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Comments by the Government of the Republic of Georgia on the concluding observations of the Human Rights Committee

1. The Government of Georgia, having familiarized itself with the observations of the Human Rights Committee contained in document CCPR/CO/74/GEO of 28 March 2002, wishes to express its satisfaction with the largely upbeat assessment of the progress Georgia has made in implementing the provisions of the International Covenant on Civil and Political Rights. As requested in paragraph 22 of the Committee's concluding observations, the Government of Georgia is hereby transmitting information about the issues raised by the Committee in paragraphs 7, 8 and 9 within the deadline indicated.

2. At the same time, the Government of Georgia feels obliged to put the Human Rights Committee right with regard to some points raised in its observations, which inaccurately reflect the true state of affairs, and it also wishes to submit certain new information regarding the Committee's observations as a whole. In this respect, it should be noted that, during the consideration of the report, the Georgian delegation provided explanations on a wide range of subjects of interest to members of the Committee and submitted data to help the Committee gain a clearer insight into the actual situation. It is therefore puzzling to note that, in some instances, the Committee's recommendations take absolutely no account of the supplementary information provided by the delegation during the consideration of the report, thereby giving rise to a number of inaccuracies as listed below.

Paragraph 5

3. In paragraph 5 of the concluding observations it is stated that the Committee welcomes the creation of the "Rapid Reaction Group", the function of which is to visit places of detention and investigate complaints.

4. Here it is once more necessary to note that the "Rapid Reaction Group" is not an autonomous structure. It was established within the office of the Ombudsman as part of a six-month project that ran from December 2001 to June 2002, funded by the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe. The Ombudsman and the donor organization are currently exploring the possibility of resuming funding for this project.

5. According to the Ombudsman's report covering the first six months of 2002, the activities of the "Rapid Reaction Group" have enabled the Ombudsman to submit 54 recommendations to the Procurator-General and the Minister of Internal Affairs on human rights violations that it has identified. As the report notes, the Ombudsman's intervention facilitated the restoration of violated rights in a number of cases.

6. In the light of the foregoing, we think that paragraph 5 of the Committee's concluding observations should not mention the "Rapid Reaction Group" in isolation, but in the context of the work of the Ombudsman.

7. Additional comments may be found below regarding the Ombudsman's status and powers in connection with the views expressed by the Committee in paragraph 15 of its concluding observations.

Paragraph 6

8. In paragraph 6 it is stated that "the Committee expresses satisfaction at the creation of a Constitutional Court but it remains concerned that current procedures impede access to the Court".

9. On 12 February 2002 the Constitutional Act amending the Georgian Constitutional Court (Establishment) Act and the Proceedings Before the Constitutional Court (Establishment) Act was adopted. This Act became law on 5 March 2002. The amendments are designed to eradicate the existing shortcomings in the legislative acts that regulate the work of the Constitutional Court. These legislative innovations bear equally on procedural matters and questions relating to the Court's jurisdiction.

10. The most significant changes and innovations are as follows:

(a) Abolition of the legally sanctioned principle of "continuity", whereby a member of the Court hearing a particular case was barred from hearing others until the first case had been suspended or deferred. This procedure caused problems for the timetabling of cases. Under the amendment, a member of the Court hearing a particular case is allowed to hear other cases before the suspension or deferral of the first case;

(b) Adoption of general and differentiated schedules for the hearing of cases. Under this amendment, a plaintiff will be informed within 10 days of bringing a case before the Court whether the Court intends to consider the merits of the case. A time limit of six months has also been set for the Constitutional Court to reach a decision in a constitutional action or application;

(c) Broadening of the competence of the Constitutional Court, through the introduction of the official institution of judicial review. Pursuant to this amendment, the Constitutional Court has acquired the right not only to verify the constitutionality of a legislative act as regards its content, but also to ascertain whether the constitutionally sanctioned procedure for the adoption of the act has been observed;

(d) Broadening of the range of persons entitled to bring cases before the Constitutional Court. Legal entities are also entitled to bring cases before the Court on questions falling under chapter II of the Georgian Constitution (on fundamental human rights and freedoms).

11. We believe that the amendments described above have significantly broadened the Constitutional Court's powers, enhanced the effectiveness of its work, facilitated access to the Court and strengthened guarantees for the full protection of human rights.

Paragraph 7

12. In paragraph 7 it is stated that the Committee expresses its concern at the still very large number of deaths in police stations and prisons, including suicides and deaths from tuberculosis. The Committee also expressed its concern about the large number of cases of tuberculosis reported in prisons.

13. The Government of Georgia believes that the Committee should be updated on this issue.

14. According to official statistics, 39 prisoners died in penitentiaries administered by the Georgian Ministry of Justice in 2002. Of these, 29 died as a result of illness, while the other 10 died violent deaths (4 suicides, 5 homicides and 1 accident). The causes of death of the prisoners who died through illness were as follows: nine cases of acute cardiovascular insufficiency; six cases of pulmonary tuberculosis; six cases of acute myocardial infarction; two cases of acute ischaemia; and one case each of cirrhosis of the liver, alimentary dystrophy, brain inflammation, arteriosclerotic cardiosclerosis, acute impairment of cerebral circulation and lung cancer.

