

# The abolition of the death penalty and its alternative sanction in South Caucasus: Armenia, Azerbaijan and Georgia



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# Contents

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<b>Acknowledgments</b>	<b>2</b>
<b>Acronyms</b>	<b>3</b>
<b>Introduction</b>	<b>4</b>
<b>Research methodology</b>	<b>5</b>
<b>Executive summary</b>	<b>6</b>
<b>Country-by-country analysis</b>	
<b>Republic of Armenia</b>	<b>8</b>
<b>Republic of Azerbaijan</b>	<b>21</b>
<b>Republic of Georgia</b>	<b>36</b>
<b>Comparison of the application and implementation of the death penalty and its alternative sanction in the South Caucasus region</b>	<b>48</b>
Annex I: <b>Recommendations of the national conference: life imprisonment in Armenia (20 May 2011)</b>	<b>55</b>
Annex II: <b>Recommendations of the national conference: life imprisonment in Azerbaijan (5 July 2011)</b>	<b>56</b>
Annex III: <b>Recommendations of the national conference: life imprisonment in Georgia (17 June 2011)</b>	<b>57</b>
Annex IV: <b>Recommendations of the South Caucasus regional conference on life imprisonment (15 July 2011)</b>	<b>58</b>

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The contents of this document are the sole responsibility of Penal Reform International and can in no circumstances be regarded as reflecting the position of the European Union.

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## Acronyms

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<b>CAT</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>CJR</b>	Criminal Justice Reform Council
<b>CPC</b>	Criminal Procedure Code
<b>CPT</b>	European Committee for the Prevention of Torture
<b>ECHR</b>	European Convention for the Protection of Human Rights and Fundamental Freedoms
<b>EIDHR</b>	European Instrument for Democracy and Human Rights
<b>EU</b>	European Union
<b>GA</b>	General Assembly
<b>HCJ</b>	High Council of Justice
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>MCLA</b>	Ministry of Corrections and Legal Assistance of Georgia
<b>MP</b>	Member of Parliament
<b>NGO</b>	Non-Governmental Organisation
<b>NPM</b>	National Preventive Mechanism
<b>OPCAT</b>	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>OSCE</b>	Organization for Security and Cooperation in Europe
<b>PACE</b>	Parliamentary Assembly of the Council of Europe
<b>PDO</b>	Public Defender's Office
<b>PMG</b>	Prison Monitoring Group
<b>PRI</b>	Penal Reform International
<b>TB</b>	Tuberculosis
<b>UK</b>	United Kingdom
<b>UN</b>	United Nations
<b>UPR</b>	Universal Periodic Review
<b>USA</b>	United States of America

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# Introduction

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The death penalty is the ultimate cruel, inhuman and degrading punishment. It represents an unacceptable denial of human dignity and integrity. It is irrevocable, and where criminal justice systems are open to error or discrimination, the death penalty will inevitably be inflicted on the innocent.

The challenges within the criminal justice system do not end with the institution of a moratorium or with abolition of the death penalty, as the problem of what to do with the most serious offenders remains. Many countries that institute moratoria do not create humane conditions for prisoners held indefinitely on 'death row', or substitute alternative sanctions that amount to torture or cruel, inhuman or degrading punishment, such as life imprisonment without the possibility of parole, solitary confinement for long and indeterminate periods of time, and inadequate basic physical or medical provisions. Punitive conditions of detention and less favourable treatment are prevalent for reprieved death row prisoners.

This research paper focuses on the historical application of the death penalty, and the processes of its eventual abolition in the South Caucasus region, and subsequently the implementation of its alternative sanction, life imprisonment. Its aim is to provide up-to-date information about the laws and practices relating to how the death penalty was applied prior to abolition, and how life imprisonment is now being implemented in Armenia, Azerbaijan and Georgia.

This paper takes a country-by-country approach and focuses on:

- The legal framework of the death penalty and its alternative sanction (life imprisonment).
- Implementation of the sentence, including an analysis of fair trial standards.
- Statistical information on the application of the death penalty/life imprisonment.
- Application of the sentence including an analysis of the conditions of imprisonment.
- Criminal justice reform processes in each country.

This paper provides detailed and practical recommendations tailored to each country to bring

it in line with international human rights standards and norms. It is intended as a follow-up report to the 2009 PRI report "Life Imprisonment and Conditions of Serving the Sentence in the South Caucasus".

We hope this research paper will assist advocacy efforts in the region towards the implementation of alternative sanctions that are humane and respect international human rights standards. We also hope this paper will assist researchers, academics, members of the international and donor community, and all other stakeholders involved in penal reform processes including parliamentarians, prison officials and members of the judiciary.

This report has been published in English, Georgian and Russian.

March 2012

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## Research methodology

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Access to information on the historical application of the death penalty and its alternative sanctions is unavailable or inaccurate in many countries. Statistical information is not always made available by state bodies, and information provided is not always timely, or lacks clarity. As such, although Penal Reform International (PRI) aimed to undertake an in-depth analysis of legal, policy and practice areas within this research paper, however, access to some information was sometimes beyond the abilities of the researchers and therefore may be incomplete.

A research questionnaire was designed in late 2010 to assist researchers in identifying relevant information. The research questionnaire was designed by PRI in partnership with Sandra Babcock (Northwestern University, USA) and Dirk van Zyl Smit (Nottingham University, UK).

The research was undertaken by PRI in all three countries and included field visits and desk based research.

The researchers looked at and analysed various primary sources, including legislation and case law. They interviewed relevant government officials (within various departments of the Ministries of the Interior, the Ministries of Justice, Constitutional Councils, and the Penitentiary Services of all three countries). Prison officials including heads of the penitentiary institutions where life-sentenced prisoners are incarcerated, national human rights commissions/ombudsmen, lawyers and judges, journalists, and members of civil society/human rights defenders were also interviewed. Where access was made available to researchers, interviews were also carried out with life-sentenced prisoners.

Research also included an analysis of reports by people or organisations with first-hand experience, such as inter-governmental organisations, including UN treaty bodies and special procedures, as well as reports by international NGOs, such as Human Rights Watch, Amnesty International, Death Penalty Worldwide and the World Coalition against the Death Penalty. Reports and articles by journalists and academics were also analysed.

National and regional conferences were also held with the participation of the representatives of international and local organisations and governmental organisations in order to review and discuss the

results of the research. The recommendations of the national and regional conferences can be found in the annexes of this report.

The research was carried out during 2011.

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## Executive summary

Armenia, Azerbaijan and Georgia all took very positive, and seemingly quick, steps towards abolition in the post-Soviet Union era following independence in 1991. Georgia abolished the death penalty in 1997, Azerbaijan in 1998, and Armenia in 2003. In fact, very few executions were known to have taken place following independence in all three countries. Armenia carried out no executions after independence; the last execution took place in 1988. The last execution in Azerbaijan took place in 1993 and in Georgia in 1995.

All three countries have made international commitments towards abolition in law through the ratification of international and regional treaties. All three have ratified Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (on the elimination of the death penalty), and Georgia has ratified Protocol No. 13 to the ECHR (concerning abolition of the death penalty under all circumstances). Both Azerbaijan and Georgia have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (aiming at the abolition of the death penalty).

Accordingly, the South Caucasus is now an execution-free region and can be held-up as an example of best practice for other regions on the cusp of abolition. However, what has replaced the death penalty is in some regards just as inhumane as the death penalty was prior to its abolition.

Following abolition, all three countries adopted a new punishment: life imprisonment. Armenia provided that life imprisonment meant a minimum tariff of 20 years, Azerbaijan and Georgia a minimum tariff of 25 years imprisonment. None of the three countries have a maximum tariff, meaning that there is the potential for those sentenced to life imprisonment to never be released.

Although life imprisonment is a relatively new punishment in the region, its use is growing: there are currently 99 lifers in Armenia, 244 in Azerbaijan,

and 91 in Georgia. Its indeterminate length and overly punitive nature<sup>1</sup> raise a number of legal and practical concerns.

Across the region, people are sentenced to life imprisonment after proceedings which fail to meet international standards for a fair trial, as guaranteed under Article 14 of the ICCPR, to which all three countries are state parties. Although the right to a fair trial is not impeded by a lack of legal guarantees, it is impeded in practice. The lack of an independent judiciary is compounded by poor and ineffective legal assistance for indigent defendants, resulting in low acquittal rates and there are concerns over sentences being applied indiscriminately and arbitrarily.

The conditions and treatment of life-sentenced prisoners are reported to be well below international standards. In the South Caucasus region, where criminal justice institutions are in a process of continuous development and the resources are far from comparable with European countries, the difficulties associated with prison conditions and rights for lifers are serious ones.

Although the situation differs in Armenia, Azerbaijan and Georgia there are also several similarities. Prison conditions are highly restrictive and often jeopardise the physical and mental health of inmates. This is particularly damaging given the long-term nature of their sentences and the limited or non-existent opportunities to be considered for early release.

Lifers in all three countries are incarcerated in cells for an average of 23 hours a day. There are virtually no out-of-cell activities, and minimal in-cell activities. There is a lack of access to education, employment, or any other rehabilitative programmes, and most lifers are only entitled to a small number of family visits per year, often under very restrictive conditions. Life-sentenced prisoners are often separated from the rest of the prison population and kept under a much harsher and stricter regime, which is unrelated to their risk to prison security, but based on their legal status

<sup>1</sup> While the purpose of sentencing is ultimately punitive, the nature of the sentence should be proportionate to the seriousness of the offence and individualised to the specificities of the crime, including the circumstances in which it was committed. Sentences should not, therefore, be used to serve wider political purposes or purely to punish the offender. Effectively locking away criminals for life and creating a discriminatory and arbitrary regime purely because of the type of sentence a prisoner is serving fails to tackle the structural roots of crime and violence. Prisoners serving life or long-term imprisonment often experience differential treatment and worse conditions of detention compared to other categories of prisoner. Examples include separation from the rest of the prison population, inadequate living facilities, excessive use of handcuffing, prohibition of communication with other prisoners and/or their families, inadequate health facilities, extended use of solitary confinement and limited visit entitlements. Punitive conditions of detention and less favourable treatment are known to be particularly prevalent for reprieved death row prisoners. Sentences should reflect international human rights standards and norms, and provide the offender with a meaningful opportunity for rehabilitation and reintegration back into society, thereby leading to law-abiding and self-supporting lives after their release.

as a lifer. The actual living and hygiene conditions of the prison cells also raise serious concerns regarding the health of such prisoners. Financial and other resources continue to be under-committed, meaning that substantial improvements to the condition and treatment of lifers are not going to take place in the immediate future.

Despite these difficulties, there are several positive developments and efforts made by state structures, civil society and the international community. These include improvements to legislation, improved qualification of prison staff, and vocational training of prison personnel. However, while these efforts are commendable, all three countries need to implement additional reforms at the legislative, policy and practice level to ensure that international human rights standards are met.

As such, we trust that this report will assist governments in the region to implement a more holistic approach to penal reform which focuses on reformation and the respect for human dignity, rather than a punitive approach to punishment.

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# Republic of Armenia

## I. Basic country information

*Geographical region:* Armenia is a landlocked country located between Georgia to the north, Azerbaijan to the east, Iran to the south and Turkey to the west. The capital is Yerevan.

*Type of government:* According to Article 1 of the Constitution, the Republic of Armenia is “a sovereign, democratic, social state governed by rule of law”.

*Language:* The state language is Armenian.

*Population:* Armenia has a population of approximately 3.2 million people.

*Religion:* The predominant religion in Armenia is Christianity.

## II. Overview of the status of the death penalty in Armenia

Following independence from the Soviet Union in 1991, Armenia retained the death penalty in its 1961 Criminal Code for 18 peace-time offences and 16 war-time offences. Some of the offences did not involve the use of violence. However, Armenia very quickly took positive legal and political steps to reduce the application of the death penalty in practice.

The first elected president of Armenia, President Ter-Petrosian, was personally opposed to the death penalty and refused to sign any death warrants. As such, the last execution known to have taken place was prior to independence, in 1988.

In May 1992, two offences were abolished from the Criminal Code (speculation and large-scale theft of state or social property), and in December 1995 an additional offence was abolished (desertion). This left 31 offences for which the death penalty could be imposed, which was still excessive, especially considering the courts continued to hand down death sentences.

In 2001, Armenia became a member of the Council of Europe, thereby undertaking a number of human rights obligations. One of these obligations was the abolition of the death penalty as an exclusive form

of punishment. Subsequently, Armenia declared an official moratorium in 2001.

On 18 April 2003, the new Criminal Code was adopted, replacing the death penalty with the sentence of life imprisonment. It was envisaged under the new Criminal Code that this penalty could only be imposed for particularly grave crimes. The 2003 Criminal Code also included the provision, in Article 16(4), that a person accused of committing a crime cannot be extradited to another country, if the legislation in that country envisages the death penalty for the given crime, without Armenia receiving assurances from that country that the death penalty will not be executed.

However, the Law on the Application of the Criminal Code retained the death penalty for murder with aggravating circumstances, terrorist acts, and rape of female minors if these crimes were committed before the entry into force of the new Criminal Code on 1 August 2003.

The Secretary-General of the Council of Europe described this development as “partial abolition”, and called for complete abolition.

On 9 September 2003, the National Assembly of Armenia ratified Protocol No. 6 on the Elimination of the Death Penalty to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and it entered into force on 1 October 2003. Armenia also signed Protocol No. 13 (concerning abolition of the death penalty under all circumstances) in 2006; however ratification has not yet taken place.

Robert Kocharyan, the second President of Armenia, commuted the sentences of all 42 persons on death row to a sentence of life imprisonment on 1 August 2003. On 27 January 2004, the Parliamentary Assembly of the Council of Europe expressed concern over the commutation process and urged the Armenian authorities to examine each of the 42 cases on an individual basis. No steps were taken in this regard.

In 2005, the Armenian Constitution was finally amended to abolish the death penalty. Article 15 now prescribes:

*“Everyone shall have a right to life. No one shall be condemned to the death penalty or executed.”*

### III. Legal framework: application of international and regional human rights standards in Armenia

According to Article 6 of the Constitution, international treaties shall enter into legal force in Armenia only after being ratified. They shall form a constituent part of the Armenian legal system. However the treaty must comply with the Constitution for it to be ratified. Once ratified, it takes precedence over national legislation.

Armenia is party to most international human rights instruments relevant to the death penalty.

Armenia ratified the International Covenant on Civil and Political Rights (ICCPR) and its First Optional Protocol on 23 June 1993. However Armenia is not a signatory to the Second Optional Protocol to the ICCPR (aiming at the abolition of the death penalty). Armenia ratified the Convention against Torture (CAT) on 13 September 1993, the Optional Protocol to CAT (OPCAT) on 14 September 2006, and the Convention on the Rights of the Child on 23 June 1993. It is not a state party to the Rome Statute of the International Criminal Court.

In 2001, Armenia became a member of the Council of Europe. It ratified Protocol No. 6 to the ECHR on 1 November 2003, and signed Protocol No. 13 to the ECHR on 19 May 2006, but has not yet ratified it.

In 2007, Armenia co-sponsored and voted in favour of the United Nations (UN) General Assembly (GA) resolution “On a moratorium on the death penalty” which was adopted under resolution 62/149. The moratorium resolution was reaffirmed in 2008 in UN GA resolution 63/168 and again in 2010 in UN GA resolution 65/206. Armenia repeated its positive co-sponsoring and voting pattern in each year.

### IV. Legal framework: the death penalty in Armenia

#### Death penalty applicable crimes

Prior to abolition, the following offences carried a possible death sentence under the old Criminal Code of the Republic of Armenia (first adopted on 7 March 1961, entered into force on 1 July 1961):

1. Treason: Article 59.
2. Espionage: Article 60.
3. Terrorist act: Article 61.
4. Terrorist act against a representative of a foreign state: Article 62.
5. Sabotage: Article 63.
6. Organisational activity directed towards the commissioning of especially dangerous crimes against the state: Article 67.
7. Especially dangerous crimes against another workers’ state: Article 68.
8. Banditry: Article 72.
9. Activities causing disruption to the work of corrective labour institutions: Article 72-1.
10. Evasion of mobilisation: Article 76.
11. Making or passing counterfeit money or securities: Article 82.
12. Speculation: Article 83 (abolished in May 1992).
13. Large scale theft of state or social property: Article 90-1 (abolished in May 1992).
14. Premeditated murder under aggravated circumstances: Article 99.
15. Aggravated rape: Article 112.
16. Hijacking: Article 180-1.
17. Bribe-taking: Article 185.
18. Infringing the life of a policeman or people’s guard: Article 209-1.

The following articles of the 1961 Criminal Code, section on military crimes, prior to abolition also carried a possible death sentence if the offence was committed in times of war (although Article 248 also carried a possible death sentence in peacetime if the offence included premeditated murder):

19. Insubordination: Article 246.
20. Offering resistance to a superior or forcing him to violate official duties: Article 248.
21. Forcible actions against a superior officer: Article 250.
22. Desertion: Article 255 (abolished December 1995).
23. Unwarranted abandonment of unit in a combat situation: Article 256.
24. Evasion of military service by maiming or any other method: Article 257.
25. Intentional destruction or damaging of military property: Article 259.
26. Violation of service regulations for guard duty: Article 263.
27. Violation of rules for performing combat lookout: Article 265.
28. Abuse of authority, exceeding authority, and neglectful attitude toward duty: Article 268.
29. Surrendering or abandoning to the enemy of means of waging war: Article 269.
30. Abandonment of a sinking warship: Article 270.
31. Unwarranted abandonment of battlefield or refusal to use a weapon: Article 271.
32. Voluntary surrender into captivity: Article 272.
33. Pillage: Article 274.
34. Use of force against the population in an area of military operations: Article 275.

### Prohibited categories

Prior to abolition, a death sentence could not be passed on anyone under 18 years of age, or ruled to suffer from mental illness at the time the offence was allegedly committed or when the sentence was passed.

Pregnant women were also exempt.

## V. Legal framework: alternative sanctions to the death penalty in Armenia

### Length of life imprisonment

The sentence of life imprisonment was introduced into the new Criminal Code in 2003. According to Article 60(1) of the Criminal Code, life imprisonment means isolation from society without time-limit for particularly grave crimes. However, Article 76 of the Code provides that a person sentenced to life imprisonment can be released on parole if they have served a minimum of 20 years imprisonment, and the court finds that the prisoner does not need to serve any further punishment.

Prior to abolition, the most severe sentence after the death penalty was a 15-20 year maximum tariff. The 1961 Criminal Code did not envisage a life sentence as a possible sanction. As such, there was some debate over the length of imprisonment for the 42 reprieved death row prisoners, who had their sentences commuted to life imprisonment in August 2003. Since those 42 death row prisoners had been sentenced in accordance with the 1961 Criminal Code, there was some argument that their sentence should have been commuted to a maximum 15-20 year sentence, as opposed to a life sentence which is considered a more severe sanction.