15. As these figures show, the number of deaths in penitentiary institutions rose slightly in 2002 compared with 2001, when 31 inmates died. It should be recalled, however, that in 2000 a total of 52 prisoners died. The number of deaths from tuberculosis has declined significantly, with 6 cases in 2002 as against 13 in 2001 and 23 in 2000. Four prisoners committed suicide in 2002. In 2001 there were no suicides, but there were six in 2000.

16. Normally, when a prisoner dies, the news is relayed to the duty unit of the Corrections Department at the Ministry of Justice and the relevant procurator's office, which undertakes the necessary procedural actions as prescribed by law.

17. In 2002 the Medical Department of the Ministry of Justice took a number of steps to improve the standard of medical treatment provided at penitentiaries. Among other things, the Minister of Justice has ratified interim provisions on prison hospitals, as a result of which medical units have finally been made independent from the Corrections Department. Departmental programmes have also been adopted to protect the health of persons at institutions administered by the Corrections Department, as well as programmes to prevent the spread of HIV/AIDS and sexually transmitted diseases in these institutions. An arrangement has been worked out between the Ministry of Justice and the Ministry of Labour, Health and Social Security on transferring responsibility for psychiatric evaluations from prison hospitals to ordinary psychiatric clinics with effect from January 2003.

18. In the light of the Committee's recommendations, some practical measures should be noted:

- A properly equipped medical unit has been opened at the young offenders' institution;
- A properly equipped medical unit has been opened at adult penitentiary No. 7;
- Four wards at the female prisoners' in-patient unit have been renovated with assistance and financial support from the International Committee of the Red Cross (ICRC), and will be opened shortly;
- To implement the so-called "directly observed treatment short course (DOTS)" programme, 10 cell-type wards for prisoners suffering from tuberculosis have been renovated. This programme is already being implemented at Rustavi penitentiary.

19. As to efforts to prevent the spread of tuberculosis in prisons, the Committee should know that, with the assistance of ICRC, a total of 6,142 prisoners were screened for pulmonary tuberculosis in penitentiary institutions in 2002. Of these, 473 were found to be suffering from the disease, compared with 586 in 2001. They were all included in the DOTS programme. In all, 353 prisoners were transferred to a special tuberculosis unit for treatment, while the rest received treatment at the facility where they were serving their sentence.

20. Medical screening and consultations for sick inmates are carried out regularly at penitentiaries by prison doctors, officers of the Medical Department of the Ministry of Justice, and representatives of the Ministry of Labour, Health and Social Security. Thus, in 2002, the Ministry of Justice organized 63 prison visits for commissions from its Medical Department, with the participation of teams of specialist physicians. A total of 2,060 prisoners were screened and received appropriate treatment. In addition, with the assistance of the Georgian national centre to prevent the spread of AIDS, 2,066 convicted and remand prisoners (including those held in the tuberculosis unit and the young offenders' institution) were screened in order to identify prisoners infected with HIV and those who have AIDS. Sixteen persons were found to be infected with HIV and registered accordingly. At the time of writing (January 2003), 11 prisoners with AIDS are under constant observation by staff of the national centre to prevent the spread of AIDS and prison doctors.

21. In January 2003 the total number of patients in prison hospitals was 1,696. A total of 39,415 prisoners had received outpatient treatment.

22. In 2002 specialists from the Medical Department of the Ministry of Justice devoted particular attention to matters of sanitation and hygiene in the penitentiary system. Thus, inspections were carried out at seven penitentiary institutions, four prisons, a hospital unit for remand and convicted prisoners in Tbilisi and a special unit for tuberculosis patients. The inspections focused on sanitation and hygiene at the establishment and the amenities provided to inmates. A number of irregularities came to light in the course of the inspections, and steps were outlined to remedy them.

23. Thus, disinfection and rat control measures were taken at two colonies and one prison. Vehicles used to transport prisoners are regularly disinfected.

24. It should be noted that, owing to the decline in the overall number of prisoners, expenditure on prison food has increased from 23 to 33 lari per prisoner (about US$ 15). This has made it possible to enrich the food ration and bring its calorie content within the statutorily prescribed range, namely 2,753-2,964 kilocalories.

Paragraph 8

25. In paragraph 8 of its concluding observations the Committee expressed concern at the widespread and continuing subjection of prisoners to torture and cruel, inhuman or degrading treatment or punishment by law enforcement officials and prison officers.

26. The Committee accordingly addressed a list of recommendations to the Government of Georgia aimed at eliminating human rights violations of this nature.

27. The Government of Georgia understands the concerns expressed by the Committee. At the same time, it does not completely agree with the conclusion that there is "widespread subjection to torture" and other forms of impermissible treatment of persons in custody. It is certainly true that cases of this nature have occurred, but it would be an exaggeration to suggest that they are extremely frequent.

28. In relation to this matter, we would refer back to the information given in our answer to question 6 of the list of issues submitted by the Committee in connection with its consideration of Georgia's second periodic report under the Covenant. Specifically, presidential decree No. 42 of 18 February 2002 stipulates that the Ministry of Internal Affairs, the Ministry of Justice and the Georgian Procurator's Office are instructed to plan measures to give effect to the President's initiative to transform Georgia into a "torture-free zone". These measures have now been prepared and are in the process of being implemented.

29. Under the plan drawn up by the Georgian Procurator's Office:

- Local procuratorial bodies shall systematically check the work of the law enforcement agencies to prevent and identify instances of torture and other forms of unlawful conduct and, if necessary, take measures as prescribed by law to prosecute the guilty parties;

- Similar checks (and investigations if warranted) shall be undertaken pursuant to complaints by citizens and their attorneys and also with regard to allegations made in the mass media;

- Procuratorial units supervising the work of bodies conducting initial inquiries and preliminary investigations and of the correctional authorities shall regularly monitor the progress of checks or the investigation of instances of unlawful physical treatment of detainees and remand prisoners;

- The central and local internal affairs agencies shall notify a procurator without delay of any cases of torture or other forms of unlawful conduct that come to light, and shall report on measures taken in this regard;

- When a remand prisoner presents with bodily injuries, senior officers at the Corrections Department at the Ministry of Justice shall immediately forward the relevant case file to a procurator's office for further action;

- Procuratorial bodies are primed for ongoing cooperation with the parliamentary Committee on Human Rights, the Ombudsman, the Corrections Department at the Ministry of Justice and other relevant departments.

30. In pursuance of its plan of action, the Georgian Ministry of Internal Affairs is taking the following measures:

- Organizing staff training and conferences on the inadmissibility of torture and other forms of unlawful conduct;

- Establishing a special telephone hotline, and informing the general public of this service through the mass media;

- Carrying out unannounced internal departmental inspections of remand prisons to expose cases of torture and other forms of unlawful conduct;

- Conducting preventive operations to identify and take action in cases where detainees are held in remand units in violation of procedural deadlines, or when detainees present with bodily injuries;

- Holding regular hearings at extended council meetings in the Ministry of Internal Affairs of reports by directors of central and local internal affairs agencies and the Ministry's General Inspectorate on efforts to identify cases of torture and other forms of unlawful conduct, and the action taken in such cases;

- Forging close links with non-governmental organizations, with a view to exposing cases of torture and other forms of unlawful conduct and taking prompt action to deal with them.

31. The Ministry of Justice has taken the following steps to implement its plan of action:

- A policy outline for root and branch reform of the penitentiary system is being drawn up with a view to creating more humane conditions in places of detention, in accordance with current international standards in this field;

- A special monitoring system has been put in place for remand prisoners who present with bodily injuries either upon arrival at a penitentiary or during their stay. In such cases, regardless of the detainee's own explanation of how the injury was sustained, the relevant case file shall be sent to a procurator's office for further action;

- The post of specialist physician has been created in the Corrections Department, whose duties include checking the health of any prisoner held in a penitentiary who presents with bodily injuries;

- An independent public monitoring board has been established within the Ministry, one of whose most important functions is to guard against, identify and prevent violations of human rights, torture and other forms of unlawful conduct. Board members may visit any penitentiary without hindrance and talk with prisoners. To facilitate its monitoring duties, the board has been provided with lists of inmates who were held in places of detention in violation of procedural deadlines or who presented with bodily injuries;

- A department to reform and monitor the penitentiary system has been set up in the Ministry, one of whose functions is to draw up recommendations on upholding the rights of convicted prisoners. To this end, departmental officials take regular soundings of the views of the prisoners themselves;

- Standing public commissions have been established in penitentiaries, the function of which is to encourage measures to prevent torture and other cruel and inhuman treatment and assist the prison authorities to resolve issues involving amenities, food, medical treatment, prison industries and the education of prisoners;

- A training programme for prison officers has been developed, with special emphasis on studying the rules for the treatment of persons deprived of their liberty as laid down in existing international standards. The training includes attendance at seminars and courses held at the Ministry's training centre.

32. On 17 May 2002, the President of Georgia issued decree No. 240 on measures to strengthen the protection of human rights in Georgia. The promulgation of this decree is a direct consequence of the concluding observations of the Human Rights Committee. With reference to this specific topic, we think it important to draw the Committee's attention to the following instructions set out in this instrument:

> "1. Requests the Office of the Procurator of Georgia … and instructs the Georgian Ministry of Internal Affairs:
>
> "…
>
> "(b) To institute criminal proceedings and conduct appropriate investigations when bodily injury is found to have been inflicted on a person whose liberty has been restricted;
>
> "(c) To institute special monitoring at places of detention and deprivation of liberty with a view to identifying and eradicating cases of torture and degrading treatment and punishment, and prosecute persons found to have performed such acts;
>
> "…
>
> "(e) To raise the standard of vocational training for procuratorial officials, police and prison officers with a view to preventing torture and other unlawful conduct; to organize special training for experts and medical personnel with a view to identifying and documenting cases of torture;

"…

"3. The Georgian Ministry of Justice shall take the following action:

"(a) Submit proposals regarding the compatibility of the concept of 'torture' as defined in the Georgian Criminal Code with the provisions of the Convention against Torture … and prepare a bill to make any necessary changes to the Georgian Criminal Code …".