### Life sentence applicable crimes

According to the 2003 Criminal Code, life imprisonment can be applied to the following six criminal offences:

- 
1. Murder: Article 104(2). The Article sets out the aggravating factors necessary for life imprisonment to be applied for murder:
    - Of two or more persons.
    - Of a close relative.
    - Combined with kidnapping or hostage taking.
    - Of a pregnant woman.
    - With particular cruelty.
    - Committed in a way dangerous for the life of many people.
    - By a group of people or by an organised group.
    - Out of mercenary motives and combined with extortion and banditry.
    - Combined with terrorism.
    - Out of hooliganism.
    - To conceal another crime or to facilitate the committal of the latter.
    - Combined with rape or violent sexual actions.
    - Out of motives of national, race or religious hate or fanaticism.
    - For the purpose of utilisation of the parts of the body or tissues of the victim.
    - By a person who previously committed a murder.
  2. Application or testing of weapons of mass destruction prohibited by international agreements: Article 387(2).
  3. Murder of a representative of a foreign state(s) or international organisation(s), if this action was committed with the purpose of provoking war, or complication of international relations: Article 388(2).
  4. International terrorism: Article 389. This includes the organisation or implementation of an explosion or arson or other acts in the territory of a foreign state, with the purpose of international complications or provocation of war or destabilisation of a foreign state, aimed at the destruction of people, or bodily injuries, destruction or demolition of facilities, roads and means of transportation, communications, or other assets.
  5. Crimes against human security: Article 392. This includes deportation, illegal arrest, slavery, mass and regular execution without trial, kidnapping followed by disappearance, torture or cruel treatment of civilians, due to racial, national, ethnic identity, political views or religion.
  6. Genocide: Article 393. This includes actions aimed at the complete or partial extermination of national, ethnic, racial or religious groups by means of killing the members of this group, inflicting severe damage to their health, violently preventing them from childbearing, enforced hand-over of children, violent re-population, or physical elimination of the members of this group.
- ### Prohibited categories
- According to Article 60(2) of the Criminal Code, the following categories cannot be sentenced to life imprisonment:
- Juveniles: persons under 18 years of age at the time of the commission of the crime.
  - Women pregnant at the time of commission of the crime or sentencing.
- Further, with regard to individuals with mental illness, according to Articles 25-26 of the Criminal Code, a person “who was in a state of insanity while committing a crime” (Article 25(1)), and those who were not at the time of the offence but have become mentally ill before sentencing by the court (Article 25(3)), are not subject to criminal liability.
- Article 25(1) defines “insanity” as “not understanding the dangerous nature of one’s actions (or inaction) or control one’s actions as a result of chronic mental illness, temporary mental disorder, mental retardation or other mental disease.”
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Article 25(2) provides that forced medical measures can be imposed by the court with respect to a person who committed socially dangerous actions in an insane state. Those who were sane at the time of the offence but have become mentally ill before sentencing can be subjected to punishment if they recover.

Article 26 of the Code also makes provision for those people that may have some mental health concerns, but not to the extent that they meet the standard defined in Article 25(1), to have that condition taken into consideration as a mitigating circumstance at the sentencing stage.

## VI. Application of the death penalty/life imprisonment: fair trial procedures

### Presumption of innocence

Article 21 of the Constitution guarantees the right to be presumed innocent until proved guilty by a court judgement lawfully entered into force as prescribed by law.

### Trial by jury

There is no trial by jury in Armenia. The courts are made up of members of the judiciary.

According to Article 33 of the Judicial Code, the Criminal Court of Yerevan, is made up of a court chairman and 5 judges; the Northern Criminal Court, is made up of a court chairman and 3 judges; and the Southern Criminal Court, is made up of a court chairman and 2 judges.

The Criminal Appellate Court, based in Yerevan, functions with a court chairman and 15 judges.<sup>2</sup>

The Criminal Chamber of the Court of Cassation, also based in Yerevan, comprises the Chamber Chairman and two judges of the Chamber.<sup>3</sup>

### The right to adequate legal assistance

Article 20 of the Constitution guarantees everyone the right to legal assistance and provides that, in cases set forth by the law, legal assistance shall be provided at the expense of the state. Furthermore, Article 20 stipulates the right of every detained or indicted individual to be represented by a defence counsel of his or her own choice.

The Law on Advocacy, which was established in 2005, regulates the right to free legal representation and sets forth the relevant eligibility requirements (Article 6).

The 2005 law created a legal basis for establishing a national Public Defender's Office (PDO) or "*Hanrayin Pashtpan*" in Armenian. According to Article 45, the PDO is funded by the state. Staff attorneys (public defenders) receive monthly rather than per-case remuneration fixed at the rate of monthly remuneration for prosecutors.

It was known that in 2008, the PDO was staffed with 40 attorneys providing free representation to indigent clients. Sixteen of the PDO staff was working in Yerevan and the rest in regional PDO offices.<sup>4</sup> Armenian nationals as well as foreign nationals and stateless persons are eligible for free legal representation.

However, some clients of the PDO raised complaints with local human rights NGOs about the poor quality of legal services received. In particular, there are reports of state-appointed lawyers not familiarising themselves with the facts of the case, and in some cases, going against the interest of their clients in favour of the prosecutor. These concerns were raised in cases where life imprisonment was a possible sentence.

<sup>2</sup> Article 41 of the Judicial Code.

<sup>3</sup> Article 52, *Ibid.*

<sup>4</sup> The Legal Profession in Armenia, Irina Urumova, September 2008, p. 13.

## Independence of the judiciary

Article 94 of the Constitution legally guarantees the independence of the judiciary.

In general, the work of the court in Armenia is not considered independent, impartial or competent. Violations of fair trial standards are reported throughout all court processes. The judiciary continues to be perceived by the population as corrupt and subject to influence, not only by the state but also by different power groups.

According to the American Bar Association in 2008:

*“It is widely believed that the President and Government influence judges in cases with political implications or when a business associated with Government officials is involved. Influence from regional governors is also believed to threaten judicial independence in the regions. Attempts to influence judges are not limited to other branches of state power, however, but may take the form of a request from a friend or relative for a favour... When a judge is uncertain about how to decide a case, he/she may reportedly ask the court chairman or even an appellate court judge for advice, in order to avoid issuing the wrong decision.”<sup>5</sup>*

Despite recent pay increases and the ending of the need for judges to pay personally for aspects of basic court functions, judicial salaries continue to remain amongst the lowest in the former Soviet Union, which exposes them to corruption.<sup>6</sup>

According to the Council of Europe Commissioner on Human Rights, Thomas Hammarberg, “the judiciary is still far from being independent”, particularly because of pressure and intimidation of members of the judiciary “including from central and local authorities and prosecutors”, exerting “improper” influence.<sup>7</sup> While some measures have been taken to facilitate “the proper exercise of the functions of a judge”,

the Commissioner stresses that “much still needs to be done to ensure adequate implementation of the new legislation and improve the public trust in the judiciary”.

The Commissioner has encouraged the adoption of measures to make the process of selecting judges more transparent and fairer, to increase their remuneration and to introduce mechanisms to promote and train judges in deontology (particularly on the basis of the Code of Judicial Ethics which came into force in December 2005).

## Language of the court

Article 19 of the Judicial Code establishes that the official language of the court shall be Armenian. If a person taking part in a criminal case does not know Armenian, the Court must provide an interpreter at the state’s expense, if the defendant does not have sufficient funds.<sup>8</sup>

## Open hearings

Article 19 of the Constitution legally guarantees the right to a fair and public hearing. Article 20 of the Judicial Code provides that courts shall be open to the public, except for reasons of protecting public morals, public order, national security, the life of persons taking part in proceedings, or the interests of justice.

As far as legal proceedings are concerned, the Council of Europe Commissioner on Human Rights notes that they still lack transparency. Some progress has been noted in improving the openness of court hearings and accessibility of court decisions, in particular by creating a judicial decisions website. However, courts fail to properly substantiate their decisions. Even the motivations of decisions of the Cassation Court currently provided are subject to criticism by lawyers because of their briefness

5 American Bar Association Rule of Law Initiative Judicial Reform Index 2008. <[http://apps.americanbar.org/rol/publications/armenia\\_judicial\\_reform\\_index\\_01\\_08\\_eng.pdf](http://apps.americanbar.org/rol/publications/armenia_judicial_reform_index_01_08_eng.pdf)>, p. 3.

6 Ibid, p. 3.

7 Report by the Commissioner for Human Rights, Thomas Hammarberg, on his visit to Armenia from 7 to 11 October 2007, CommDH(2008)4, 30 April 2008.

8 Article 19(3) of the Judicial Code.

and formality. The Commissioner stresses that a transparent legal process constitutes an absolute necessity for the organisation of fair, impartial and transparent proceedings.<sup>9</sup>

### Right to an appeal by a court of higher jurisdiction

Decisions made in the Court of First Instance may be appealed to the Criminal Court of Appeal, and subsequently to the Court of Cassation which is the highest court in the Republic of Armenia.

An appeal can only be lodged where there has been a judicial error, i.e. a violation of substantive or procedural law that could influence the outcome of the case.<sup>10</sup>

### Right to seek pardon or commutation of the sentence

According to Article 20 of the Constitution, every convicted person shall have a right to request pardon or mitigation of the punishment: Article 55(17) of the Constitution places that authority in the office of the President. The Council of Justice<sup>11</sup> may express an opinion on issues of pardon at the request of the President (Article 95(4) of the Constitution).

Article 83 of the Constitution provides that the act of pardon can completely or partially exempt the convict from punishment; replace the convict's unserved part of the punishment with a lesser punishment; or delete the criminal record.

In 2003, President Robert Kocharyan commuted the death sentences of all 42 persons still on death row at the time of abolition to a sentence of life imprisonment.

It is not known if any prisoners serving a life sentence have received a commutation or pardon.

## VII. Application of the death penalty: statistics

Official statistics on the application of the death penalty are not available. However, it is known that the Republic of Armenia has not carried out any executions since it became independent in 1991, and that the last known execution was in 1988.

According to reports by NGOs, the passing of death sentences by the Courts was a regular occurrence in Armenia until abolition in 2003; however the numbers each year appear to be relatively low. Between 1990 and 1997, it was reported that a total of 21 death sentences were handed down.<sup>12</sup>

## VIII. Implementation of the death penalty: method of execution

Prior to abolition, the death penalty was executed by shooting. Little is known regarding how this was carried out, as the death penalty was considered a matter of state security.

According to Amnesty International, neither the prisoner nor his or her relatives were given any advance notification of the date of execution, or an opportunity for a last visit. The prisoner would be removed and buried in secret, with relatives having no right to the return of the body or even to know where their loved one was buried.<sup>13</sup>

<sup>9</sup> Report by the Commissioner for Human Rights, *supra* n. 7.

<sup>10</sup> Article 44 of the Judicial Code.

<sup>11</sup> The Council of Justice consists of up to nine judges elected by secret ballot for a period of five years by the General Assembly of Judges of the Republic of Armenia, two legal scholars appointed by the President of the Republic, and two legal scholars appointed by the National Assembly. The Council of Justice is chaired by the Chairman of the Court of Cassation without the right to vote (Article 94(1) of the Constitution).

<sup>12</sup> Noyan Tapan news agency, 24 March 1997.

<sup>13</sup> Armenia: Time to abolish the death penalty, Amnesty International, April 1997, AI Index EUR 54/03/97, p. 4.

## IX. Application of life imprisonment: statistics

As of 1 May 2011, 99 prisoners were serving a life sentence in Armenia.

Year	Total number of life sentences issued	Total number of lifers incarcerated
2011 (1 May)	2	99
2010	8	97
2009	12	89
2008	8	77
2007	4	71
2006	5	67
2005	5	62
2004	7	57
2003	8	50
2002	4	42
2001	3	38
2000	4	35
1999	4	31
1998	3	27
1997	6	24
1996	5	18
1995	3	13
1994	5	10
1993	2	5
1992	1	3
1991	1	2
1990	0	1
1989	1	1

## X. Implementation of life imprisonment: prison regime and conditions

### Location of imprisonment for life-sentenced prisoners

In September 2006, life-sentenced prisoners were transferred from Goris penitentiary institute to Nubarashen penitentiary. To date, 97 of the 99 prisoners sentenced to life are incarcerated at Nubarashen; the other two are incarcerated at Yerevan-Kentron prison.

### Prison regime

According to Article 60 of the Criminal Code, life imprisonment is defined as the isolation of a convict from society in a penitentiary institution indefinitely.

All life-sentenced prisoners in Armenia are detained under a closed, strict regime. Lifers are separated from the rest of the prison population.

### Conditions and treatment of detention

At present, persons sentenced to life imprisonment are kept on the fourth and fifth floors of the Nubarashen penitentiary. There are four inmates per cell. The area of the cells is 30m<sup>2</sup> in Nubarashen and 6m<sup>2</sup> in Yerevan-Kentron. A convict may also be kept in an isolated cell at his own request and where there is a threat to his personal security. The head of the penitentiary institution makes the decision about whether a prisoner can be housed alone.

According to the European Committee for the Prevention of Torture (CPT), the conditions in which life-sentenced prisoners at Yerevan-Kentron prison are accommodated gives cause for concern: "The cells were small, measuring just over 6m<sup>2</sup>, and were too narrow (i.e. less than 2m between the walls). Further, there was limited access to natural light and no outside view (as the windows faced a wall)."<sup>14</sup>

The situation is aggravated by a regime of solitary confinement for the life-sentenced prisoners. At

<sup>14</sup> Report to the Armenian Government on the visit to Armenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 May 2010, 17 August 2011, para. 71.

Yerevan-Kentron the prisoners are not allowed to associate with each other or with any other prisoner, which means that they are kept in a perpetual state of semi-isolation, with only their cell-mate for company 24-hours a day, 7-days a week.

The cells at Nubarashen were renovated in the last two years, mainly from the funds of the prisoners themselves.

The cell floor is made of wood. A toilet is partitioned within the cell. Most of the cells now have a TV set, radio, fans, and an electric heater, which provides heating in the cells during wintertime. There is a library in the penitentiary which all prisoners have access to but approximately only 50 percent of prisoners use it.

The only regular out-of-cell activity consists of a one-hour daily walk,<sup>15</sup> which is taken alone in a yard on the top floor of the prison building,<sup>16</sup> except for Saturdays and Sundays. This is justified by the fact that the responsible staff do not work on the weekends. Due to overcrowding, an activity and fitness room have been converted into additional cells, further limiting access to sports and activities.

In terms of activities, lifers spend 23 hours a day (and 24 hours at the weekends) confined to their cells in a state of enforced idleness, their main activity being watching TV and reading books. The CPT has called upon Armenia to “develop a programme of activities for prisoners sentenced to life imprisonment (including work, education, association and sports, as well as targeted rehabilitation programmes).”<sup>17</sup>

Although legislation provides that life-sentenced prisoners, like other categories of prisoner, have the right to education, this right is not implemented in practice.

As regards contact with the outside world, lifers are allowed to send and receive letters. However, Armenian legislation continues to impose severe restrictions on the visiting entitlement of life-sentenced prisoners. Life prisoners are entitled

to one long visit from friends and family and three short visits per year. The duration of the long term visit is one to three days; the short-term visit is one hour. Some convicts have renounced their right to short term visits, because the meetings take place in the presence of an employee of the penitentiary, and the convict and visitor are separated by glass, as stipulated by the law. They find the duration and the frequency of the visits unsatisfactory. They are allowed to use the telephones of the penitentiary, except for Saturdays and Sundays; but limited to three phone calls per month per prisoner.

Like all other prisoners, life-sentenced prisoners receive three meals a day. Prisoners told researchers that the quality of food provided is average. However, of those interviewed, 60 percent do not consume the meals provided by the penitentiary. Prisoners can receive additional food from parcels sent once a week from their family. Most of the prisoners do not purchase products from the penitentiary shop because of the high prices.

Linen is washed and changed once a week, mainly with the help of the prisoners’ relatives.

Life-sentenced prisoners have the possibility to shower and shave once a week.

Handcuffing of prisoners sentenced to life has been reduced, however following the escape of two lifers from Nubarashen Prison in November 2009 the practice of systematic handcuffing of life-sentenced prisoners whenever they are taken out of their cells has been reintroduced.<sup>18</sup>

## Access to medical care

Prisoners reported that they were all subjected to individual medical examinations when they entered the penitentiary institution. There is a medical post at the penitentiary which prisoners can use as needed.

At Nubarashen Prison, the healthcare team comprises of 13 full-time doctors (including the head doctor,

<sup>15</sup> Article 78 of the Penitentiary Code.

<sup>16</sup> CPT report, supra n. 14, para. 71.

<sup>17</sup> Ibid, para. 70.

<sup>18</sup> Ibid, para. 72.

cardiologist, dermatologist, dentist, two specialists in internal medicine, two TB specialists and a psychiatrist). There are an additional seven ‘feldshers’ (paramedic practitioners). Doctors work from 9am to 6pm on weekdays, and feldshers provide a 24-hour presence, seven days a week.

Prisoners can access medicines from the medical post mainly free of charge, and sometimes from the penitentiary shop at their own expense or from their families. If necessary, prisoners including lifers can be transferred to the Central Hospital of Penitentiary Institutions.

Although a psychiatrist is employed at Nubarashen, the CPT has raised concerns that the treatment of prisoners under psychiatric observation was seriously handicapped by the poor material conditions, and treatment possibilities other than medication were lacking.<sup>19</sup>

According to the CPT, the two life-sentenced prisoners held at Yerevan-Kentron prison appeared to have unmet serious mental health needs, notably related to prolonged detention in solitary confinement.<sup>20</sup>

At Nubarashen Prison, a life-sentenced prisoner who was identified as a suicide risk was kept in his cell, hand- and ankle-cuffed to his bed for more than one month between December 2009 and January 2010. At no point was he sent to a hospital facility.<sup>21</sup>

## Rehabilitation and social reformation programmes

The right to education for convicts is legally guaranteed under Articles 89 and 90 of the Penitentiary Code. The penitentiary institution must take measures to organise basic education in penitentiary institutions. Higher and postgraduate education is to be organised at the expense of the convict. Access to education is possible, and at least two of the 99 lifers study at a higher education institution, for which they have to pay for themselves.

The right to work is not legally guaranteed. Article 85 of the Penitentiary Code requires that the internal regulations of the penitentiary define the conditions for work. On 14 February 2005, the Minister for Justice issued a decree which established a procedure for convicts to be engaged in technical activities and services at the penitentiary. Unfortunately the provisions of the decree have not been applied to life-sentenced prisoners.

There are no other programmes or activities designed to rehabilitate or prepare lifers for their eventual release back into society.

## Conditions for parole

According to Article 76 of the Criminal Code a person sentenced to life imprisonment can be released on parole, if the court finds that the person does not need to serve the punishment any longer, and has served no less than 20 years of imprisonment.

The procedure for parole is set out in Articles 115 and 116 of the Criminal Procedure Code. At the expiration of 20 years imprisonment, the prison authorities, with the consent of the prisoner, will review the prisoner’s case and submit a recommendation to an independent commission on “Parole and Commutation of Punishment”.<sup>22</sup> They base their decision on the behaviour of the prisoner, and in particular, whether the prisoner has violated any prison regulations in the previous five years. The independent commission will then decide whether to release the prisoner or replace the punishment with a milder punishment: if the commission takes a positive decision, a petition to be released will be made to the court. If the court refuses a petition for parole, another application on the same grounds may be asserted in court within three years after the decision of refusal.<sup>23</sup>

The longest term served by a lifer to date is 22 years. Prisoner M.S. falls under the criteria for parole, however he is still imprisoned, and no steps have been taken to petition for his parole.

<sup>19</sup> Ibid, para. 109.

<sup>20</sup> Ibid, para. 110.

<sup>21</sup> Ibid, para. 117.

<sup>22</sup> The members of the independent Commission on “Parole and Commutation of Punishment” must be approved by the President.

<sup>23</sup> Article 116(2) Criminal Procedure Code.

Length of imprisonment served	No. of prisoners
22 years	1 prisoner
20 years	1 prisoner
19 years	1 prisoner
18 years	2 prisoners
17 years	5 prisoners
16 years	3 prisoners
15 years	5 prisoners
14 years	6 prisoners
13 years	3 prisoners
12 years	4 prisoners
11 years	4 prisoners
10 years	3 prisoners
9 years	4 prisoners
8 years	8 prisoners
7 years	7 prisoners
6 years	5 prisoners
5 years	5 prisoners
4 years	5 prisoners
3 years	8 prisoners
2 years	12 prisoners
1 year	8 prisoners

## Prison staff and management

Lifers interviewed considered their relationship with the staff of the prison to be acceptable. They stated that they meet with employees of the penitentiary every day, and that they can meet a psychologist, a social worker or a lawyer if requested, and can also request a meeting with the head of the penitentiary. However, there is a need for the prison service to recruit additional psychologists, lawyers and social workers.

There are no special trainings provided for personnel who work with lifers and long-term prisoners. The only trainings that were conducted for such personnel have been organised by Penal Reform International with the financial assistance of the European Union under their EIDHR programme.

## Monitoring prisons

A Public Monitoring Group has been carrying out monitoring in penitentiary establishments under the Ministry of Justice since 2005. The group comprises representatives of NGOs who are authorised to access penitentiary institutions, to meet with persons deprived of their liberty, and to submit relevant reports to the Ministry of Justice.<sup>24</sup>

On 14 September 2006, Armenia ratified the OPCAT; undertaking to establish a national preventive mechanism (NPM) for the monitoring of prisons. The office of the Ombudsman was designated as the NPM.

In 2008, the Council of Europe Commissioner for Human Rights has recommended that Armenia improve public monitoring of penitentiary institutions, with particular emphasis on ensuring that the group of public observers includes independent and impartial representatives from civil society.<sup>25</sup>

## XI. Transparency and accountability

The Ministry of Justice provides information on the number of life-sentenced prisoners and places of imprisonment on its website. The most recent statistics are eight months old. The information reflected in this report has been obtained upon request.

## XII. Current reform processes in the criminal justice system

In 2001, the authority of the Penitentiary Department was transferred from the jurisdiction of the Ministry of Interior Affairs to the jurisdiction of the Ministry of Justice, with the aim to improve the penal system, as well as to contribute to the improvement of the conditions of detention, and ensure the protection of detainees' rights.

As part of PRI's programme of work in Armenia, a number of key events and initiatives have taken place. This has included training of mid-level prison

<sup>24</sup> National report to the UN Human Rights Council, A/HRC/WG.6/8/ARM/1, 17 February 2010, para. 42.

<sup>25</sup> Report by the Commissioner for Human Rights, supra n. 7, p. 32.

officials on international human rights standards for the treatment and the rights of those who face life imprisonment.

A national conference focusing on reform challenges for life imprisonment was held in Yerevan, Armenia on 20 May 2011 with the participation from both government representatives and civil society. One of the key outcomes of the national conference was the agreement of recommendations for the reform process (see Annex I).

A regional conference on life imprisonment brought together participants from Armenia, Azerbaijan and Georgia was convened in Tbilisi, Georgia on 15 July 2011. Participants agreed 22 recommendations to take the reform process forward across the South Caucasus region (see Annex IV).

Continued advocacy efforts at the national and regional (through the EU and the OSCE) level have continued to push for reforms in the penal and criminal justice systems.

### **XIII. Recommendations to the Republic of Armenia**

1. Sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, and ratify Protocol No. 13 to the European Convention on Human Rights.
2. Become a state party to the Rome Statute of the International Criminal Court.
3. Co-sponsor and vote in favour of the upcoming UN General Assembly resolution calling for a moratorium on the death penalty scheduled for 2012, and any other relevant resolutions. Make use of bilateral relations to advocate for other states to support the resolution.
4. Provide public access to information and statistics on the national penal system, including the number of sentenced prisoners and their characteristics, length of sentence and place of sentence. Declassify the regulations and orders related to the rights of life-sentenced prisoners. Publish historical information on the application of the death penalty prior to abolition, including data on those executed and those sentenced to death.
5. Shorten the minimum length of term which a life-sentenced prisoner must serve before being able to apply for parole (currently 20 years). According to the UN Crime Prevention and Criminal Justice Branch's 1994 report 'Life Imprisonment', all prisoners sentenced to life should have their suitability for release reviewed after serving between 8 and 12 years of incarceration.
6. Improve the system of legal aid in Armenia. This should include ensuring that the Public Defender's Office only recruits well-trained lawyers, and provides them with appropriate remuneration. Legal aid should be available at all stages of a criminal case: pre-trial, trial, appellate, pardon and parole stage.
7. Uphold the independence and integrity of the judiciary, including ensuring that judges are well trained, paid an appropriate salary for their position, and have security of tenure. Make the process to select judges more transparent and fair.

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8. Draft and adopt a strategy to reform the penal system with a clear vision that makes specific reference to reforming life imprisonment; organise a public debate on the strategy, with participation from all interested parts of civil society.
  9. Continue to carry out reforms of the penitentiary system so that it is in compliance with international human rights standards. This should include improving the cell size for prisoners at Yerevan-Kentron institution.
  10. Ensure that prison conditions of prisoners including lifers approximate as closely as possible the conditions of life outside the prison system.
  11. Improve daily activities for life-sentenced prisoners. Such activities should be aimed at improving their mental health and supporting their rehabilitation and reintegration back into society by organising targeted training for them, and providing them with appropriate work skills and education. This should include:
    - a. Providing lifers with regular access to sporting activities.
    - b. Providing lifers with the opportunity to engage in employment.
    - c. Regularly amending the library.
    - d. Implementing all necessary measures in order to provide lifers with the right to education.
    - e. Consider developing other rehabilitation and reintegration programmes that will assist a lifer to deal with any underlying issues or problems linked to their crime, such as treatment in case of drug/alcohol abuse, anger management, and psychological/psychiatric support.
  12. Special efforts should be made to prevent the breakdown of family ties of prisoners serving life sentences and to increase the number of long- and short-term visits for lifers, and to reduce the restrictive conditions of short-term visits.
  13. Abolish the systematic use of handcuffing of lifers when being taken out of their cell. Any security or disciplinary measures should only be decided on a case-by-case basis, based on an individual risk-assessment, and not based on the type of sentence being served.
  14. Improve independent monitoring of places of detention. Ensure that the national preventive mechanism can operate independently, and is competent to access and monitor all places where persons are deprived of their liberty on a regular and unfettered basis, and is well resourced and financed to ensure effectiveness.
  15. Increase resources for the prison system to improve salary and working conditions for prison staff. Ensure all prison staff are appropriately trained in international human rights standards, and are appropriately remunerated.
  16. Improve the parole system, making procedures clear, and ensure that judges who have the responsibility to review parole applications are specialised penal judges, with experience in dealing with such cases.
  17. Reduce the amount of time (currently three years) by which a refused parole application can be re-submitted.
  18. Encourage further collaboration on criminal justice issues between government officials and civil society, including journalists and human rights defenders.
  19. Encourage relevant international organisations and donor states in a position to do so to promote and support criminal justice reforms within Armenia at both the financial and political level.
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# Republic of Azerbaijan

## I. Basic country information

*Geographical region:* Azerbaijan is the largest country in the Caucasus region of Eurasia. It is bounded by the Caspian Sea to the east, Russia to the north, Georgia to the northwest, Armenia to the west, and Iran to the south. Baku is the capital.

*Type of government:* Article 7 of the Constitution provides that Azerbaijan is a “democratic, legal, secular, unitary republic”.

*Language:* The official language is Azerbaijani.

*Population:* Azerbaijan has a population of approximately 9.1 million people.

*Religion:* Around 95 percent of the population is Muslim (85 percent are Shia and 15 percent Sunni: Azerbaijan has the second highest Shia population percentage after Iran).

## II. Overview of the status of the death penalty in Azerbaijan

The death penalty was first introduced into Azerbaijan in 1918, however was quickly abolished by January 1920, and then reintroduced in 1922.

Between 1947 and 1950 the death penalty was replaced with a term of imprisonment of 25 years. However, it was reintroduced into legislation in 1950 before finally being abolished in 1998.

Under the 1950 Decree of the President of the USSR, the death penalty was applicable to crimes related to parricide, espionage and sabotage.<sup>26</sup> In 1954, premeditated murder in aggravating circumstances was added to the list of death penalty applicable crimes.

In 1958, two more offences were added to the list: terrorism and brigandage, raising the number of death penalty applicable crimes in Azerbaijan to six.

The 1960 Criminal Code expanded the list again, raising the number of death penalty applicable crimes from six to 33 (see section IV below).

Following the period of “perestroika”<sup>27</sup> in the late 1980s, four new articles were introduced to the Criminal Code to establish the death penalty as a punishment for political crimes. This brought up the total number of death penalty applicable offences to 37.

In August 1991 Azerbaijan became an independent state. In 1992, Azerbaijan became a member of the United Nations (UN) and ratified the International Covenant on Civil and Political Rights (ICCPR).

A moratorium on executions was subsequently established in 1993. It is important to note that at this time a public opinion poll indicated that 81.8 percent of the population were in favour of retaining the death penalty.

On 21 December 1994, the death penalty was abolished for women.

A new Azerbaijani Constitution, adopted by referendum in November 1995, provided that “prior to its complete abolition, capital punishment as a supreme measure of punishment can be applied to the gravest offences against state, life and health of other persons” (Article 27). While the new Constitution did not abolish the death penalty, it did indicate that Azerbaijan was on the path towards it.

In 1996, Azerbaijan started on the road to membership of the Council of Europe, a precondition of which is the abolition of the death penalty. Subsequently, the 1960 Criminal Code was amended in 1996 to abolish 19 death penalty applicable offences and merge three offences into other articles of the Criminal Code (this followed the abolition of one death penalty applicable offence in 1991). This meant that by 1996, Azerbaijan retained 14 death penalty applicable offences. At the same time, the Criminal Code created a new restriction on the application of the death penalty for men aged over 65 at the time of committing the offence.<sup>28</sup>

<sup>26</sup> Decree of the President of the Supreme Council of the USSR, 12 January 1950.

<sup>27</sup> Perestroika was a political movement within the Communist Party of the Soviet Union during the 1980s, widely associated with the Soviet leader Mikhail Gorbachev.

<sup>28</sup> Article 22 of the 1960 Criminal Code provided that the death penalty could only be applied to men over the age of 18 and under the age of 65.

On 22 January 1998, the President made a public commitment to abolish the death penalty and commuted the sentences of the then 128 persons on death row to 20 years imprisonment.

On 10 February 1998, the law on the abolition of the death penalty was adopted (and entered into force on 21 February 1998). A new Criminal Code was also introduced in 1998, establishing that the ultimate and maximum punishment in Azerbaijan would be life imprisonment for 25 years. However, the 1995 Constitution has not been amended to recognise this new status.

Azerbaijan ratified the Second Optional Protocol to the ICCPR (aiming at the abolition of the death penalty) in January 1999. However, it entered a reservation under which the death penalty could be applied for grave crimes committed in wartime or under threat of war, and the Criminal Code was amended to this effect in October 1999.

In May 2002, Azerbaijan ratified Protocol No. 6 on the Elimination of the Death Penalty to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Unfortunately Azerbaijan has yet to sign and ratify Protocol No. 13 (concerning abolition of the death penalty under all circumstances).

### III. Legal framework: application of international and regional human rights standards in Azerbaijan

International agreements to which Azerbaijan is a party are an integral part of its legislative system and, in the event of a conflict, prevail over national regulations and laws (with the exception of the Constitution and laws adopted by referendum).<sup>29</sup>

Azerbaijan is party to most international and regional human rights instruments relevant to the death penalty.

Azerbaijan ratified the International Covenant on Civil and Political Rights (ICCPR) on 13 August 1992, its

First Optional Protocol on 27 November 2001, and the Second Optional Protocol to the ICCPR (aiming at the abolition of the death penalty) on 22 January 1999. Azerbaijan ratified the Convention against Torture (CAT) on 16 August 1996, the Optional Protocol to CAT (OPCAT) on 28 January 2009, and the Convention on the Rights of the Child on 13 August 1992. It is not a state party to the Rome Statute of the International Criminal Court.

In 2001, Azerbaijan became a member of the Council of Europe. It ratified Protocol No. 6 to the ECHR on 1 May 2002, but has not signed or ratified Protocol No. 13 to the ECHR.

In 2007, Azerbaijan voted in favour of the United Nations (UN) General Assembly (GA) resolution “On a moratorium on the death penalty” which was adopted under resolution 62/149. The moratorium resolution was reaffirmed in 2008 in UN GA resolution 63/168 and again in 2010 in UN GA resolution 65/206. Azerbaijan repeated its positive voting pattern in each year.

## IV. Legal framework: the death penalty in Azerbaijan

### Death penalty applicable crimes

Prior to abolition, the following 37 offences carried a possible death sentence under the previous Criminal Code of the Republic of Azerbaijan (first adopted on 8 December 1960):

1. Treason: Article 57(1).
2. Use of the armed forces, or of legislation of Azerbaijan against the Azerbaijani people and constitutional state bodies: Article 57-1(2) (introduced 22 July 1992).
3. Espionage: Article 58.
4. Terrorist act: Article 59(1).
5. Terrorist act against a foreign citizen: Article 60(1) (merged into other articles in the Criminal Code in 1996).

<sup>29</sup> Articles 148 and 151 of the Constitution.

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6. Sabotage: Article 61 (merged into other articles in the Criminal Code in 1996).
  7. Organisational activity directed toward particularly serious crimes, as well as participation in anti-Soviet organisations: Article 65.
  8. State crimes of particular danger committed against the workers of another country: Article 66.
  9. Robbery: Article 70.
  10. Actions that disrupt the functioning of Correctional Labor Institutions: Article 70-1 (abolished 1996).
  11. Establishment of armed formations and groups not provided by the law: Article 70-2(3) (introduced 17 January 1992).
  12. Failure to heed the call for mobilisation: Article 74(2).
  13. Manufacture or sale of counterfeit money or securities: Article 80(2) (abolished 1996).
  14. Violation of the rules on foreign currency transactions: Article 81(2) (abolished 1993).
  15. Theft of state property on a large scale: Article 88-1 (abolished 1996).
  16. Premeditated murder under aggravating circumstances: Article 94.
  17. Rape: Article 109(3).
  18. Accepting a bribe: Article 170(2) (abolished 1996).
  19. Attempt on the life of a militiaman or volunteer police: Article 191-1 (merged into other articles in the Criminal Code in 1996).
  20. Hijacking or seizure of a railway train, aircraft, ship or boat, as well as the seizure of any station, airport, port or other transportation company, institution, organisation: Article 212-2(3) (introduced on 2 April 1992).
  21. Terrorism: Article 212-3 (introduced 21 October 1994).
  22. Disobedience to the chief / insubordination: Article 233(c) (abolished 1996).
  23. Offering resistance to a superior or forcing him to violate his/her duties: Article 235(c) (abolished 1996).
  24. Violent actions against a superior officer: Article 237(b) (abolished 1996).
  25. Desertion: Article 242(b)(c) (abolished 1996).
  26. Wilful abandonment of a combat situation: Article 243 (abolished 1996).
  27. Evasion of military service through self-mutilation, or through other means: Article 244(b) (abolished 1996).
  28. The intentional destruction of or damage to military property: Article 246(c) (abolished 1996).
  29. Violation of regulations for guard service: Article 250(f) (abolished 1996).
  30. Violation of the rules of combat duty: Article 252(d) (abolished 1996).
  31. Abuse of power, abuse of authority and neglect of service: Article 255(c).
  32. Surrender or abandonment to the enemy the means of warfare: Article 256 (abolished 1996).
  33. Abandonment of a sinking warship: Article 257(b) (abolished 1996).
  34. Wilful abandonment of the battlefield or refusal to use weapons: Article 258 (abolished 1996).
  35. Voluntary surrender: Article 259 (abolished 1996).
  36. Marauding (looting): Article 261 (abolished 1996).
  37. Violence against the population in the area of military operations: Article 262 (abolished 1996).
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## Prohibited categories

Groups for which the application of the death penalty was prohibited were:

- Women.<sup>30</sup>
- Men below the age of 18 at the time of the crime.<sup>31</sup>
- Men over the age of 65 at the time of sentencing.<sup>32</sup>
- Anyone ruled to have been insane when the crime was committed, or when judgement was passed.

## V. Legal framework: alternative sanctions to the death penalty in Azerbaijan

### Length of life imprisonment

In 1998, life imprisonment was introduced as a new offence in the Criminal Code to replace the death penalty.

A life sentence is defined in Azerbaijan as a minimum term of imprisonment of 25 years. Only once the minimum term is served can a prisoner apply for release.

Under the 1960 Criminal Code the most severe sentence after the death penalty was 15 years imprisonment. Following abolition, approximately 80 former death row prisoners appealed to the Court of First Instance with a request to bring their commuted sentence into line with the 1960 Criminal Code in the hope that the court would replace their life sentence with a 15 year sentence. Previously pardoned persons, who were sentenced to the death penalty, were required to serve no more than 15 years. The 25-year term exceeded the previous maximum. The Court turned down all cases and upheld the new 1998 Criminal Code. On 28 July

2005, the Constitutional Court, at the request of the Ombudsman, refused to review the constitutionality following the replacement of the death penalty with life imprisonment.

### Life sentence applicable crimes

Although life imprisonment has replaced the death penalty as the ultimate and maximum sentence in Azerbaijan, the range of offences for which a life sentence may be imposed seems excessive and goes beyond the “most serious crimes” principle.