33. The Government of Georgia notes that a number of steps have already been taken to implement the presidential directives described above.

34. The Ministry of Justice has prepared a bill to amend the Georgian Criminal Code, which stipulates, among other things, that the concept of "torture" under Georgian law should be brought into line with the provisions of the Convention against Torture. This bill is currently at the discussion stage, a process in which national non-governmental organizations are involved together with the relevant official bodies. The bill will then be put before Parliament for ratification. By November 2003, Georgia is scheduled to submit its third periodic report to the relevant United Nations committee on the implementation at the national level of the Convention against Torture. In that report we shall include a fuller review of developments in this field.

35. The Georgian Procurator's Office has instituted a hotline whereby anyone may contact a procurator at any time and report a violation of his or her rights. The Procurator's Office pays special attention to cases involving the unlawful physical assault of detainees and remand prisoners by police officers, with a view to conducting a proper investigation and prosecuting the guilty parties.

36. The Georgian Procurator's Office reports that, in the first nine months of 2002, procuratorial bodies brought criminal proceedings in 54 cases involving the commission of various kinds of unlawful actions. Seventeen of these cases involved official misconduct - overstepping or abuse of authority, unlawful detention, or unacceptable treatment of detainees. Nine police officers were placed in pre-trial detention as a preventive measure. In three cases the investigation has already been completed and the relevant case files forwarded to the courts.

37. The Georgian Ministry of Internal Affairs reports that in 2002 a total of 287 case files involving internal investigations of unauthorized actions and human rights violations committed by police officers were sent to the Procurator's Office. This figure is approximately 25 per cent higher than the comparable indicator for 2001. In addition to criminal proceedings instituted in these cases (as described above), 92 police officers were dismissed from the force (including 12 senior officers at various levels). Seventy-four officers were relieved of their duties (including 33 senior officers at various levels). In all, 382 officers were disciplined (177 received reprimands and 198 severe reprimands). All these figures are significantly higher than the corresponding figures for 2001.

38. The Georgian Ministry of Justice reports that, in the period from January to December 2002, criminal proceedings were brought against eight prison officers. Of these, four were prosecuted for dereliction of official duty (article 342, paragraph 1, of the Criminal Code); two for exceeding their authority (art. 333, para. 1); and two for abuse of authority

(art. 332, para. 1). In addition, over the same period, disciplinary measures were taken against another 390 officers. Of these, 160 were relieved of their duties for conduct unbecoming and 84 were summarily dismissed. The rest were subject to disciplinary sanctions of varying degrees of severity.

39. At the same time, according to the Ministry of Justice, the human rights protection unit of the Corrections Department received no complaints of ill-treatment at the hands of prison officers from remand or convicted prisoners in 2002. It should be noted that the Enforcement of Penalties Act and the Ombudsman Act make it possible to submit such communications without impediment.

40. It is the view of the Government of Georgia that the information cited above fully demonstrates that efforts to tackle the human rights violations mentioned in paragraph 8 of the Committee's concluding observations are ongoing and of an increasingly energetic nature.

41. Pursuant to the Committee's recommendation that "all statements obtained by force from detained persons should be investigated and may never be used as evidence", we must stress that article 42, paragraph 7, of the Georgian Constitution stipulates that evidence obtained illegally has no legal force.

42. The provisions of the general constitutional requirement cited above have also been incorporated into the Code of Criminal Procedure. Specifically, article 7 of the Code states that "evidence obtained illegally has no legal force". Article 10 on the presumption of innocence fully reflects this universally recognized principle, the first time it has been provided for as such in Georgian procedural law. Judicial supervision has been introduced for any procedural actions undertaken by persons conducting initial inquiries, investigators or procurators which involve limitation of the constitutional rights and liberties of citizens; suspects, accused persons and other parties to proceedings are entitled to appeal to a court if their complaint or application is dismissed by a person conducting an initial inquiry, an investigator or a procurator (art. 15).

43. The Code of Criminal Procedure further states that the confessions of accused persons, if not supported by other evidence, are insufficient to conclude that they actually committed the offences. No testimony may be obtained under duress. The use of physical or mental compulsion to obtain testimony is prohibited, as is blackmail; testimony obtained in this way shall not be admitted (arts. 19 and 119). Any evidence obtained in breach of the statutorily defined procedure, and specifically through the use of violence, threats, blackmail or harassment, is deemed inadmissible and shall be excluded from the criminal case. Prosecution evidence that has been ruled invalid may, however, be admitted at the application of the defence (art. 111).

44. The adversarial nature of trial proceedings and the equality of the parties ensure that evidence and confessions obtained by unlawful means are detected, that they are recognized as such and are excluded from consideration (article 475 of the Code of Criminal Procedure).

45. The Government of Georgia considers that the aforementioned procedural safeguards are sufficient and has always taken great pains to ensure that they are unswervingly applied in practice.

46. Pursuant to the Committee's recommendation "to provide training in human rights, particularly on the prohibition of torture, to police and prison officers", the Committee might be interested to hear about the following practical steps which have already been taken in this regard.