Under the 1998 Criminal Code, life imprisonment as a punishment is included in 19 articles:

1. Aggravated murder: Article 120(2).
2. Terrorism-related offences resulting in death: Article 214.
3. Treason (joining the enemy, spying, giving state secrets to a foreign state, providing assistance to a foreign state, foreign organisation or their representatives in carrying out hostile activities against the Republic of Azerbaijan): Article 274.
4. Espionage: Article 276.
5. Waging aggressive war: Article 100(2).
6. Genocide: Article 103.
7. Full or partial destruction of the population in the absence of signs of genocide: Article 105.
8. Sexual violence (rape, enforced prostitution, enforced sterilisation, or committing other acts of sexual violence against persons): Article 108.
9. Forced pregnancy: Article 108-1.
10. Forced detention (detention, arrest or abduction of persons and the subsequent denial of the deprivation of liberty or a denial of the message information about his fate or whereabouts): Article 110.
11. Racial discrimination (apartheid): Article 111.

<sup>30</sup> Article 22 of the 1960 Criminal Code.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

12. Violation of the laws or customs of war: Article 115(4).
13. Violations of international humanitarian law during armed conflict: Article 116.
14. Inaction or providing feedback for criminal orders during armed conflict: Article 117(2).
15. Use of the armed forces of Azerbaijan Republic and other armed groups, the legislation of Azerbaijan Republic, against the Azerbaijani people and the constitutional state bodies: Article 275(2).
16. Attempt on the life of a state or public figure (a terrorist act): Article 277.
17. Forcible seizure of power or forcible retention of power: Article 278.
18. Creation of armed formations or groups not envisaged by the law: Article 279(3).
19. Armed rebellion: Article 280.

On 3-7 September 2007, the Council of Europe Commissioner on Human Rights, Thomas Hammarberg, visited Azerbaijan, and stated in his report that the Criminal Code has “unusually long lists of crimes, punishable by life imprisonment, some of which are not comprehensively outlined (terrorism in Article 214, high treason in Article 274) and thus, are hardly compatible with the general principle of law, that the crime should not only be set forth in law, but that the law should be quite comprehensive.”<sup>33</sup>

## Prohibited categories

Article 57(2) of the Criminal Code, provides that life imprisonment is prohibited from being applied to:

- Women.
- Men below the age of 18 at the time of the crime.
- Men over the age of 65 at the time of sentencing.

With regard to persons with mental illnesses, according to Article 21(1) of the Criminal Code, no person shall be held criminally responsible, if, at the time of committing a crime, they were in a “state of insanity”. That is, if they could not realise the actual nature and public danger of the acts or inaction or to control these acts due to chronic mental illness, temporary disruption of mental activity, dementia or other mental illness.

Decisions on the issue of mental illness are taken by the court based on the opinion of a medical commission.

If a person commits a socially dangerous act (action or inaction) in a “state of insanity” the court may take compulsory medical measures.<sup>34</sup>

If a person was sane at the time of committing a crime, but becomes mentally ill when judgement is to be passed, the court may take the offender’s mental illness into account in sentencing, and medical measures may also be applied.<sup>35</sup>

## VI. Application of the death penalty/life imprisonment: fair trial procedures

### Presumption of innocence

Article 63 of the Constitution legally guarantees the presumption of innocence.

### Trial by jury

Article 24 of the Criminal Procedure Code provides that the accused shall have the right to be tried by a jury in certain circumstances. This includes those accused of an offence which provides life imprisonment as a punishment.<sup>36</sup> The jury consists of twelve main and two reserve jurors.<sup>37</sup>

<sup>33</sup> Report by the Commissioner for Human Rights, Mr Thomas Hammarberg, on his visit to Azerbaijan 3-7 September 2007, CommDH (2008) 2, 20 February 2008, section 56.

<sup>34</sup> Article 21(2) of the Criminal Code.

<sup>35</sup> Article 21(3), *Ibid.*

<sup>36</sup> Article 395(1) of the Criminal Procedure Code.

<sup>37</sup> Article 79(2), *Ibid.*

However, although the Criminal Procedure Code entered into force on 1 September 2000, more than 11 years have passed without jury trials having actually been implemented in Azerbaijan.

## The right to adequate legal assistance

Article 61 of the Constitution guarantees the right to qualified legal assistance from the moment of detention or arrest. In specific cases set out by legislation legal advice shall be rendered free of charge, at the State's expense.<sup>38</sup>

If the defendant is charged with a particularly serious offence, which would include those for which life imprisonment may be imposed, and the defendant is financially insolvent, the Criminal Procedure Code allows them to receive free assistance from a state attorney.<sup>39</sup>

A state attorney must be a member of the Bar Association of the Republic of Azerbaijan.<sup>40</sup>

In many cases, however, prisoners have questioned the independence of lawyers appointed by the court and have complained about the lack of access to lawyers.

Although the Constitution provides equal status for prosecutors and defence lawyers before the courts, in practice the arrest and investigatory powers of the prosecutors have dominant influence before the courts.

The UN Committee against Torture raised the issue of "inadequate legal safeguards for detainees, which include, inter alia, restricted access to public defenders and failure to notify detainees of their rights at the time of detention, including their rights to contact family members." The Committee was also

concerned at the "shortage of public defenders in the state party, and at allegations that the quality of legal aid is low as a result of inadequate resources... The state party should also take effective measures to ensure that in practice all detainees in all detention and remand centres are guaranteed, inter alia, immediate access to independent legal counsel."<sup>41</sup>

In one case, for example, the state prevented the replacement of a state-appointed lawyer with a lawyer chosen by the family.<sup>42</sup>

It should be noted that the remuneration for a state-appointed lawyers is very low: approximately 99 gepiks (approximately €1.03) per hour. This does not include time spent travelling, activities undertaken to investigate the case, or any other financial costs linked to the trial. To receive payment of the fee the lawyer must obtain permission from the prosecutor and the court, which makes the lawyer dependent on these bodies.<sup>43</sup>

There are approximately 741 lawyers in Azerbaijan Lawyer's Board (about 1 advocate for every 10,000 people). These figures are much lower in comparison with neighbouring countries, which have less territory and population than Azerbaijan.

## Independence of the judiciary

Article 127 of the Constitution guarantees the independence of judges.

However, according to local civil society, corruption and a lack of independence are serious problems in Azerbaijan, which result in unfair and politically motivated trials.<sup>44</sup>

In practice, the courts are reported to be subject to political influence.

<sup>38</sup> Article 61(2) of the Constitution.

<sup>39</sup> Article 92(3)(7) of the Criminal Procedure Code.

<sup>40</sup> Articles 91(5)(4) and 91(5)(5), *Ibid.*

<sup>41</sup> Concluding observations of the Committee against Torture, 8 December 2009, CAT/C/AZE/CO/3, para.11.

<sup>42</sup> Case of Camille Sadraddinov, *Ibid.*, para.11.

<sup>43</sup> NGO Report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, October 2009, <[http://www2.ohchr.org/english/bodies/cat/docs/ngos/NGOReport\\_Azerbaijan43.pdf](http://www2.ohchr.org/english/bodies/cat/docs/ngos/NGOReport_Azerbaijan43.pdf)>, p. 10.

<sup>44</sup> Human Rights Center of Azerbaijan (HRCA), Individual UPR submission - Azerbaijan, September 2008, <[http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/AZ/HRCA\\_AZE\\_UPR\\_S4\\_2009\\_HumanRightsCenterofAzerbaijan\\_upr.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/AZ/HRCA_AZE_UPR_S4_2009_HumanRightsCenterofAzerbaijan_upr.pdf)>, paras. 14 and 15.

The President directly appoints lower level judges. The President also appoints the Constitutional Court and Supreme Court judges with confirmation by the legislature. Prosecutors (procurators) are also appointed by the President with confirmation from the legislature. Judges will often remand a case for further investigation rather than render an innocent verdict. Investigations tend to focus on obtaining confessions rather than on gathering evidence.<sup>45</sup>

The Council of Europe Commissioner for Human Rights has recommended that Azerbaijan complete reforms of the judiciary so as to ensure its full independence, impartiality and effectiveness by reforming the system of selection and appointment of judges, focusing on the integrity of candidates, their practical abilities and knowledge of human rights standards; proceeding to the establishment of a National Academy of Judges; increasing funding of the judiciary and securing better conditions for proper administration of justice; encouraging the evolution of the Collegium of Advocates into a professional bar association independent of the state; ensuring the application of codes of ethics for legal professions; and taking measures to improve proper enforcement of judicial decisions.<sup>46</sup>

## Language of the court

Article 127(XI) of the Constitution provides that legal proceedings are to be carried out in the state language of Azerbaijani or in a language of the majority of the population in a specific area. Persons who do not know the language of court proceedings have the right to be acquainted with court materials, to take part in legal proceedings, and to make statements in the court in their native language through the aid of an interpreter.

Article 91(5)(12) of the Criminal Procedure Code provides that a defendant may have the free assistance of an interpreter if he is financially insolvent.

## Right to an appeal by a court of higher jurisdiction

Article 65 of the Constitution provides that every person convicted by a court has the right to appeal that judgement to a higher court.

A verdict from the Court of First Instance can be appealed within 20 days to the Appellate Court,<sup>47</sup> and within one month to the Supreme Court.<sup>48</sup>

With few exceptions, former death row prisoners were sentenced to death by the Supreme Court, acting as a court of first instance for serious crimes. This meant that in practice, there was no right to appeal to a court of higher jurisdiction. On 1 September 2000, when the new Criminal Code and the Criminal Procedure Codes (CPC) were introduced, only a small portion of former death row prisoners were able to appeal their death sentences. Despite the fact that the transitional law on the introduction of the CPC did not provide a deadline to appeal sentences handed down by the old law and the Constitution guarantees the possibility of appeal.

## Right to seek pardon or commutation of the sentence

The right to seek pardon of a sentence is guaranteed under Article 65 of the Constitution.

The President retains the constitutional authority to exercise pardon and grant clemency.

Prior to abolition, all death sentences were automatically passed to the Presidential Clemency Commission, which prepared recommendations for consideration by the President, regardless of whether the prisoner had submitted a petition.<sup>49</sup>

Article 356(6) of the Criminal Procedure Code provides that if the accused is sentenced to life imprisonment, the right to apply for a pardon shall

45 See for example, 2010 Human Rights Report: Azerbaijan, US State Department Bureau of Democracy, Human Rights, and Labour, 8 April 2011.

46 Contribution to the fourth session of the Universal Periodic Review (UPR) working group by the Office of the Commissioner for Human Rights of the Council of Europe, Recommendations from the report of the Commissioner's visits to Azerbaijan CommDH(2008)2, <[http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/AZ/COE\\_AZE\\_UPR\\_S4\\_2009\\_anx\\_RecommendationsfromtheReportoftheCommissionersVisitsstoAzerbaijan.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/AZ/COE_AZE_UPR_S4_2009_anx_RecommendationsfromtheReportoftheCommissionersVisitsstoAzerbaijan.pdf)>, para. 2.

47 Articles 384-407 of the Criminal Procedure Code.

48 Articles 408-420, *Ibid.*

49 Article 109(22) of the Constitution.

be explained to him however they have to issue an application themselves.

The Presidential Clemency Commission seeks the views of the Supreme Court and the office of the Prosecutor General in making recommendations, as well as taking into consideration the circumstances of the crime, the family status of the prisoner and other mitigating or aggravating factors. A dossier of the case is then passed onto the President, who issues a decision by decree.

It is known that the President granted clemency to the final 128 death row prisoners on 22 January 1998, commuting their sentences to 20 years imprisonment.

For those serving a life sentence who have received a commutation, their sentences have been commuted from life to a specified period, ranging from 15 to 25 years. The number of commuted life sentences passed year on year is given below:

Year	Number of commuted life sentences
2010	1
2009	0
2008	0
2007	0
2006	2
2005	1
2004	1
2003	2
2002	0
2001	1
2000	0
1999	6
1998	Life imprisonment introduced

## VII. Application of the death penalty: statistics

During the 20 years under Soviet rule (1971 to 1991), it has been estimated that approximately 400 death sentences were handed down in Azerbaijan. It is unknown exactly how many executions took place during that time.

Azerbaijan has not published any official statistics on the number of death sentences issued or executions carried out prior to abolition.

Below is a break-down of the figures of death sentences and executions which researchers were able to gather from various sources:

Year	Total number of death sentences	Total number of executions
1998 (Abolished February 1998)	6	Abolished
1997	23	Moratorium
1996	41	Moratorium
1995	37	Moratorium
1994	23	Moratorium
1993 (Moratorium established June 1993)	22	8
1992	27	4
1991 (Azerbaijan gains independence)	18	0
1990	3	3
1989	3	6
1988	6	5
1987	11	Unknown
1986	17	Unknown
1985	15	Unknown
1984	16	Unknown
1983	26	Unknown
1982	26	Unknown
1981	30	Unknown
1980	34	Unknown
1971-1979	213	Unknown
<b>Total</b>	<b>At least 597</b>	<b>At least 26</b>

## VIII. Implementation of the death penalty: method of execution

Prior to abolition, the method of execution was by shooting.

On average, prisoners on death row were executed no longer than nine months after conviction.

Executions took place in the fifth block of Baku's Bailov prison where prisoners on death row were held.

Under procedures laid down back in the Soviet era, the director of Bailov prison, on receiving an official communication that a prisoner's petition for clemency had been refused, was obliged to ensure that the execution was carried out within 24 hours. To this end the director would forewarn members of a special commission that they would need to convene within a specified time. The prisoner was given no advance notice of this. The commission members consisted of a prosecutor, the prison director, a doctor and an official from the Ministry of Internal Affairs.<sup>50</sup>

When the commission had assembled, the condemned person would be summoned from the cell, with hands cuffed behind their back and a rubber stopper placed in the mouth to prevent him from crying out. The text of the decree refusing clemency would be read out, and the prisoner would then be taken immediately to a cell a short distance away and shot in the head two or three times with a revolver.

Neither the prisoner nor his or her relatives were given any advance notice of the date of execution, or an opportunity for a last visit, and the prisoner had barely minutes to come to terms with imminent execution after the clemency refusal had been announced. The prisoner would be removed and buried in secret, with relatives having no right to the body or even to know where their loved one was buried.<sup>51</sup>

## IX. Application of life imprisonment: statistics

In Azerbaijan, official statistics on the number of life-sentenced prisoners is considered a state secret.

However, according to unofficial information, as of December 2010, the country had 244 prisoners serving a life sentence. This includes the prisoners who had their sentences commuted from death to life imprisonment.

Life sentences known to have been passed are the following:

Year	Number of life sentences
2010	12
2009	9
2008	Figures unknown
2007	18
2006	9
2005	13
2004	20
2003	21
2002	23
2001	19
2000	23

The majority of lifers have been sentenced for offences linked to acts of terrorism.

There are ten foreign citizens sentenced to life imprisonment: six Russians and four Georgians.

## X. Implementation of the death penalty/life imprisonment: prison regime and conditions

### Location of imprisonment for death row/ life-sentenced prisoners

When the death penalty was reintroduced in 1922, facility No. 5 was assigned as death row. During Soviet rule, nine isolation cells and six cells for two persons were assigned to facility No. 5. However, due to overcrowding, prison officials added bunk beds into the isolation cells and used one of the washrooms as a cell. Sometimes a store room was also used as a cell. The overcrowding of cells on

<sup>50</sup> Azerbaijan: Time to abolish the death penalty, Amnesty International, March 1997, EUR 55/02/97, p. 7.

<sup>51</sup> Ibid, p. 7.

death row accounted for high mortality rates and a high percentage of sick prisoners. Prisoners on death row were not permitted to be transferred to the prison hospital. Outdoor exercise was not allowed for those on death row.

Upon abolition of the death penalty, those on death row were moved to Gobustan prison under the Ministry of Justice between 16 and 19 March 1998.

Of the current 244 lifers, all but 17 are incarcerated in Gobustan prison. Twelve are held at the Central Medical Facility (the central prison hospital); three are in a specialised medical institution for the treatment of tuberculosis; and two are held in the Detention Unit.

Facility No. 5 remains an isolation facility, and detainees sentenced to life imprisonment who are considered “extremely dangerous” are incarcerated here.

It is expected that in 2012 a new prison for lifers will open in Umbak, a village near Baku.

## Prison regime

Life-sentenced prisoners are separated from other prisoners under a strict high-security regime.

Until recently, life prisoners were kept isolated from each other and only two prisoners were kept in one cell at the same time. Verbal communication with a neighbouring cell was considered a breach of the prison rules, although it was not usually punished.

New legislation was introduced on 24 June 2008 to improve the prison regime for lifers. Of importance was the amendment to repeal the requirement that no more than two prisoners could be housed in one cell.

## Conditions and treatment of detention

The majority of lifer cells measure approximately 2.57m x 3.88m with a ceiling of about 3.5m. In the cell there is a bunk bed, small table and two chairs whose legs are cemented to the floor, a bedside table for personal items, and a toilet, which is separated

from the rest of the cell by a one meter thick stone wall. The floor and ceiling of the cell is covered with concrete slab, which means that cells are hot in summer and cold in winter.

A barred window of 80cm<sup>2</sup> is located over the toilet and closed off by a transparent plastic film in winter. A lattice with 15cm<sup>2</sup> sections provides the only passage of air and natural light. A pane on the door is opened only during the distribution of food. There is a lack of natural air circulation in the cells.

The CPT delegation observed in 2008 that the legal requirement of 4m<sup>2</sup> of living space per prisoner was observed in all the cells visited (e.g. one prisoner in cells measuring 7-8 m<sup>2</sup>; two prisoners in cells measuring 9-10 m<sup>2</sup>; three prisoners in cells measuring some 17 m<sup>2</sup>). However, as stressed by the CPT in previous visit reports, given that prisoners were locked up in their cells for 23 hours a day, living space was far from generous.<sup>52</sup>

While the food has improved considerably since 1998, the nutritional standards established by decision No. 154 of the Cabinet of Ministers on 25 September 2001 are still not being met. In particular, prisoners are not allocated the amount of food prescribed for them on a daily basis (80 grams of meat, 100 grams of fish, 500 grams of potatoes, and 300 grams of vegetables). Instead, they get monotonous food, without enough calories or vitamins, and no fruit is provided.<sup>53</sup> Bread, the quality of which is variable, is often infected by a so-called “potato sickness”, rendering the grain unsuitable for eating. The lack of quality food is especially felt in circumstances where a person is sick, and where food parcels are only allowed eight times per year (up to 31.5kg each). Prisoners can buy food from the prison shop at their own expense.

Water supply is not always stable at Gobustan prison because the prison receives its water from a distance. At times there are also problems with the supply of electricity. During the summer, a light-saving mode is used restricting lights in the cells; however as there is not a sufficiently large window in the cells this impedes reading and writing, which are the only occupation available to prisoners.

<sup>52</sup> Report to the Azerbaijani Government on its visit to Azerbaijan carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 8 to 12 December 2008, para. 17.

<sup>53</sup> Ibid, para. 18.

Lifers have the opportunity to take a shower once a week (the bathrooms have recently been renovated). According to Annex 24 of Decision No. 154 of the Cabinet of Ministers (25 September 2001), prisoners are provided with laundry soap (250 gr. per month), bath soap (100 gr. per month), detergent (150 gr. per month), toothbrush (one per year) and toothpaste (one per three months). At the same time, proposed amendments to the relevant decision of the Cabinet of Ministers regarding more frequent provision of toilet paper and women prisoners with hygienic pads have also been drafted, but not yet adopted.<sup>54</sup> Occasionally there have been complaints about the failure to replace bed linen. However, each prison now has a laundry facility in each building.

The CPT has noted that during their visit to Gobustan prison in 2008 the units for lifers had significantly improved. Running water was provided on a permanent basis in the cells, and the showers in Unit 4 had been renovated, enabling prisoners to take more frequent showers. Further renovation work was underway in the shower facilities of Unit 6. In addition, the establishment's kitchen had been completely refurbished and properly equipped. However, the CPT also noted that the conditions in the most dilapidated Unit 1 remained basically unchanged.<sup>55</sup>

Following abolition of the death penalty lifers were eligible for only two short visits (four hours), and two food parcels weighing a maximum of 10 kg, per year. From September 2000 to July 2008, this was increased to three short visits and one long visit<sup>56</sup> (three days), four food parcels weighing up to 31 kg, and six phone calls per year.

Short-term visits are received under closed conditions, i.e. in a room divided in the middle by a corridor encircled with wire mesh, allowing no physical contact between prisoner and visitor.

On 24 June 2008, the Parliament improved treatment of lifers by adopting the law "On amendment of the Code of the Republic of Azerbaijan on the Execution of Punishments and of the Criminal Procedural Code of the Republic of Azerbaijan". The new law increased

the number of visits and parcels (six short and two long visits, eight parcels, and 24 phone calls, per year). The 2008 law also permitted the use of TV sets (prisoners can watch up to four hours per day) and radios in the cells, and introduced formal access to the court to challenge prison disciplinary procedures.

The law also provided that after serving ten years without any disciplinary issues, a life-sentenced prisoner would be entitled to an extra two short and one long visit, receipt of an additional two parcels, and two more telephone conversations per year.<sup>57</sup>

Prisoners are also entitled to spend up to USD \$3.30 per month on buying essentials. However, as many of the life-sentenced prisoners come from very poor backgrounds, many prisoners' families cannot to put money onto the prison accounts. As the prisoners themselves cannot work, spending up to \$3.30 per month from their prison accounts is often only a theoretical right.

Article 85 of the Code of Corrections provides that lifers are entitled to a daily one-hour walk. In practice, however, most prisoners get about half an hour. There are four walking spaces at Gobustan. There is no gym or sporting equipment. In the new establishment it is planned that each cell will have its own walking space.

Articles 95-99 of the Code of Corrections makes provisions for the useful employment of persons sentenced to life imprisonment. In practice, with the exception of one single prisoner in charge of repairing electrical and radio equipment, none of the prisoners are given any work.

The prison has a library; however it has a poor selection of books. There are no other activities available for lifers. In June 2008 the restriction on the possibility of continuing higher education for lifers was removed, however it is not being implemented in practice.

The Azerbaijani Human Rights Ombudsman has noted that the new 2008 law provides inmates with a

<sup>54</sup> Response of the Azerbaijani Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Azerbaijan from 8 to 12 December 2008, paras 16, 18 and 19.

<sup>55</sup> CPT report to the Azerbaijani Government, supra n. 52, para. 16.

<sup>56</sup> Overnight visits were made possible in 2001 by the building of family rooms at Gobustan prison to facilitate such long visits.

<sup>57</sup> Article 122(2) of the Code of Corrections.

wider range of rights, alleviates detention conditions and censorship of correspondence, and creates more opportunities for involvement of prisoners in labour and social activities.”<sup>58</sup>

It is important to note that in 2008, there were up to 20 suicide attempts and killings in Gobustan prison, including seven successful ones. In fact, there have been very high mortality rates for lifers in general. Twenty-five of 289 lifers (18 percent) died in prison in the last 11 years. Among the dead are 33 of 128 death row prisoners (26 percent).<sup>59</sup>

In its Resolution No. 1545 (April 2007), the Parliamentary Assembly of the Council of Europe (PACE) stated that “conditions within the penitentiary system of Azerbaijan remain heavy despite efforts focused on improvement of infrastructure. The situation of Gobustan prison raises special concerns due to high mortality and suicide rates of inmates.”

### Access to medical care

Life-term prisoners are usually transferred to medical facilities for treatment only if they are in a fatal condition (the central hospital and the tuberculosis facility<sup>60</sup> has a specific wing for lifers). It is forbidden to treat non-tuberculosis patients in the Central Prison Hospital for more than one month.

Outpatient treatment in the prison is complicated by the fact that the medical facilities have very limited drugs and equipment, and also limited staff. In Gobustan prison there is a psychologist (an officer who is subordinate to the Prison Service) and a psychiatrist (a doctor who is employed by the Medical Department of the Ministry of Justice).

Following a riot in 1999, policy now dictates that the prison keys must be locked in a safe every evening and the prison director must take the safe key home with him. Thus, if a prisoner becomes ill during the night, as a rule, his cell remains locked until the morning.

As part of a programme to improve access to medical care and ensure the independence of medical specialists, medical services have been separated from the Prison Service and reorganised under a central medical authority set up and operating within the Ministry of Justice.<sup>61</sup> Prisoners also now have access to their own medical records and personnel files.

### Conditions for parole

According to Article 57(3) of the Criminal Code, once a person sentenced to life imprisonment has served 25 years imprisonment, and that no other offence has been committed, the court can replace life imprisonment by imprisonment with a certain term or conditionally release them from imprisonment if the court considers it unnecessary for the prisoner to continue punishment. Upon request of the court, prison administration provides personal characteristics of the convicted person and its view as to whether the prisoner has served an appropriate sentence. However, there are no other guidelines to assist prisoners in their parole application, and the system itself is very restrictive and un-transparent.

Only three life term prisoners have been released from life imprisonment in Azerbaijan.

The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, in his report on Azerbaijan said: “Life imprisonment without fair and serious possibility of release generates human rights concerns. Especially in conjunction with the terms ‘maximum security’, it can be inhuman or degrading treatment and, therefore, violate Article 3 of the ECHR.”<sup>62</sup>

58 Report of the Commission for Human Rights (Ombudsman) of the Republic of Azerbaijan to the UN Human Rights Committee Working Group on the Universal Periodic Review, <[http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/AZ/CHR\\_AZE\\_UPR\\_S4\\_2009\\_CommissionerforHumanRights\\_upr.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/AZ/CHR_AZE_UPR_S4_2009_CommissionerforHumanRights_upr.pdf)>, para. 19.

59 Statistics provided by the Human Rights Centre of Azerbaijan.

60 As part of the programme for the provision of technical assistance to the countries of the Commonwealth of Independent States (TACIS), a new treatment block has been erected in the specialised treatment facility for convicted persons with tuberculosis.

61 National report to the UN Human Rights Council Working Group on the Universal Periodic Review, 4 November 2008, A/HRC/WG.6/4/AZE/1, para. 87.

## Prison staff and management

Lifers tend to interact mainly with the junior prison officers who they see every day during inspections, outdoor walks, and meals.

Prison staff has received no specific directions or instructions on how to treat lifers.

There are no special trainings provided for prison personnel on how to deal with life and long-term prisoners. The only trainings that were conducted for all personnel working with life and long-term prisoners was organised by PRI with the financial assistance of the European Union EIDHR programme.

## Monitoring prisons

According to the Law “On public participation in the correction of prisoners and the implementation of public control over the activities of corrective institutions”, public supervision over the prisons is provided by a Public Committee formed and approved by the Ministry of Justice. Only those NGOs who are part of the Public Committee can enter the prisons with permission from the Ministry of Justice.<sup>63</sup>

The Office for Human Rights (Ombudsman) carries out monitoring of the conditions of detention of lifers, and this monitoring has, since 2009, played the role of a national preventive mechanism (Azerbaijan ratified OPCAT in January 2009).

The last visit of the European Committee on the Prevention of Torture (CPT) took place in December 2008.

## XI. Current reform processes in the criminal justice system

Despite existing bureaucratic problems, authorities have a positive attitude towards reforming the system of life imprisonment. This has been confirmed

by the adoption of the 2008 law<sup>64</sup> and promotion of monitoring visits of the Public Committee to Gobustan prison.

Furthermore, in February 2009 the President issued a decree creating the 2009-2013 State Programme on Development of the Justice System. The program’s objectives included improving legislation and the quality of professional staff training.

This complements a 2006 prison reform programme launched with the financial support of the Council of Europe and the European Commission (€1.4million). The project aimed to improve legislation and prison administration, and to organise training of prison staff and rehabilitation for prisoners.<sup>65</sup>

As part of PRI’s programme of work in Azerbaijan, a number of key events and initiatives have taken place. This has included training of mid-level prison officials on international human rights standards for the treatment and the rights of those who face life imprisonment.

A national conference focusing on reform challenges for life imprisonment was held in Baku, Azerbaijan on 5 July 2011 with the participation from both government representatives and civil society. One of the key outcomes of the national conference was the agreement of recommendations for the reform process (see Annex II).

A regional conference on life imprisonment brought together participants from Armenia, Azerbaijan and Georgia was convened in Tbilisi, Georgia on 15 July 2011. Participants agreed 22 recommendations to take the reform process forward across the South Caucasus region (see Annex IV).

Continued advocacy efforts at the national and regional (through the EU and the OSCE) level have continued to push for reforms in the penal and criminal justice systems.

62 Report CommDH(2008)2 by the Commissioner for Human Rights, supra n. 33, section 58.

63 Report of the Commission for Human Rights (Ombudsman) on the UPR, supra n. 58, para. 21.

64 On an amendment of the Code of the Republic of Azerbaijan on Execution of Punishment and of the Criminal Procedural Code of the Republic of Azerbaijan.

65 National report to the UN Human Rights Council on the UPR, supra n. 61, para. 86.

## XII. Recommendations to the Republic of Azerbaijan

1. Amend Article 27 of the Constitution of Azerbaijan to provide for the full abolition of the death penalty in law.
2. Sign and ratify Protocol No. 13 to the European Convention on Human Rights.
3. Become a state party to the Rome Statute of the International Criminal Court.
4. Co-sponsor and vote in favour of the upcoming UN General Assembly resolution calling for a moratorium on the death penalty scheduled for 2012, and any other relevant resolutions. Make use of bilateral relations to advocate for other states to support the resolution.
5. Provide public access to information and statistics on the national penal system, including the number of sentenced prisoners and their characteristics, length of sentence and place of sentence. Declassify the regulations and orders related to the rights of life-sentenced prisoners. Publish historical information on the application of the death penalty prior to abolition, including data on those executed and those sentenced to death.
6. Shorten the minimum length of term which a life-sentenced prisoner must serve before being able to apply for parole (currently 25 years). According to the UN Crime Prevention and Criminal Justice Branch's 1994 report 'Life Imprisonment', all prisoners sentenced to life should have their suitability for release reviewed after serving between 8 and 12 years of incarceration.
7. Humanise the system of punishment by reducing the number of crimes (currently 19) for which life imprisonment may be prescribed, and limit these cases to only the most serious crimes.
8. Improve the system of legal aid in Azerbaijan. This should include ensuring that the Azerbaijan Lawyer's Board only recruits well-trained lawyers, and provides them with appropriate remuneration that covers all aspect of their caseload including investigation costs and travel expenses. Legal aid should be available at all stages of a criminal case: pre-trial, trial, appellate, pardon and parole stage.
9. Uphold the independence and integrity of the judiciary, including by ensuring that judges are well trained, paid an appropriate salary for their position, and have security of tenure. Make the process to select judges more transparent and fair.
10. Implement the 2000 Criminal Procedure Code which provides for jury trials in criminal proceedings.
11. Draft and adopt a strategy to reform the penal system with a clear vision that makes specific reference to reforming life imprisonment; organise a public debate on the strategy, with participation from all interested parts of civil society.
12. Continue to carry out reforms of the penitentiary system so that it is in compliance with international human rights standards. This should include increasing the cell size for prisoners at Gobustan prison.
13. Ensure that prison conditions of life-sentenced prisoners approximate as closely as possible the conditions of life outside the prison system. This should include reducing the requirement that all life-sentenced prisoners should serve their sentence in cells under isolated or semi-isolated conditions for prolonged periods of time.

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14. Improve daily activities and devise a comprehensive regime for out-of-cell activities for life-sentenced prisoners at Gobustan prison. Such activities should be aimed at supporting their rehabilitation and reintegration back into society by organising targeted training for them, and providing them with appropriate work skills and education. This should include:
    - a. Providing lifers with access to regular sporting activities, and increasing the amount of time prisoners can exercise outside.
    - b. Providing lifers with the opportunity to engage in employment.
    - c. Regularly renewing the library.
    - d. Implementing all necessary measures in order to provide the right to both primary and secondary education.
    - e. Consider developing other rehabilitation and reintegration programmes that will assist a lifer to deal with any underlying issues or problems linked to their crime, such as treatment in case of drug/alcohol abuse, anger management, and psychological/psychiatric support.
  15. Special efforts should be made to prevent the breakdown of family ties of prisoners serving life sentences and to increase the number of long- and short-term visits for lifers (to at least one short- or long-term visit per month), reduce the restrictive requirements for short-term visits, and increase the number of phone calls.
  16. Abolish the systematic use of handcuffing of lifers when being taken out of their cell. Any security or disciplinary measures should only be implemented on a case-by-case basis, based on an individual risk-assessment, and not based on the type of sentence being served.
  17. Stop the prison policy of locking cell keys in a safe over-night, and provide night staff with access to cell keys in case of an emergency.
  18. Make improvements to the supply of both physical and mental healthcare at Gobustan prison. This should include increasing the type and quantity of drugs, equipment and staffing needs at the infirmary. Psychiatrists, psychologists and social workers should be available on a regular basis to all prisoners sentenced to life.
  19. Improve independent monitoring of places of detention. Ensure that the NPM (Office for Human Rights/Ombudsman) can operate independently, and is competent to access and monitor all places where persons are deprived of their liberty on a regular and unfettered basis, and is adequately resourced and financed to ensure effectiveness. Continue to permit the Public Committee access to prisons.
  20. Increase resources for the prison system to improve salary and working conditions for prison staff. Ensure all prison staff are appropriately trained in international human rights standards, and are appropriately remunerated.
  21. Improve the parole system, making procedures clear and less restrictive and more transparent, and ensure that judges who have responsibility to review parole applications are specialised penal judges, who have experience in dealing with such cases.
  22. Encourage further collaboration between government officials and civil society, including journalists and human rights defenders, on criminal justice and penal reform issues.
  23. Encourage relevant international organisations and donor states in a position to do so to promote and support criminal justice and penal reforms within Azerbaijan at both the financial and political level.
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# Republic of Georgia

## I. Basic country information

*Geographical region:* Georgia is bound to the west by the Black Sea, to the north by Russia, to the south by Turkey and Armenia, and to the southeast by Azerbaijan. The capital is Tbilisi.

*Type of government:* Article 1 of the Constitution provides that Georgia is a “democratic republic”.

*Language:* The official language is Georgian, and in Abkhazia – Georgian and Abkhazian.

*Population:* The population of Georgia is approximately 4.4 million people.

*Religion:* The majority of the population of Georgia practices Orthodox Christianity.

were reportedly shot dead for looting in the western city of Zugdidi five days later.<sup>66</sup>

In March 1994, the official moratorium on executions was lifted, and at least 14 men were executed between then and February 1995.<sup>67</sup> All executions were for premeditated, aggravated murder.

In 1996, a *de facto* moratorium on executions was re-established as part of Georgia’s efforts to qualify for accession to the Council of Europe (Georgia became a Member State on 27 April 1999).<sup>68</sup>

On 11 December 1996, parliament reduced the application of the death penalty by abolishing six death penalty applicable offences from the Criminal Code, leaving seven offences carrying a possible death sentence.

On 11 November 1997, Georgia formally abolished the death penalty by adopting law No. 1069-I on “The abolition of capital punishment”.

At that time, 54 convicts were on death row. They were subsequently pardoned by the President in Decree No. 385 on 25 June 1997. Their death sentences were replaced with 20 years’ imprisonment.

On 22 March 1999, Georgia ratified the Second Optional Protocol to the ICCPR (aiming at the abolition of the death penalty). Protocol No. 6 on the Elimination of the Death Penalty to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was ratified on 1 May 2000, and Protocol No. 13 (concerning abolition of the death penalty under all circumstances) to the ECHR was ratified on 1 September 2003.

Life imprisonment was formally adopted into the Criminal Code in 1999, and entered into force in May 2000.

The Constitution of Georgia was amended in 2006. Article 15 now states that everyone has the inviolable right to life, and capital punishment is prohibited.

## II. Overview of the status of the death penalty in Georgia

The 1960 Criminal Code of Georgia established the death penalty for especially grave crimes in aggravated circumstances, as set out in 13 articles of the Code.

Following independence, Georgia became the first republic in the former USSR to take concrete measures to abolish the death penalty, when on 20 March 1991 parliament abolished the death penalty for four economic offences in the 1960 Criminal Code. Several months later, the death penalty was abolished for another two offences.

An official moratorium on executions was declared in 1992, pending discussions of a new Criminal Code. This signalled a step to the international community that Georgia was on the path to full abolition in law. However, in 1993 Georgia took a step back, and introduced two new death penalty applicable offences into the Criminal Code, and in November 1993 a Decree was issued authorising, on a temporary basis, summary executions for the crimes of banditry and looting in times of war. Nine people

<sup>66</sup> Georgia: Time to abolish the death penalty, Amnesty International, January 1997, AI Index 56/01/97, p. 5.

<sup>67</sup> Ibid, p. 5.

<sup>68</sup> Radio Tbilisi, 18 November 1996, Interfax News Agency, 19 November 1996.

### III. Legal framework: application of international and regional human rights standards in Georgia

Article 6(2) of the Constitution provides that an international treaty ratified by the state shall take precedence over domestic normative acts, unless it contradicts the Constitution.<sup>69</sup>

Georgia is party to all international and regional human rights instruments relevant to the death penalty.

Georgia ratified the International Covenant on Civil and Political Rights (ICCPR) and its First Optional Protocol on 3 May 1994. It ratified the Second Optional Protocol to the ICCPR (aiming at the abolition of the death penalty) on 22 March 1999. Georgia ratified the Convention against Torture (CAT) on 26 October 1994, the Optional Protocol to CAT (OPCAT) on 9 August 2005, and the Convention on the Rights of the Child on 2 June 1994. It became a state party to the Rome Statute of the International Criminal Court on 5 September 2003.

In 1999, Georgia became a member of the Council of Europe. The country ratified Protocol No. 6 to the ECHR on 1 May 2000, and Protocol No. 13 on 1 September 2003.