47. Specifically, in the second half of 2002, representatives of the Ministry of Internal Affairs took part in a series of training exercises. These included:

- Further training courses from 14 to 24 May on the legislative underpinning of human rights and fundamental freedoms organized by the United Nations Development Programme, the embassy of the Netherlands in Georgia, the Ombudsman and the Georgian Ministry of Internal Affairs;

- A seminar on the protection of human rights in police work, held at the Ministry of Internal Affairs in June, with the involvement of officials from the office of the Ombudsman, the Georgian Procurator's Office and officials from the internal affairs agencies responsible for activities in the field of human rights;

- A seminar on the organization of police work and a police code of ethics, organized in October with the involvement of experts from the Council of Europe;

- A seminar in November organized by the office of the Ombudsman, with the assistance of the Council of Europe, devoted to ways and means of preventing unlawful treatment of detainees by police officers;

- A seminar on the human rights situation in Georgia and European human rights standards was held in November at the Ministry of Internal Affairs Academy;

- A project entitled "Seminars at police stations and monitoring of pre-trial detention facilities", organized jointly by the department in the Georgian National Security Council responsible for the protection of human rights, intellectual and humanitarian security and the non-governmental organization Former Political Prisoners for Human Rights, was launched in November. The project includes human rights training sessions for police officers at 23 police stations throughout Georgia. By the end of June 2003 - the project completion date - similar training sessions are planned at a further 22 police stations around the country.

Paragraph 9

48. In paragraph 9 of its concluding observations, the Committee expressed its concern at the length of the period (up to 72 hours) that persons can be kept in police detention before they are informed of the charges against them. The Committee is also concerned at the fact that, until the trial takes place, the accused cannot make a complaint before a judge regarding abuse or ill-treatment during the period of pre-trial detention.

49. The Government of Georgia has the following statement to make on this matter: the claim that detainees are not informed of the charges against them for 72 hours is untrue. Article 73 of the Georgian Code of Criminal Procedure stipulates that detainees must be handed

a copy of the decision to institute criminal proceedings against them no later than 12 hours after their arrest. This decision must indicate the offence which they are suspected of having committed. As to the 72-hour period mentioned in the Committee's observations, reference should be made to paragraph 161 of the periodic report, which states that, under article 18 of the Constitution, "detainees or persons whose liberty has otherwise been restricted must be brought before an appropriate court within a maximum of 48 hours. If the court does not decide within the next 24 hours that the person should be remanded in custody or otherwise restrained, he or she must be released without delay (para. 3). Persons suspected of having committed a crime may not be held in short-term detention for more than 72 hours".

50. Moreover, we should like to quote more extensively from the report (paras. 164 and 165): "The bringing of a detainee to a police post or before the competent person in a body conducting an initial inquiry shall be followed immediately by the making of a formal record of the detention and its witnessing, by the appending of their signatures, by the record-writer, the detainer and the detainee. The lawfulness of, and justification for, a detention must be verified within 12 hours of the detainee's being thus brought in, and the competent official of the organ making the initial inquiry shall then issue a reasoned order for the opening of criminal proceedings and the charging and remand in custody of the suspect or for the dropping of the matter and the detainee's release. The procurator must be immediately informed of the content of the order. If the order is for the opening of proceedings and the remand in custody of suspects, their rights must be explained to them in writing. Persons detained on suspicion must be formally questioned within 24 hours of being brought in … . No one may be held in short-term detention for more than 48 hours without being charged. If no decision is issued within the next 24 hours to remand persons in custody or to subject them to some other preventive measure, they must be released without delay."

51. On 29 January 2003, the Georgian Constitutional Court examined and allowed in part the constitutional action brought by the Ombudsman and several non-governmental organizations to have a number of the above-mentioned provisions of the Code of Criminal Procedure declared unconstitutional. Specifically, these were the norms regulating detention and the exercise of the detainee's right to a defence. The most important decisions of the Court in relation to the issue under discussion are reproduced below.

52. The Constitutional Court put considerable weight on the definition of the precise moment of arrest, noting: "A person is deemed to have been detained from the moment when, in cases and on grounds stipulated by law, a person specially empowered to carry out an arrest restricts that person's constitutionally guaranteed rights."

53. The Court ruled unconstitutional and struck down the following grounds for detention that previously existed under procedural law:

- Need to present a person to the police;
- Having no fixed abode;
- Failure to establish a person's identity;
- Where there is "other evidence".

54. The Court also indicated that only persons officially recognized as suspects may be detained.

55. In its decision, the Constitutional Court emphasized: "Immediately upon being detained, persons must have their rights explained to them and be given the opportunity to exercise the following rights:

"- The right to remain silent;

"- The right not to incriminate themselves;

"- The right to be assisted by counsel."

56. With reference to the last-mentioned provision, the Court thought it necessary to explain that "detained suspects may request the assistance of counsel not only prior to their (initial) interrogation, but as soon as they are arrested, in order to safeguard their legitimate interests and provide them with competent legal assistance".

57. The Committee should also be aware of a number of changes incorporated into Georgian law as a result of the Constitutional Court's ruling. Thus, the Court noted: "The statutory defined limit on the duration of unsupervised meetings between (detainees) and their counsel (namely one hour a day) is unconstitutional … because the duration of the meeting should vary with the complexity of the criminal case. Moreover, this restriction should not be used for the deliberate obstruction of either of the parties to the proceedings who enjoy equal rights." Finally, the Court ruled that a body administering a case must postpone an investigative action or a court hearing if counsel is unable to attend for good reasons.