In 2007, Georgia co-sponsored and voted in favour of the United Nations (UN) General Assembly (GA) resolution “On a moratorium on the death penalty” which was adopted under resolution 62/149. The moratorium resolution was reaffirmed in 2008 in UN GA resolution 63/168 and again in 2010 in UN GA resolution 65/206. Georgia repeated its positive co-sponsoring and voting pattern in each year.

### IV. Legal framework: the death penalty in Georgia

#### Death penalty applicable crimes

According to the Criminal Code of Georgia adopted on 30 December 1960 and entering into force on 1 March 1961, the death penalty should be applied only for especially grave offences under aggravated circumstances. Thirteen articles provided for the death penalty, although only seven of them were in force at the time of abolition in November 1997:

1. Treason: Article 65 (abolished 1996).
2. Genocide: Article 65-I.
3. Espionage: Article 66 (abolished 1996).
4. Participation by mercenaries in armed conflict or in a combat situation: Article 66-I (abolished 1996).
5. Terrorist act: Article 67.
6. Terrorist act against the representative of a foreign state: Article 68.
7. Sabotage: Article 69.
8. Banditry: Article 78 (abolished 1996).
9. Actions disrupting the operation of penitentiary institutions: Article 78-I (abolished 1996).
10. Offences against human life and health, notably premeditated murder under aggravated circumstances: Article 104.
11. Rape: Article 117 (abolished 1996).
12. Attempt on the life of a police officer: Article 209-I.
13. Offering resistance to a superior or forcing him or her to violate official duties (military offence): Article 258.

<sup>69</sup> Article 6(2) of the Constitution.

## Prohibited categories

Under the Article 42 of the 1960 Criminal Code, the death penalty was not applied against:

- Juveniles up to the age of 18 years.
- Women, who were pregnant at the moment a crime was committed, at the moment a sentence was passed, or at the moment a sentence was executed.

It is worth noting that the legislation did not prescribe any privileges for the mentally ill.

## V. Legal framework: alternative sanctions to the death penalty in Georgia

Law # 1069-I on “The abolition of capital punishment” mentions the introduction of life imprisonment as a new form of punishment. The law was formerly adopted and amended the Criminal Code on 22 July 1999 (entering into force in June 2000). Although the new form of punishment applied to offences which were previously subject to the death penalty, at the same time the scope and scale of its application were enhanced dramatically.

### Length of life imprisonment

According to Article 72 of the Criminal Code, “the convict may be released from serving life imprisonment if he has served 25 years of imprisonment.”

An amendment made to the Criminal Code on 9 March 2010 stipulates that “life imprisonment can be substituted by community service, if he/she has actually completed a 20 year imprisonment term, and if the local board of the Ministry of Corrections, Probation and Legal Aid deems that the convict does not need to further serve his/her sentence”.

### Life sentence applicable crimes

Article 51(1) of the Criminal Code stipulates that “life imprisonment may be awarded only in cases of

especially grave crimes.” Article 12(4) of the Criminal Code defines especially grave crimes as “the crime of aforethought or crime of negligence for practice whereof the sentence provided by this Code exceeds ten years of imprisonment or covers a full life term”.

There are 18 articles in the Criminal Code which provide life imprisonment as a possible punishment:

1. Premeditated murder under aggravated circumstances: Article 109(3).
2. Trafficking in juveniles: Article 143(4).
3. Unlawful misappropriation, destruction or damage of a stationary platform [e.g. oil rigs and other installations for the extradition of natural resources]: Article 227(3).
4. Violation of the territorial integrity of Georgia: Article 308(2).
5. Sabotage: Article 318(3).
6. Terrorist act: Article 323(3).
7. Technological terrorism: Article 324(2).
8. Cyber-terrorism: Article 324(2).
9. Assault on a Georgian political official: Article 325.
10. Assault on an individual or institution enjoying international security: Article 326.
11. Seizure or blockage of a strategic or very important facility with terrorist purposes: Article 330.
12. Financial support of terrorism: Article 331.
13. Preparing or waging aggressive military actions: Article 404.
14. Genocide: Article 407.
15. Crimes against humanity: Article 408.
16. Ecocide: Article 409.
17. Illegitimate fabrication, production, purchase, shipment, transfer or sale of drugs, their analogue or precursor: Article 260(3).
18. Premeditated violation of international legal humanitarian norms during an armed conflict: Article 411.

## Prohibited categories

Article 51(2) of the Criminal Code prohibits life imprisonment from being applied to:

Those who were not eighteen at the time the crime was committed.

Those who were sixty at the moment a sentence is passed.

Georgia is the only country in the Caucasus region where life imprisonment can be imposed on females.

With regard to persons with mental illnesses, Article 34 of the Criminal Code provides that a person will not be criminally liable for any illegal action if, “due to chronic mental illness, temporary mental disorder, imbecility or any other mental disease, was unable to comprehend the illegitimacy of his/her action or, although could comprehend but, nevertheless, could not act otherwise.” The court may apply compulsory medical measures.

Those who are deemed not mentally ill but have some kind of diminished responsibility at the time of committing the offence, i.e. could not fully comprehend the actual character or illegitimacy of his/her action or guide oneself, will still be criminally liable, however the diminished responsibility will be taken into consideration at the time of sentencing by the court.<sup>70</sup>

A person who was sane at the time of committing a crime, but who becomes mentally ill before the judgement is to be passed and is “not able to perceive the actual nature or legitimacy of their action at the moment the crime was committed, due to their chronic mental illness, temporary mental disorder, mental retardation or other mental ailments”, will have their mental disorder taken into account in sentencing, and medical measures may be applied.<sup>71</sup>

## VI. Application of the death penalty/life imprisonment: fair trial procedures

### Presumption of innocence

Article 40(1) of the Constitution guarantees the right to be presumed innocent. The burden of proof rests with the prosecutor.

### Trial by jury

Jury courts were adopted in Georgia in February 2004 in Article 82(5) of the Constitution. This was elaborated on 9 October 2009 when the new Criminal Procedure Code was adopted in Georgia.

As of 1 July 2012, jury trials will be implemented throughout Georgia, making it the first nation in the South Caucasus to implement a jury trial system nationwide. Jury trials were first established in the city court of Georgia’s capital of Tbilisi, to hear aggravated homicide cases. Later, jurisdiction of jury trials will be extended to other criminal offenses and to civil cases.<sup>72</sup>

According to the Code, a jury court consists of 12 regular and two substitute jurors who are selected from a pool of 100 candidates named in the general list of voters of Georgia. In order to serve as a jury member, a candidate must be between 18 and 70 years of age, registered in the Civil Registry database of Georgia, fluent in the language of the criminal proceeding, domiciled within the jurisdiction of the court where the trial is taking place, and not be limited in physical and intellectual abilities in a manner that would prevent him/her serving as a juror. In order to prevent the exertion of undue influence over fellow jurors, the Code does not allow lawyers, psychologists, psychiatrists, or clergymen to serve as jurors. Law enforcement personnel, government officials, and members of the military also are exempt from jury duty. Participants in criminal proceedings in a corresponding case are excluded from jury service as well.<sup>73</sup>

<sup>70</sup> Article 35 of the Criminal Code.

<sup>71</sup> Article 34(3), *Ibid.*

<sup>72</sup> Article 330 of the Criminal Procedure Code.

<sup>73</sup> Article 30, *Ibid.*

Jury verdicts do not have to be unanimous. If a jury cannot reach a unanimous decision within three hours of beginning deliberation, a decision can be reached in the next six hours of deliberation based on a ten-to-two vote. If a decision is not reached after that, the required vote changes to eight to four.<sup>74</sup>

The establishment of a jury system has instigated strong opposition from those who assert that it will not be easy to find impartial jury members. Opponents believe that because Georgia is a small country of 4.6 million, where people tend to know each other, jurors somehow can be connected with the defendants and therefore taint the impartiality of proceedings. Furthermore, the idea of sequestering juries was rejected by the government for financial reasons, thus also hindering the impartiality of jury members.<sup>75</sup>

### The right to adequate legal assistance

Article 42(3) of the Constitution guarantees the right to legal defence.

Article 85(3) of the Constitution also establishes the principle of equality of arms by providing that the “legal proceedings shall be exercised on the basis of equality of parties and the adversarial nature of the proceedings”.

A defendant has the right to select their own lawyer, as well as to replace their lawyer at any time. If the defendant is indigent, he/she has the right to have counsel assigned at the cost of the government (Article 38 of the Constitution).

A defence lawyer is mandatory for those who are accused of an offence for which life imprisonment is a possible punishment (Article 45 of the Constitution).

In 2007, the Law on Legal Aid was adopted by Parliament. The Law established a free Legal Aid Service that includes free legal consultation in all fields of law, lawyers’ representation in criminal cases indigent defendants as well as representation in cases where the accused is being sentenced to compulsory psychiatric treatment.<sup>76</sup>

However, concerns have been raised that lawyers appointed by the court are not considered independent because they are subject to influence by the prosecutor’s office.<sup>77</sup>

### Independence of the judiciary

Articles 82(3) and 84(1) of the Constitution guarantee the independence of the judiciary. Any pressure upon the judge or interference in his/her activity with the view of influencing his/her decision shall be prohibited and punishable by law.

The High Council of Justice (HCJ) is a supervisory body for the judiciary. Following reform in 2007, the HCJ is chaired by the Chairman of the Supreme Court of Georgia and has full and exclusive authority to appoint and dismiss judges. The decision-making power of the HCJ rests on the judges.<sup>78</sup> The principle of life-time tenure of judges became guaranteed in the new Constitution, adopted in October 2010.

However, extremely high conviction rates, with less than one percent of acquittals in criminal cases, indicate that the judicial authorities continue to act in favour for the prosecution.<sup>79</sup>

The UN Human Rights Council issued its report on the Universal Periodic Review for Georgia in March 2011. Recommendations raised by delegations included strengthening the implementation of the rule of law and promotion of the independence of the judiciary.<sup>80</sup>

74 Article 261, *Ibid*.

75 Georgia: Courts with Jurors Established Nationwide, Peter Roudik, The Law Library of Congress, 9 November 2011, <[http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_l205402877\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402877_text)>.

76 National report to the UN Human Rights Council Working Group on the Universal Periodic Review, 8 November 2010, A/HRC/WG.6/10/GEO/1, para. 26.

77 PRI interview with criminal defence lawyer in Tbilisi, Georgia, 2011.

78 National report to the UPR, *supra* n. 76, para. 21.

79 Joint NGO report to the Universal Periodic Review of Georgia (Georgian Young Lawyers’ Association, Human Rights Centre, Article 42 of the Constitution, and Educators and Scientists Free Trade Union of Georgia), July 2010, para. 6.

80 Report of the Working Group on the Universal Periodic Review, 16 March 2011, A/HRC/17/11, Recommendations 105.47-105.55 (Latvia, Australia, Greece, Moldova, Lithuania, Chile, Hungary, Slovakia, and Poland).

## Language of the court

Legal proceedings are conducted in the state language of Georgian. An individual who does not speak Georgian shall be provided with an interpreter.<sup>81</sup> Services of an interpreter shall be compensated at the expense of the state budget.<sup>82</sup>

## Open hearings

Cases shall be considered in an open hearing, and a court judgement shall be delivered publicly.<sup>83</sup>

However, it was reported to PRI researchers that although the attendance of the public is not prohibited by law, such trials [life imprisonment trials] are deliberately held at a time and premises, where the access for the public is actually impossible.<sup>84</sup>

## Right to an appeal by a court of higher jurisdiction

The right to appeal is guaranteed by law in Georgia and decisions of the Courts of First Instance can be appealed to the Court of Appeal, and finally to the Supreme Court of Georgia.

## Right to seek pardon or commutation of the sentence

The President has the power to grant pardon to convicted persons,<sup>85</sup> including for those who were sentenced to death, as well as those sentenced to life imprisonment.

All death sentences were passed automatically to the Presidential Clemency Commission, which prepared recommendations for consideration by the President,

regardless of whether the prisoner concerned had submitted a petition.

The Clemency Commission is made up of members selected by the President. Commission members may review the case files, including any mitigating factors, before making a recommendation to the President. If the recommendation was to commute the death sentence, the commission also recommended a substitute length of imprisonment, usually ranging from 15 to 20 years.

In 1995 prior to abolition, the Clemency Commission implemented a tacit de facto moratorium by suspending consideration of any of the petitions for clemency coming before it. The consequence of this was that no cases reached the President for a final decision, thus no death warrants were signed.

It is known that at least 20 death sentences were commuted between 1994 and 1995.<sup>86</sup> In June 1997, 54 death row prisoners were pardoned by the President, and their death sentence was replaced with imprisonment for 20 years.<sup>87</sup>

It is unknown if any life-sentenced prisoners have been commuted since the punishment came into force in 2000.

## VII. Application of the death penalty: statistics

Information on the annual number of death sentences and executions prior to abolition was requested by researchers from the Penitentiary Department of the Ministry of Corrections and Legal Assistance of Georgia (MCLA). However they were not provided with any data.

The last execution was known to have taken place in 1995.

<sup>81</sup> Article 85(2) of the Constitution.

<sup>82</sup> Article 10 of the Law on Common Law Courts.

<sup>83</sup> Article 85(1) of the Constitution.

<sup>84</sup> PRI interview with criminal defence lawyer in Tbilisi, Georgia, 2011.

<sup>85</sup> Article 73(1)(n) of the Constitution.

<sup>86</sup> Georgia: Time to abolish the death penalty, supra n. 66, p. 5.

<sup>87</sup> Decree No. 385 on 25 June 1997.

<sup>88</sup> Article 42 of the 1960 Criminal Code.

## VIII. Implementation of the death penalty: method of execution

Prior to abolition, the method of execution in Georgia was by shooting.<sup>88</sup>

## IX. Application of life imprisonment: statistics

There are 91 prisoners sentenced to life imprisonment in Georgia (87 men and four women). The majority of the prisoners are Georgian citizens, however there are three foreigners serving a life sentence: Azerbaijani, Bulgarian and Turkish.

According to the data acquired from the penitentiary department of the MCLA, statistics for the application of the sentence are available from the year 2008, although the sentence has been applied in Georgia since 2000. The statistics are as follows:

Year	Number of life prisoners
2011 (July)	91 (2 prisoners died)
2010	93
2009	88
2008	79
2007	Data not available
2006	Data not available
2005	Data not available
2004	Data not available
2003	Data not available
2002	Data not available
2001	Data not available
2000	Data not available

## X. Implementation of the death penalty/life imprisonment: prison regime and conditions

### Location of imprisonment for death row and life-sentenced prisoners

Prior to abolition, death row inmates were incarcerated at Tbilisi Investigation Isolator #1 (later prison #5) in cells that were housed underground. The cells were mostly for one person, but due to overcrowding, it was permitted to locate two prisoners to a cell. The cells were small and damp, with no windows and no natural light or ventilation. Death row convicts were not permitted visitation rights or walks.

Life sentence prisoners are accommodated at five different prison institutions (but mainly in prison # 6) and in the prison hospital:

Prison Number	Number of life inmates
6	79
5 (women's prison)	4
2	3
7	3
8	1
Health care facility	1
<b>Total</b>	<b>91</b>

### Cost of imprisonment

The government does not publish information on the cost of imprisonment; however the penitentiary department told researchers that the cost of maintaining all types of prisons amounts to GEL 8.6 (approximately €4) per prisoner per day.

### Prison regime

According to the Law of Georgia "On Imprisonment", life-sentenced prisoners are incarcerated under special rules. This includes being placed under 24-hour constant surveillance.<sup>89</sup> They are to be housed separately, and are not allowed to communicate with other types of prisoners.<sup>90</sup>

<sup>89</sup> Article 77(1) of the Law on Imprisonment.

<sup>90</sup> Articles 22 and 77(4), *ibid.*

Article 76 of the Law on Imprisonment only provides that a life-sentenced prisoner “should serve a sentence at prison”. It does not specify a particular regime.

## Conditions and treatment of detention

In assessing the conditions and treatment of detention for lifers, it should be noted that requested permission from researchers to visit lifers in prison was refused. Therefore, the basis of this part of the report was gathered from research undertaken in 2009-2010, and through other sources. Data received through formal letters was also used, along with data obtained, although to a lesser extent, through interviews with staff of the penitentiary.

Those sentenced to life imprisonment are put into isolation for the first two weeks of their sentence, where they undergo a medical assessment and prison officials explain their rights and obligations under the prison regulations. There is no systematic approach to undertaking an individual assessment of the prisoner’s needs or risks, due to lack of appropriate resources or expert staff (social workers or psychologists) to do so.

Inmates are then accommodated in cells that have six beds; however there are usually 3-4 prisoners per cell. Institution #6 also has one eight-bed cell. In the female institution, accommodation includes cells with three double-bunk beds. As there are only four life-sentenced female prisoners, they are housed two prisoners per cell.

Cells with life-sentenced prisoners are furnished with beds, a cabin for personal possessions and food, bedding and linen. The cells have windows, which provide the inmates with access to natural lighting and ventilation. There is a toilet in each cell.

The inmates share a common bathroom, which, according to the staff, is available twice a week at the female institution and once a week at the male institution.

Prisoners can buy linen themselves at the prison shop. They must wash linen in their cells, including during the winter months.

However, according to the Georgian National Preventive Mechanism (NPM), the conditions in establishment No. 6 are not satisfactory. In particular, ventilation is not provided, the walls are damp, the plaster is damaged, there are very weak light bulbs for lighting and access to natural light is not adequate. The floor is concrete, and renovation works need to be carried out.<sup>91</sup>

The Public Defender’s Office has also cited a number of systematic problems across all penitentiary institutions that need to be urgently tackled within the on-going reforms. Recommendations include improvement of the living and sanitary situation in all penitentiary establishments.<sup>92</sup>

Meals are served to the inmates in their cells and prisoners use plastic utensils. The food includes vegetables, cereals and meat. The inmates can also purchase additional food at the institution stores.

Life-sentenced prisoners can walk outside every day for one hour, aside from Saturdays and Sundays. The walking area is very small, and there is hardly enough room for more than three prisoners. There is no access to any other sporting equipment or facilities.

The four female lifers at women’s prison No. 5 can take up to two hours exercise a day.

Article 77 of the Law on Imprisonment stipulates that life-sentenced prisoners are only entitled to two short- and one long-term visit (up to 48 hours) per year. However, respondents interviewed in 2009-2010 indicated that the prisoners at institution No. 6 receive one short-term visit a month and one long-term visit every six months.

The short-term visiting facilities are separated by a screen so that the prisoner cannot have any physical contact with their family members. A small number of family rooms (equipped with a bedroom and a bathroom) have been built and furnished at prison No. 6 to accommodate over-night visits. However there is currently no infrastructure to permit long-term visits for women offenders.

91 Special Report on the monitoring of the penitentiary establishments, temporary detention isolators and military detention facilities, National Preventive Mechanism, Public Defender of Georgia, 2010, p. 24.

92 Report of the Office of the Public Defender (Ombudsman) of Georgia, submitted to the UN Human Rights Council for the 10th session of Universal Periodic Review, 12 July 2010, paras. 7 and 16.

Life-sentenced prisoners may also meet with lawyers, religious representatives, the Public Defender's Office representative and other persons.

Prisoners can use the telephone twice a month for 15 minutes.

The prisoners have access to a television, newspapers and books. Books must be requested from the library.

Education, employment and other types of rehabilitation programmes are not available for lifers.

According to Article 77(3) of the Law on Imprisonment, disciplinary procedures for lifers may include: a) reprimand; b) prohibition of receiving and sending mail; or c) placement in the punishment cell for the term of three to 20 days.

According to one group of respondents, placement in a "solitary cell" for three days is often used as disciplinary action, as well as the prohibition of visitation with family members.

## Access to medical care

Prisoners undergo medical screening upon admission to the institution, and each prison institution has a health department that inmates can be transferred to. Nonetheless, life-sentenced prisoners are often not transferred to the central hospital or to general public hospitals even if they are seriously ill, due to security concerns.

Prison No. 6 has four doctors and six nurses. At women's prison No. 5 there are six doctors and six nurses. Inmates have access to a social worker and a psychologist at both prisons.

On average each penitentiary institute spends around 2.08 GEL (€1.20) on medications each month per inmate.<sup>93</sup>

In prison No. 6, none of the prisoners have access to their own medical records.<sup>94</sup>

The UN Human Rights Council issued its report following the Universal Periodic Review for Georgia in March 2011. Recommendations raised by delegations included to improve conditions in prisons, including in relation to inadequate health care.<sup>95</sup>

## Conditions for parole

It should be noted that in Georgia no life sentence can be applied without the opportunity of release, which is implemented in practice. Article 72 of the Criminal Code provides that a convict can be paroled so long as:

1. They have completed 25 years of imprisonment.
2. The local board of the Ministry of Corrections, Probation and Legal Aid does not deem it necessary for the convict to further serve his/her full sentence.

An amendment made to the Criminal Code on 9 March 2010 stipulates that "life imprisonment can be substituted by community service, if he/she has actually completed a 20 year imprisonment term, and if the local board of the MCLA deems that the convict does not need to further serve his/her sentence".

As there are no specific rehabilitation programmes to prepare lifers for release, it is difficult for the local board of the MCLA to accurately and independently assess risk of recidivism in case of the offender's early release.

Up until 2010, all decisions regarding parole were taken by the courts; since then a parole board (under the MCLA) is in place.

There is no automatic review of the sentence; prisoners need to apply directly to the parole board. In their application, they need to provide information on their conduct in the prison system and reveal any disciplinary issues, as well as statements of remorse. However, there are no specific guidelines to assist a life-sentenced prisoner in their application.

If parole is granted, the probation service determines licence conditions, which may include restrictions, tagging, community service etc.

<sup>93</sup> The Right to Health and Problems Related to Exercise this Right within the Penitentiary System of Georgia, National Preventive Mechanism, Public Defender of Georgia, 2010, p. 60.

<sup>94</sup> Ibid, p. 100.

<sup>95</sup> Report of the Working Group on the UPR, supra n. 80, recommendation 105.36 (Australia).

However, as life imprisonment was only implemented in 2000, it will not be until 2020 that the first prisoners are eligible for parole. Therefore, the possibility of parole for lifers is still a theoretical right, and it is impossible to antedate implementation in practice at this stage.

### Prison staff and management

Staff working with life-sentenced prisoners do not receive any special training, although there are a number of specialised issues associated with life and long-term imprisonment that should require specialised staff.

### Monitoring prisons

In August 2005, Georgia ratified the Optional Protocol to the UN Convention Against Torture (OPCAT), undertaking to establish a National Preventive Mechanism (NPM) for the monitoring of prisons.

In 2007, the Inter-Agency Coordinating Council against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (the Council) was established to enhance the fight against all forms of ill-treatment. In September 2010, the Council adopted a new strategy to develop an effective complaints procedure for persons deprived of their liberty.

In 2008, the Office of the Public Defender (PDO) was designated as the NPM. In June 2010, the NPM published its first report and made it publically available.

The CPT last carried out a monitoring visit of Georgian prisons in February 2010. However this did not include a visit to prison No. 6 where the majority of lifers are incarcerated.

## XI. Current reform processes in the criminal justice system

Criminal Justice Reforms are led by the Criminal Justice Reform Inter-Agency Coordination Council

(the CJR Council). The CJR Council represents a key policy-making body that is chaired by the Minister of Justice. It has developed biannual consultation forums with the donor community and civil society representatives. Its working groups create an inclusive process, with participation being offered to any organisation or interested individual expert.

In 2009, the CJR Council adopted various strategies and action plans – on criminal procedure legislation, juvenile justice, penitentiary reform, probation and legal aid, prosecution, police, judiciary and the PDO. Progress reports of the CJR Council are publicly available at [www.justice.gov.ge](http://www.justice.gov.ge).<sup>96</sup> However, the most recent report published dates July 2010.

In March 2010, a new Code on Imprisonment was adopted by Parliament, and entered into force on 1 October 2010. The Code represents a step forward for overall reform of the penitentiary system.

As part of PRI's programme of work in Georgia, a number of key events and initiatives have taken place. This has included training of mid-level prison officials on international human rights standards for the treatment and the rights of those who face life imprisonment.

A national conference focusing on reform challenges for life imprisonment was held in Tbilisi, Georgia on 17 June 2011 with the participation from both government representatives and civil society. One of the key outcomes of the national conference was the agreement of recommendations for the reform process (see Annex III).

A regional conference on life imprisonment brought together participants from Armenia, Azerbaijan and Georgia was convened in Tbilisi, Georgia on 15 July 2011. Participants agreed 22 recommendations to take the reform process forward across the South Caucasus region (see Annex IV).

Continued advocacy efforts at the national and regional (through the EU and the OSCE) level have continued to push for reforms in the penal and criminal justice systems.

<sup>96</sup> National report to the UPR, supra n. 76, para. 27.

## XII. Recommendations to the Republic of Georgia

1. Co-sponsor and vote in favour of the upcoming UN General Assembly resolution calling for a moratorium on the death penalty scheduled for 2012, and any other relevant resolutions. Make use of bilateral relations to advocate for other states to support the resolution.
2. Publish historical information on the execution of the death penalty prior to abolition, including data on those executed and those sentenced to death. Inform families of the place of burial of those executed.
3. Publish official statistics on the application of life imprisonment from its implementation in 2000. Include information on the number of sentenced prisoners and their characteristics, length of sentence and place of sentence.
4. Publish historical and future statistics on the implementation of the presidential pardon / clemency, and enhance transparency of the Clemency Commission.
5. Shorten the minimum length of term which a life-sentenced prisoner must serve before being able to apply for parole (currently 25 years). According to the UN Crime Prevention and Criminal Justice Branch's 1994 report 'Life Imprisonment', all prisoners sentenced to life should have their suitability for release reviewed after serving between 8 and 12 years of incarceration.
6. Humanise the system of punishment by reducing the number of crimes (currently 18) for which life imprisonment may be prescribed, and limit these cases to only the most serious crimes.
7. Improve the system of legal aid in Georgia. This should include ensuring that the free Legal Aid Service only recruits well-trained lawyers, and provides them with appropriate remuneration that covers all aspect of their case work. Legal aid should be available at all stages of a criminal case: pre-trial, trial, appellate, pardon and parole stage.
8. Uphold the independence and integrity of the judiciary, including ensuring that judges are well trained, paid an appropriate salary for their position, and have security of tenure. Make the process to select judges more transparent and fair.
9. Draft and adopt a strategy to reform the penal system with a clear vision that makes specific reference to reforming life imprisonment which is consistent with international human rights standards and norms. Consider introducing internal regulations into the penitentiary system which define the conditions of serving a life sentence. Organise a public debate on the strategy, with participation from all interested parts of civil society.
10. Continue to carry out reforms to the penitentiary system so that it is in compliance with international human rights standards. This should include making improvements to actual living facilities and improving sanitation conditions. Remove legal restrictions which isolate life-sentenced prisoners from the rest of the prison population. Steps should be taken to ease the transfer of lifers from a strict to a more general regime of imprisonment. Prisoners should not be isolated under a strict regime based on their type of sentence; an individual risk assessment should be carried out to indicate which prisoners which regime is appropriate.
11. Ensure that prison conditions of prisoners, including life-sentenced prisoners, approximate as closely as possible the conditions of life outside the prison system. This should include reducing the requirement that all life-sentenced prisoners should serve their sentence in cells under isolated or semi-isolated conditions for prolonged periods of time.
12. Improve daily activities and devise a comprehensive regime for out-of-cell activities for life-sentenced prisoners. Such activities should be aimed at supporting their rehabilitation and reintegration back into society by organising targeting training for them, and providing them with appropriate work skills and education. This should include:

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- a. Providing lifers with regular access to sporting activities, and increasing the amount of time prisoners can exercise outside.
  - b. Providing lifers with the opportunity to engage in employment.
  - c. Regularly amending the libraries.
  - d. Implementing all necessary measures in order to provide the right to both primary and secondary education.
  - e. Consider developing other rehabilitation and reintegration programmes that will assist a lifer to deal with any underlying issues or problems linked to their crime, such as treatment in case of drug/alcohol abuse, anger management, and psychological/psychiatric support.
13. Special efforts should be made to prevent the breakdown of family ties of prisoners serving life sentences and to increase the number of long- and short-term visits for lifers (to at least one short- or long-term visit per month), reduce the restrictive requirements for short-term visits so that prisoners can have direct contact with their family members, and increase the number of phone calls.
  14. Improve independent monitoring of places of detention. Ensure that the NPM can operate independently, and is competent to access and monitor all places where persons are deprived of their liberty on a regular and unfettered basis, and is well resourced and financed to ensure effectiveness.
  15. Make improvements to the supply of both physical and mental healthcare for prisoners incarcerated at prison # 6 and women's prison # 5. This should include improving the availability of drugs, equipment and staffing needs at the infirmary. Psychiatrists, psychologists and social workers should be available on a regular basis for all prisoners sentenced to life. Ensure that lifers can be transferred to an appropriate health facility or hospital if necessary. Provide lifers with the ability to access a personal doctor or invite a private physician to the prison. Make medical records available to the prisoner and his/her family members.
  16. Increase resources for the prison system to improve salary and working conditions for prison staff. Ensure all prison staff are appropriately trained in international human rights standards, know how to manage lifers as a vulnerable section of the prison population, and are appropriately remunerated.
  17. Improve the parole system, making procedures clear, less restrictive and more transparent, and ensure that the members of the parole board have appropriate training and experience in dealing with such cases.
  18. Encourage further collaboration between government officials and civil society, including journalists and human rights defenders, on criminal justice issues.
  19. Encourage relevant international organisations and donor states in a position to do so to promote and support criminal justice reforms within Georgia at both the financial and political level.
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## Comparison of the application and implementation of the death penalty and its alternative sanction in the South Caucasus region

	Republic of Armenia	Republic of Azerbaijan	Republic of Georgia
<b>Death penalty</b>			
<b>1. Death penalty status</b>	Abolitionist	Abolitionist	Abolitionist
<b>2. Date abolished, if applicable</b>	2003	1998	1997
<b>3. Date of last execution</b>	1988	1993	1995
<b>4. Date of last death sentence</b>	Early 1990s	N/A	Mid-1990's
<b>5. Death penalty applicable crimes</b>	<ol style="list-style-type: none"> <li>1. Treason.</li> <li>2. Espionage.</li> <li>3. Terrorist act.</li> <li>4. Terrorist act against a representative of a foreign state.</li> <li>5. Sabotage.</li> <li>6. Organisational activity directed to commission of especially dangerous crimes against the state.</li> <li>7. Especially dangerous crimes against another workers' state.</li> <li>8. Banditry.</li> <li>9. Activities causing disruption to the work of corrective labour institutions.</li> <li>10. Evasion of mobilization.</li> <li>11. Making or passing counterfeit money or securities.</li> <li>12. Speculation.</li> <li>13. Large scale theft of state or social property.</li> <li>14. Premeditated murder under aggravated circumstances.</li> <li>15. Aggravated rape.</li> <li>16. Hijacking.</li> <li>17. Bribe taking.</li> <li>18. Infringing the life of a policeman or people's guard.</li> <li>19. Insubordination.</li> <li>20. Offering resistance to a superior or forcing him to violate official duties.</li> <li>21. Forcible actions against a superior officer.</li> </ol>	<ol style="list-style-type: none"> <li>1. Treason.</li> <li>2. Use of the Armed Forces of the Azerbaijan Republic and other legislation of the Azerbaijan Republic against the Azerbaijani people and constitutional state bodies.</li> <li>3. Espionage.</li> <li>4. Terrorist act.</li> <li>5. Terrorist act against a foreign citizen.</li> <li>6. Sabotage.</li> <li>7. Organisational activity directed toward particularly serious crimes, as well as participation in anti-Soviet organisations.</li> <li>8. State crimes of particular danger committed against the workers of another country.</li> <li>9. Robbery.</li> <li>10. Actions that disrupt the functioning of Correctional Labour Institutions.</li> <li>11. Establishment of armed formations and groups not provided by the law.</li> <li>12. Failure to heed the call for mobilisation.</li> <li>13. Manufacture or sale of counterfeit money or securities.</li> <li>14. Violation of the rules on foreign currency transactions.</li> <li>15. Theft of state property on a large scale.</li> <li>16. Premeditated murder under aggravating circumstances.</li> </ol>	<ol style="list-style-type: none"> <li>1. Treason.</li> <li>2. Genocide.</li> <li>3. Espionage.</li> <li>4. Participation by mercenaries in armed conflict or in a combat situation.</li> <li>5. Terrorist act.</li> <li>6. Terrorist act against the representative of a foreign state.</li> <li>7. Sabotage.</li> <li>8. Banditry.</li> <li>9. Actions disrupting the operation of penitentiary institutions.</li> <li>10. Offences against human life and health, notably murder under aggravated circumstances.</li> <li>11. Rape.</li> <li>12. Attempt on the life of a police officer.</li> <li>13. Offering resistance to a superior or forcing him or her to violate official duties (military offence).</li> </ol>

	Republic of Armenia	Republic of Azerbaijan	Republic of Georgia
5. Death penalty applicable crimes (continued)	<p>22. Desertion.</p> <p>23. Unwarranted abandonment of unit in a combat situation.</p> <p>24. Evasion of military service by maiming or any other method.</p> <p>25. Intentional destruction or damaging of military property.</p> <p>26. Violation of service regulations for guard duty.</p> <p>27. Violation of rules for performing combat lookout.</p> <p>28. Abuse of authority, exceeding authority, and neglectful attitude toward duty.</p> <p>29. Surrendering or abandoning to the enemy of means of waging war.</p> <p>30. Abandonment of a sinking warship.</p> <p>31. Unwarranted abandonment of battlefield or refusal to use a weapon.</p> <p>32. Voluntary surrender into captivity.</p> <p>33. Pillage.</p> <p>34. Use of force against the population in an area of military operations.</p>	<p>17. Rape.</p> <p>18. Accepting a bribe.</p> <p>19. Attempt on the life of a militiaman or volunteer police.</p> <p>20. Hijacking or seizure of a railway train, aircraft, ship or boat, as well as the seizure of any station, airport, port or other transportation company, institution, organisation.</p> <p>21. Terrorism.</p> <p>22. Disobedience to the chief / insubordination.</p> <p>23. Offering resistance to a superior or forcing him to violate his/her duties.</p> <p>24. Violent actions against a superior officer.</p> <p>25. Desertion.</p> <p>26. Wilful abandonment of a combat situation.</p> <p>27. Evasion of military service through self-mutilation, or through other means.</p> <p>28. The intentional destruction of or damage to military property.</p> <p>29. Violation of regulations for guard service.</p> <p>30. Violation of the rules of combat duty.</p> <p>31. Abuse of power, abuse of authority and neglect of service.</p> <p>32. Surrender or abandonment to the enemy the means of warfare.</p> <p>33. Abandonment of a sinking warship.</p> <p>34. Wilful abandonment of the battlefield or refusal to use weapons.</p> <p>35. Voluntary surrender.</p> <p>36. Marauding (looting).</p> <p>37. Violence against the population in the area of military operations.</p>	

	Republic of Armenia	Republic of Azerbaijan	Republic of Georgia
<b>6. Categories excluded from the death penalty</b>	<ul style="list-style-type: none"> <li>Individuals under 18 years of age at the time of crime commission.</li> <li>Pregnant women.</li> <li>Mentally ill.</li> </ul>	<ul style="list-style-type: none"> <li>Men under 18 years of age at time of crime commission.</li> <li>Women (despite age, pregnancy).</li> <li>Men over 65 years of age at time of sentence.</li> <li>Mentally ill.</li> </ul>	<ul style="list-style-type: none"> <li>Juveniles under 18 years of age at the time the crime was committed.</li> <li>Pregnant women.</li> </ul>
<b>7. Was there a moratorium in place prior to abolition?</b>	A moratorium on executions declared in 2001.	Unofficial moratorium on executions from 1993.	A moratorium on executions from 1992 to 1993. Moratorium on executions lifted, and then re-established in 1996.
<b>9. Have there been any death row commutations?</b>	The final 42 death row prisoners had their sentences commuted to 20 years imprisonment in 2003.	The final 128 death row prisoners had their sentences commuted to 20 years imprisonment in 1998.	The final 54 death row prisoners had their sentences commuted to 20 years imprisonment in 1997.
<b>11. Method of execution</b>	Shooting.	Shooting.	Shooting.
<b>Alternative sanction</b>			
<b>12. Alternative sanction to death penalty</b>	Life imprisonment: minimum of 20 years.	Life imprisonment: minimum of 25 years.	Life imprisonment: minimum of 25 years (or 20 years plus five years community service).
<b>13. Is there a mandatory life sentence?</b>	No.	No.	No.
<b>14. Life imprisonment applicable crimes</b>	<ol style="list-style-type: none"> <li>Aggravated murder.</li> <li>Application or testing of mass destruction weapons prohibited by international agreements.</li> <li>Murder of a representative of a foreign state(s) or international organisation(s), if this action was committed with the purpose of provoking war, or complication of international relations.</li> <li>International terrorism.</li> <li>Crimes against human security.</li> <li>Genocide.</li> </ol>	<ol style="list-style-type: none"> <li>Aggravated murder.</li> <li>Terrorism-related offences resulting in death.</li> <li>Treason.</li> <li>Espionage.</li> <li>Waging aggressive war.</li> <li>Genocide.</li> <li>Full or partial destruction of the population in the absence of signs of genocide.</li> <li>Sexual violence.</li> <li>Forced pregnancy.</li> <li>Forced detention.</li> <li>Racial discrimination (apartheid).</li> <li>Violation of the laws or customs of war.</li> </ol>	<ol style="list-style-type: none"> <li>Premeditated murder under aggravated circumstances.</li> <li>Trafficking in juveniles.</li> <li>Unlawful misappropriation, destruction or damage of a stationary platform [e.g. oil rigs and other installations for the extradition of natural resources].</li> <li>Violation of the territorial integrity of Georgia.</li> <li>Sabotage.</li> <li>Terrorist act.</li> <li>Technological terrorism.</li> </ol>