58. At the same time, it should be noted that, in practice, violations of the constitutionally and statutorily defined 72-hour period of short-term detention do occur. Accordingly, the General Inspectorate of the Ministry of Internal Affairs is taking a number of practical steps, for example scheduled and unannounced checks of duty units and police lock-ups. In 2002 there were 65 checks of this kind, as a result of which disciplinary sanctions were taken against those guilty of the offences listed above; 26 officers were relieved of their duties. According to statistics supplied by the Corrections Department of the Ministry of Justice, in 2001 a total of 238 remand prisoners were transferred to prisons in breach of the statutory deadlines; in the first 10 months of 2002 this trend slackened off, with 136 prisoners in this category.

59. Unfortunately, since the consideration of the periodic report, no amendments have been made to existing legislation relating to the right of accused persons to make complaints to judges regarding ill-treatment during the pre-trial investigation. Article 416, paragraph 4, of the Code of Criminal Procedure states that no petitions or complaints may be submitted directly to the court until the case has been remitted for trial.

Paragraph 10

60. In paragraph 10 of its concluding observations, the Committee expressed concern that a person may be detained and imprisoned or prevented from leaving his or her residence because of non-fulfilment of contractual obligations.

61. It should be noted that the Bankruptcy Proceedings Act, reviewed in the periodic report, was amended in April 2001. Specifically, the provisions regarding the application to insolvent debtors of measures such as arrest and custody or detention for the purposes of securing a written power of attorney have been taken off the books.

62. At the same time, the same law contains a provision stating that insolvent debtors may be arrested and brought before a court in order to "present such information which they are under an obligation to provide pursuant to this Act" (art. 14, para. 1 (a)).

63. Thus, a number of changes have already been made to the law (although not enough) in order to bring it into line with the Covenant.

Paragraph 12

64. In paragraph 12 of its concluding observations the Committee expressed its concern at the existence of factors which have an adverse effect on the independence of the judiciary, such as delays in the payment of salaries and the lack of adequate security for judges.

65. Additionally, the Committee recommended that the State should ensure that documented complaints of judicial corruption are investigated by an independent agency and that, where necessary, the appropriate disciplinary or penal measures are taken.

66. According to information supplied by the Georgian Council of Justice, in 2002 actual budget appropriations for the ordinary courts totalled more than 97 per cent of the projected amount for ring-fenced items and 79 per cent for other items. In 2002 the backlog in judges' salaries was cleared. Judges are now paid on time.

67. As for guaranteeing the security of judges, the Committee should be aware that district courts are guarded by the police when the court is in session, although this is not a permanent arrangement. Tbilisi and Kutaisi district courts contract out their court security, and the Georgian Supreme Court has a special guard service. The institution of court officers has been established; their remit includes keeping order during trials.

68. Also with reference to the security of trial proceedings, it should be noted that threats of any kind are dealt with immediately. The following may serve as an example. The trial at a Tbilisi district court in late January 2003 of three Chechens detained in August 2002 for illegally crossing the State border was interrupted when a telephone caller warned that a bomb had been planted in the courthouse. The building was immediately evacuated. Officers of the Georgian Ministry of State Security - engineers and a sniffer dog team - arrived at the scene within minutes. Fortunately, the warning turned out to be a hoax and no explosive device was found in the building.

69. In 2002 there were no recorded instances of attacks or criminal assaults on judges. Unfortunately, there has been one such incident this year, when a judge from Kutaisi district court was manhandled. He was hospitalized as a result of his injuries. A criminal case has been opened in connection with this incident and a preliminary investigation is now under way.

70. The following points should be noted with regard to the problem of judicial corruption. Article 87 of the Constitution stipulates that the consent of the Chief Justice of Georgia is needed to prosecute a judge for a criminal offence (including corruption), and that the matter must be referred to the Chief Justice by the appropriate official. According to the Georgian Council of Justice, there were no such cases in 2002. Disciplinary prosecutions of judges, which may be brought against district or city court judges, are handled by the Council of Justice. Such cases might involve less serious offences not entailing criminal liability, for example a judge's abuse of his position to secure material or other gain prohibited by law. In 2002 two judges were disciplined for precisely this kind of corruption.

71. The Committee might also like to know that, at the end of 2002, on the initiative of the American Association of Jurists, the organizations Central European and Eurasian Law Initiative and the Association of Georgian Judges inaugurated a series of training courses for the judiciary focusing on questions of judicial ethics. A total of 85 Georgian judges have undergone the initial phase of training. The training sessions, which will be attended by all Georgian judges, are led by American experts. We believe that this initiative and other similar projects will help to ensure that the Georgian judiciary functions more effectively.

Paragraph 15

72. In paragraph 15 of its concluding observations the Committee expressed its concern about instances of trafficking of women and called upon the State party to take measures to prevent and combat this practice.

73. Pursuant to this recommendation, the Government of Georgia thinks the Committee should know that on 17 January 2003 the President signed decree No. 15 ratifying the plan of action to combat trafficking in the period 2003-2005. A close study of the text of the decree will enable the Committee to judge the extent to which the measures envisaged under the plan of action conform to its recommendations.

74. Some of the instructions set out in this decree are already being implemented. Thus, at the end of January 2003, a special anti-trafficking department was established in the Georgian Ministry of Internal Affairs.

75. The Government of Georgia wishes to assure the Committee that it is fully aware of the danger of the transnational crime of trafficking. It stands ready to combat this phenomenon by every means at its disposal - obviously, acting within the law - and intends to inform the Committee of progress in this regard when it submits its third periodic report under the Covenant.

Paragraph 16

76. In paragraph 16 of its concluding observations the Committee expressed concern that the Ombudsman's functions were not clearly defined and her power to implement recommendations was limited.

77. The Government of Georgia cannot agree with the Committee's opinion, for the reasons set out below.

78. The Georgian Ombudsman is a constitutional institution. First of all, this arrangement provides a solid foundation for the Ombudsman's activities and, second, it guarantees the office-holder's independence.

79. The Ombudsman Act of May 1996 defines the Ombudsman's functions as follows:

1. The Georgian Ombudsman sees to it that human rights and freedoms are observed in Georgian territory, identifies violations and contributes to the restoration of violated rights. The Ombudsman watches over the work of official bodies, local government, officials and legal entities, issues recommendations and makes proposals (art. 3);

2. In exercising his or her powers, the Ombudsman acts independently and is subordinate to the Constitution and the law alone. Any pressure on the Ombudsman or interference in his or her work is prohibited and punishable by law (art. 4);

3. The Georgian Ombudsman shall of his or her own authority verify the situation with regard to observance of human rights and freedoms and violations thereof, and examine applications and complaints received from Georgian citizens, foreigners present in Georgia and stateless persons, non-governmental organizations … (arts. 12 and 13);

4. In carrying out checks the Ombudsman is entitled:

- To enter without hindrance any government body, enterprise, organization or institution, including military units, places of detention, remand centres and other custodial facilities;

- To demand and obtain from government bodies, enterprises, organizations, institutions, officials and legal entities any information, documents and other materials required to carry out a check;

- To seek explanations on any question under investigation from officials of any rank;

- To take cognizance of criminal, civil and administrative cases in which rulings have become enforceable (art. 18).

80. The Government of Georgia believes that the provisions cited above outline the Ombudsman's functions with sufficient clarity and transparency, and exclude all ambiguity and unwarranted restrictions.

81. Regarding the implementation of the Ombudsman's recommendations, it should be noted that in Georgia, as in other countries, the Ombudsman does not have the power to issue directives. This is a well-known and typical feature of this quasi-judicial institution throughout the world, keeping in mind the generally acknowledged fact that the central instrument for

protecting human rights and issuing binding decisions is an independent, fair and impartial court, in relation to which the Ombudsman performs a merely ancillary role. Nevertheless, the Ombudsman Act confers upon the Ombudsman fairly wide-ranging powers to implement his or her recommendations. Thus, the Ombudsman is entitled:

- To submit proposals to Parliament on the improvement of legislation to uphold human rights and freedoms;

- To forward recommendations on restoring violated rights to the government body, official or legal entity whose actions occasioned the violation;

- Where there is evidence that an offence has been committed, to transmit the relevant case file to the appropriate bodies with a recommendation that criminal proceedings be instituted;

- To write to the President of Georgia or to Parliament in the event of gross or mass violations of human rights, if the means at the Ombudsman's disposal are insufficient to deal with the problem;

- To bring actions before the Constitutional Court;

- In special cases involving human rights violations, to request Parliament to establish an interim parliamentary investigative commission (art. 21).

82. In addition, articles 22-25 of the Act oblige the relevant structures and officials to react to the Ombudsman's recommendations in an appropriate and timely fashion, and provide for sanctions to be taken against those who create obstacles or avoid carrying out the legitimate requirements of the Ombudsman.

83. The Act requires the Ombudsman to report to Parliament twice a year on the human rights situation in Georgia. Discussion of the most recent reports has prompted the President to issue a decree and an order, instructing the relevant bodies of the executive branch to take steps to resolve the issues raised by the Ombudsman. We believe that these presidential regulatory acts have done much to enhance the Ombudsman's authority and give effect to many of the Ombudsman's most important recommendations.

84. At the time of writing, budgetary underfunding remains the most serious difficulty facing the Ombudsman. We note with regret that the accomplishments of the Ombudsman's office are heavily dependent on assistance from foreign donors (as was the case with the "Rapid Reaction Group" referred to above).

Paragraph 18

85. In paragraph 18 of its concluding observations the Committee expressed concern at the discrimination suffered by conscientious objectors owing to the fact that non-military alternative service lasts for 36 months compared with 18 months for military service. The Committee also regretted the lack of information on the existing rules regarding the admissibility of applications to avoid military service on grounds of conscientious objection.

86. The Government of Georgia is pleased to note that, in line with the Committee's recommendation, the Non-Military Alternative Service Act was amended in May 2002 to bring the length of alternative service into line with that of normal military service (from 18 months for soldiers to 24 months for reserve officers).