	Republic of Armenia	Republic of Azerbaijan	Republic of Georgia
14. Life imprisonment applicable crimes (continued)		<p>13. Violations of international humanitarian law during armed conflict.</p> <p>14. Inaction or providing feedback for criminal orders during armed conflict.</p> <p>15. Use of the Armed Forces of Azerbaijan and other armed groups, the legislation of Azerbaijan, against the Azerbaijani people and the constitutional state bodies. Listen</p> <p>16. Attempt on the life of a state or public figure (a terrorist act).</p> <p>17. Forcible seizure of power or forcible retention of power.</p> <p>18. Creation of armed formations or groups not envisaged by the law.</p> <p>19. Armed rebellion.</p>	<p>8. Cyber-terrorism.</p> <p>9. Assault on a Georgian political official.</p> <p>10. Assault on an individual or institution enjoying international security.</p> <p>11. Seizure or blockage of a strategic or very important facility with terrorist purposes.</p> <p>12. Financial support of terrorism.</p> <p>13. Preparing or waging aggressive military actions.</p> <p>14. Genocide.</p> <p>15. Crimes against humanity.</p> <p>16. Ecocide.</p> <p>17. Illegitimate fabrication, production, purchase, shipment, transfer or sale of drugs, their analogue or precursor.</p> <p>18. Premeditated violation of international legal humanitarian norms during an armed conflict.</p>
15. Categories excluded from life imprisonment	<ul style="list-style-type: none"> <li>Juveniles below the age of 18 years at the time of committing a crime.</li> <li>Pregnant women.</li> <li>Mentally ill</li> </ul>	<ul style="list-style-type: none"> <li>Juveniles below the age of 18 years at the time of committing a crime.</li> <li>Women.</li> <li>Men who have reached the age of 65 at the time of sentencing.</li> <li>Mentally ill.</li> </ul>	<ul style="list-style-type: none"> <li>Juveniles under 18 years of age at the time the crime was committed.</li> <li>Those who have reached the age of 60 at the time of sentencing.</li> <li>Mentally ill.</li> </ul>
16. Location of life-sentenced prisoners	<ul style="list-style-type: none"> <li>Nubarashen prison (97 lifers).</li> <li>Yerevan-Kentron prison (2 lifers)</li> </ul>	<ul style="list-style-type: none"> <li>Gobustan Prison (227 lifers).</li> <li>Central Medical facility (12 lifers).</li> <li>Specialised medical institution for TB (3 lifers).</li> <li>Detention Unit (2 lifers).</li> </ul> <p>It is assumed that in 2012 a new prison will open in Umbak (in a village near Baku) for all lifers.</p>	<ul style="list-style-type: none"> <li>Prison # 6 (79 Lifers).</li> <li>Prison # 5 (4 female lifers).</li> <li>Prison # 2 (3 lifers).</li> <li>Prison # 7 (3 lifers).</li> <li>Prison # 8 (1 lifer).</li> <li>Heath facility (1 lifer).</li> </ul>

	Republic of Armenia	Republic of Azerbaijan	Republic of Georgia
<b>17. Number of lifers</b>	99 lifers (all men).	244 lifers (all men).	91 lifers (87 men and 4 women).
<b>18. Can lifers apply for a pardon/ clemency?</b>	Yes: presidential pardon.	Yes: presidential pardon.	Yes: presidential pardon.
<b>19. Cost of imprisoning one lifer for a year/ day</b>	Unknown.	Unknown.	8.5 GEL per day per inmate / 3,102.5 GEL per year per inmate (Approximately €1,430 per year per inmate).
<b>20. Number of life sentences issued in 2010 and 2011</b>	2011 – at least 2. 2010 – 8 life sentences.	2011 – Unknown. 2010 – 12 life sentences.	2011 – Unknown. 2010 – 5 life sentences.
<b>21. Number of lifers paroled in 2010 and 2011</b>	Only one prisoner meets the criteria for early conditional release; however he has not yet been paroled.	Only three lifers have been released to date.	To date, no life prisoner in Georgia has completed 20 or 25 years imprisonment; therefore no parole applications have yet been considered. The earliest parole review will be in 2020.
<b>Fair trial standards</b>			
<b>22. Presumption of innocence</b>	The presumption of innocence is legally guaranteed.	The presumption of innocence is legally guaranteed.	The presumption of innocence is legally guaranteed.
<b>23. Trial by jury</b>	No trial by jury.	Trial by jury established in 2000, however has not been implemented in practice.	Trial by jury implemented in 2009, piloted in Tbilisi, and to be introduced to the rest of the country in July 2012.
<b>24. Access to legal aid</b>	Advocacy Law provides that the state must guarantee free legal assistance in criminal matters through the Public Defenders Office.	Criminal Procedure Code guarantees the right to free legal assistance from a state attorney through the Legal Aid Service.	Free legal assistance is guaranteed under the Criminal Procedure Code.

	Republic of Armenia	Republic of Azerbaijan	Republic of Georgia
<b>25. Appeal process</b>	All sentences may be appealed to the Court of Appeal, and then to the Court of Cassation.	All sentences may be appealed to the Court of Appeal, and then to the Supreme Court.	All sentences may be appealed to the Court of Appeal, and then to the Supreme Court.
<b>Transparency</b>			
<b>26. Information of official statistics and information on the death penalty and its alternative sanctions.</b>	The Penitentiary Department of the Ministry of Justice of Armenia is responsible for providing information on the number of prisoners and their location.	The Penitentiary Department of the Ministry of Justice of Azerbaijan is responsible for providing information on the number of prisoners and their location.	Access to statistics is available upon formal request from any authorities (court, public prosecutor's office, penitentiary) and from their websites. Statistical information includes the number of prisoners and their location. This is published on a monthly basis. The court also publishes court decisions including crimes and sentences.
<b>Civil society</b>			
<b>27. Key civil society organisations working on a penal reform.</b>	<ul style="list-style-type: none"> <li>• Group of Public Observers for Prisons.</li> <li>• Helsinki Committee of Armenia.</li> <li>• Ombudsman Office of Armenia.</li> </ul>	<ul style="list-style-type: none"> <li>• Committee for Public Monitoring of Prisons.</li> <li>• Ombudsman Office of Azerbaijan.</li> </ul>	<ul style="list-style-type: none"> <li>• The Public Defender of Georgia.</li> </ul>
<b>International and regional human rights standards</b>			
<b>International Covenant on Civil and Political Rights (ICCPR)</b>	23 June 1993	13 August 1992	3 May 1994
<b>First Optional Protocol ICCPR</b>	23 June 1993	27 November 2001	3 May 1994
<b>Second Optional Protocol ICCPR</b>	Unsigned	22 January 1999	22 March 1999
<b>Convention Against Torture (CAT)</b>	13 September 1993	16 August 1996	26 October 1994
<b>Optional Protocol CAT (OPCAT)</b>	14 September 2006	28 January 2009	9 August 2005
<b>Convention on the Rights of the Child (CRC)</b>	23 June 1993	13 August 1992	2 June 1994
<b>International Criminal Court / Rome Treaty</b>	Unsigned	Unsigned	5 September 2003

	<b>Republic of Armenia</b>	<b>Republic of Azerbaijan</b>	<b>Republic of Georgia</b>
<b>2007 UN GA moratorium resolution 62/149</b>	Voted in favour Co-sponsored resolution	Voted in favour	Voted in favour Co-sponsored resolution
<b>2008 UN GA moratorium resolution 63/168</b>	Voted in favour Co-sponsored resolution	Voted in favour	Voted in favour Co-sponsored resolution
<b>2010 UN GA moratorium resolution 65/206</b>	Voted in favour Co-sponsored resolution	Voted in favour	Voted in favour Co-sponsored resolution
<b>Protocol No. 6 European Convention on Human Rights</b>	1 November 2003	1 May 2002	1 May 2000
<b>Protocol No. 13 European Convention on Human Rights</b>	Signed (19 May 2006) but not ratified	Unsigned	1 September 2003

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## Annex I: Recommendations of the national conference: life imprisonment in Armenia (20 May 2011)

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### RECOMMENDATIONS OF CONFERENCE PARTICIPANTS<sup>97</sup>

#### (NATIONAL CONFERENCE: LIFE IMPRISONMENT IN ARMENIA)

Yerevan, Armenia, 20 May 2011

The conference participants made the following recommendations that the state bodies of the Republic of Armenia implement the following measures at the earliest opportunity:

- I. Ensure that those serving a life sentence are able to effectively access:
  - i. further education and/or appropriate training;
  - ii. psychiatric treatment and have regular access to psychologists and social workers; and
  - iii. sufficiently paid employment of a useful nature to keep prisoners actively employed for a normal working day.
- II. Create conditions for life sentence prisoners to effectively engage in physical and sporting activities as a way of maintaining health and to keep prisoners actively engaged.
- III. Increase the frequency of visitation for life sentence prisoners to receive family members.
- IV. Ensure that all necessary medical facilities are available to life-sentenced prisoners, and ensure that there are appropriate facilities for the treatment of life-sentenced prisoners at the prisoners' hospital.
- V. Make the parole system for life sentence prisoners more flexible and transparent, ensuring that all release procedures are clearly defined in law, are accessible, meet due process safeguards, and are subject to appeal or review.
- VI. Improve the quality of prison food (food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served) for those serving a life sentence.
- VII. Uphold the rule of law, and in particular, ensure that the judicial system is impartial and transparent when dealing with life sentence applicable cases.

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<sup>97</sup> Approximately 30 participants attended from Armenia, including government officials, NGOs, prison officials, and representatives of inter-governmental bodies.

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## Annex II: Recommendations of the national conference: life imprisonment in Azerbaijan (5 July 2011)

### RECOMMENDATIONS OF THE CONFERENCE PARTICIPANTS<sup>98</sup>

#### (NATIONAL CONFERENCE: LIFE IMPRISONMENT IN AZERBAIJAN)

Baku, Azerbaijan, 5 July 2011

The conference participants make the following recommendations that the state bodies of the Republic of Azerbaijan implement the following measures at their earliest opportunity:

- I. Implement the current legislation which establishes trial by jury for cases which may be subject to a sentence of life imprisonment.
- II. Implement a genuine review of the outstanding cases of those prisoners sentenced to death prior to abolition, taking into consideration the amount of time already spent in detention, any fair trial issues, and the extent to which individuals pose a continuing threat to society.
- III. Make the parole system for life sentence prisoners more flexible and transparent, ensuring that all release procedures are clearly defined in law, are accessible, meet due process safeguards, and are subject to appeal or review.
- IV. Ensure full access to the judicial system for those prisoners serving a life sentence.
- V. Access to personal files should be ensured for the purposes of appealing administrative or other sanctions.
- VI. Ensure all life-sentenced prisoners have at least 4m<sup>2</sup> of space in their living accommodation as required under international and European standards.
- VII. Improve the quality of prison food (food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served) for those serving a life sentence. Dietary food should be available for those lifers who have special requirements due to health conditions;
- VIII. Increase the daily amount of time that life prisoners are able to access suitable exercise in the open air, especially for those with poor health conditions.
- IX. Ensure that all necessary medical and psychiatric facilities are available to life-sentenced prisoners, and in particular improve access for life sentence prisoners to specialised hospitals. Ensure that all the lifers are screened for TB upon admission. A Psychiatric Commission should be in place and operational to make decisions about the need for specialised treatment of mentally disturbed prisoners.
- X. Medical files of lifers should be made accessible to prisoners themselves, their families and invited medical specialists.
- XI. Ensure that those serving a life sentence are able to effectively access sufficiently paid employment of a useful nature to keep prisoners actively employed for a normal working day.
- XII. Ensure that life sentence prisoners are able to effectively access education programmes.
- XIII. Ensure that those serving a life sentence are able to effectively access psychiatric treatment and have regular access to psychologists and social workers. There should be a sufficient number of psychologists available to provide needed examination and assistance to life prisoners given their high numbers.
- XIV. Create conditions for life sentence prisoners to effectively engage in physical and sporting activities as a way of maintaining health and to keep prisoners actively engaged.
- XV. Ensure access for life sentence prisoners to a qualified representative of any religion when required, and establish a prison chaplain institution.

<sup>98</sup> Approximately 30 participants attended from Azerbaijan, including government officials, NGOs, prison officials, academics, and representatives of inter-governmental bodies (the EU, OSCE and the ICRC).

## Annex III: Recommendations of the national conference: life imprisonment in Georgia (17 June 2011)

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### RECOMMENDATIONS OF THE CONFERENCE PARTICIPANTS<sup>99</sup>

#### (NATIONAL CONFERENCE: LIFE IMPRISONMENT IN GEORGIA)

Tbilisi, Georgia, 17 June 2011

The conference participants make the following recommendations that the state bodies of Georgia implement the following measures at their earliest opportunity:

- I. Revise the criminal laws and the judicial practice with regard to applying the life and long-term sentences, in order to apply such sentences as an extreme measure exceptionally in minimal cases in view of public security, as the practice of life and long-term sentences will contribute to the overpopulation of prisons.
- II. Ensure that persons convicted of life imprisonment are provided with a possibility of attending trial when their cases are reviewed by the appellate and cassation courts.
- III. Ensure full access to the judicial system for those prisoners serving a life sentence.
- IV. Ensure all life-sentenced prisoners have at least 4m<sup>2</sup> of space in their living accommodation as required under international and European standards.
- V. Increase the daily amount of time that life prisoners are able to access suitable exercise in the open air.
- VI. Ensure that all necessary medical and psychiatric facilities are available to life-sentenced prisoners, and in particular to improve access for life sentence prisoners to specialised hospitals.
- VII. A Psychiatric Commission should be in place and operational to make decisions about the need for specialised treatment of mentally disturbed prisoners.
- VIII. Ensure that those serving a life sentence are able to effectively access sufficiently paid employment of a useful nature to keep prisoners actively employed for a normal working day.
- IX. Ensure that life sentence prisoners are able to effectively access education programmes, including vocational training courses.
- X. Ensure that those serving a life sentence are able to effectively access psychiatric treatment and have regular access to psychologists and social workers.
- XI. Create conditions for life sentence prisoners to effectively engage in physical and sporting activities as a way of maintaining health and to keep prisoners actively engaged.
- XII. Ensure special and gender-specific needs of women lifers are provided for.
- XIII. Ensure that the concept of progressive imprisonment applies to lifers and to make it possible to change regimes respectively.
- XIV. Legislation be adopted which would specifically regulate the issues of life imprisonment.

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<sup>99</sup> Approximately 30 participants attended from Georgia, including government officials, NGOs, prison officials, academics, and representatives of inter-governmental bodies (the EU, OSCE and the ICRC).

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## Annex IV: Recommendations of the South Caucasus regional conference on life imprisonment (15 July 2011)

### RECOMMENDATIONS OF THE CONFERENCE PARTICIPANTS<sup>100</sup>

(REGIONAL CONFERENCE: LIFE IMPRISONMENT IN SOUTH CAUCASUS REGION)

Sheraton Metechi Palace Hotel, Tbilisi, Georgia, 15 July 2011

The conference participants made the following recommendations:

#### I. Legislation and Criminal Justice System

- a. Revise the criminal laws and the judicial practice with regard to applying life and long-term sentences, in order to apply such sentences as an extreme measure exceptionally in minimal cases in view of public security, as the practice of life and long-term sentences will contribute to the overpopulation of prisons.
- b. Implement the current legislation which establishes trial by jury for cases which may be subject to a sentence of life imprisonment.
- c. Ensure full access to the judicial system for those prisoners serving a life sentence.
- d. Uphold the rule of law, and in particular, ensure that the judicial system is impartial and transparent when dealing with life sentence-applicable cases.
- e. Implement a genuine review of the outstanding cases of those prisoners sentenced to death prior to abolition, taking into consideration the amount of time already spent in detention, any fair trial issues, and the extent to which individuals pose a continuing threat to society.
- f. Access to personal files should be ensured for the purposes of appealing administrative or other sanctions.
- g. Ensure full access to the judicial system for those prisoners serving a life sentence.
- h. Ensure that the concept of progressive imprisonment applies to lifers and to make it possible to change regimes respectively.
- i. Legislation be adopted which would specifically regulate the issues of life imprisonment.

#### II. Living Conditions

- a. Ensure all life-sentenced prisoners have at least 4m<sup>2</sup> of space in their living accommodation as required under international and European standards.
- b. Increase the frequency of visitation for life sentence prisoners to receive family members.
- c. Increase the daily amount of time that life prisoners are able to access suitable exercise in the open air. Especially for those with poor health conditions.

<sup>100</sup> Approximately 45 participants attended from Armenia, Azerbaijan and Georgia, including government officials and civil society, prison warders, representatives from the Ministry of Corrections and Legal Assistance of Georgia, the Public Defender's Office, the General Prosecutor's Office, and the Supreme Court. Participation from international bodies included the EU, the Norwegian Mission of Rule of Law Advisers to Georgia (NORLAG), the International Committee of the Red Cross (ICRC), and the Council of Europe.

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- d. Improve the quality of prison food (food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served) for those serving a life sentence. Dietary food should be available for those lifers who have special requirements due to health conditions.
  - e. Create conditions for life sentence prisoners to effectively engage in physical and sporting activities as a way of maintaining health and to keep prisoners actively engaged.
  - f. Ensure access for life sentence prisoners to a qualified representative of any religion when required, and establish a prison chaplain institution.
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### **III. Medical Service**

- a. Ensure that all necessary medical and psychiatric facilities are available to life-sentenced prisoners, and in particular improve access for life sentence prisoners to specialised hospitals, ensure that there are appropriate facilities for the treatment of life-sentenced prisoners at the prisoners' hospital.
  - b. Ensure that all the lifers are screened for tuberculosis upon admissions.
  - c. A Psychiatric Commission should be in place and operational to make decisions about the need for specialised treatment of mentally disturbed prisoners. Ensure that those serving a life sentence are able to effectively access psychiatric treatment and have regular access to psychologists and social workers. There should be sufficient number of psychologists available to provide needed examination and assistance to life prisoners given their high numbers.
  - d. Medical files of lifers should be made accessible to prisoners themselves, their families and invited medical specialists.
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### **IV. Employment and Education**

- a. Ensure that those serving a life sentence are able to effectively access sufficiently paid employment of a useful nature to keep prisoners actively employed for a normal working day.
  - b. Ensure that life sentence prisoners are able to effectively access education programmes, including vocational training courses.
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### **V. Parole**

- a. Make the parole system for life sentence prisoners more flexible and transparent, ensuring that all release procedures are clearly defined in law, are accessible, meet due process safeguards, and are subject to appeal or review.
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For more information on PRI's work on the abolition of the death penalty and alternative sanctions that respect international human rights standards, please contact:

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