87. In compliance with the Committee's wishes, some additional information is supplied below regarding the procedures for performing non-military alternative service.

88. The State Commission for Non-Military Alternative Service, the establishment of which was referred to in the reply to question 17 of the list of issues to be taken up in connection with the consideration of the second periodic report of Georgia under the International Covenant on Civil and Political Rights, set to work during the spring and autumn military call-ups in 2002.

89. According to figures from the Department for Non-Military Alternative Service at the Ministry of Labour, Health and Social Security, approximately 140 persons have made known their wish to perform non-military alternative service, most of whom are Jehovah's Witnesses. During the spring call-up, 29 applications to perform alternative service were granted, and another 47 in the autumn (76 overall). In two cases, conscientious objectors invoked the provisions of the Compulsory Military Service (Payment for Deferral) Act and, having paid the fee specified in the Act, deferred their military service for one year. Subsequently, by paying this fee, these persons (or any other young people liable to national military service) may obtain additional deferrals or avoid military service altogether.

90. Persons performing non-military alternative service were found work in a psychiatric hospital in the capital, Tbilisi, and in the sanitation services. According to recent figures, there are approximately 100 jobs for persons in this category in Tbilisi alone.

Paragraph 19

91. In paragraph 19 of its concluding observations, the Committee expressed concern with respect to obstacles facing minorities in the enjoyment of their cultural, religious or political rights. The Committee called upon the State party to ensure that all members of minorities enjoy effective protection from discrimination and the opportunity to use their own language and culture.

92. The Government of Georgia wishes to register the fact that it does not fully share the Committee's concern about the situation of minorities in Georgia.

93. The Government is clearly aware of the problems that must be faced in combating manifestations of religious intolerance, to which the Committee has quite rightly made reference (paragraph 17 of the concluding observations). The Government is concerned by the inadequate representation of minorities at the decision-making level in the legislative and executive branches of government.

94. At the same time, the assertion that minorities encounter obstacles to the use of their language and culture, or that they suffer discrimination, is untrue. Neither the Constitution and the laws, nor the de facto situation in the country, lend any real substance to claims such as those made by the Committee.

95. In our view, it would be more accurate to emphasize the heightened degree of civil integration in Georgia and the adoption of positive measures designed to achieve genuine equality between all sectors of the Georgian population. Accordingly, we wish to draw the Committee's attention to presidential decree No. 68 of 4 March 2003 ratifying the plan of action to strengthen the protection of the rights and freedoms of all sectors of the Georgian population in the period from 2003 to 2005. The Government of Georgia considers that the range of measures provided for in the decree will encourage Georgia's minorities to exercise their rights more effectively.

96. The Georgian Parliament's Committee for Civil Integration is currently putting the finishing touches to an outline plan for the integration of ethnic minorities in Georgia, which will serve as a basis for the development and consolidation of integration processes in the multi-ethnic Georgian society. When this task is complete, the outline plan is scheduled to be approved by the Georgian Parliament.

97. In its third periodic report under the Covenant, the Government will furnish the Committee with detailed information about subsequent measures at the domestic level to protect and promote more effectively the rights of persons belonging to ethnic, religious or linguistic minorities.

Paragraph 20

98. In paragraph 20 of its concluding observations, the Committee expressed its concern at the harassment of members of non-governmental organizations in Georgia and called upon the State party to ensure that these organizations can freely perform their democratic functions.

99. The Government of Georgia shares the concern expressed by the Committee, but does not think it entirely correct to state that human rights non-governmental organizations are unable to perform their activities safely. On the contrary, the right of association is on the whole accorded widespread respect in Georgia and is seen as a cornerstone of the functioning of civil society.

100. Unfortunately, there have been isolated incidents that have formed the basis for the Committee's comments on this issue. But in such cases the Government always takes whatever measures are prescribed by law. For example, in one incident in July 2002, certain members of the well-known Georgian human rights organization Freedom Institute were criminally assaulted. Almost immediately afterwards, the President issued a special order instructing the Ministry of Internal Affairs and the Procurator's Office to take whatever steps were necessary to identify and punish the criminals responsible. The President also instructed the said departments to keep the public properly informed of progress in their work. The investigation of this case yielded results: one of the assailants was rapidly identified and arrested. His accomplices are still being sought.

101. In conclusion, the Government of Georgia wishes to inform the Human Rights Committee that its concluding observations have been translated into Georgian and published in the official gazette *Sakartvelos respublika* (Republic of Georgia). The Committee's observations

have been discussed at a meeting of the Georgian National Security Council, a consultative body reporting to the President. Following this discussion, the aforementioned decree No. 240 on measures to strengthen the protection of human rights in Georgia was issued by the head of State. The Government of Georgia is thus complying in a timely manner with the Committee's request made in paragraph 22 of the concluding observations.

102. Pursuant to article 40, paragraph 5, of the Covenant and rule 71, paragraph 2, of the rules of procedure of the Human Rights Committee, the Government of Georgia requests that these comments be included in the Committee's report for submission to the Economic and Social Council and the Third Committee of the General Assembly.
