

HUMAN RIGHTS COMMITTEE
91st Session
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REPLIES OF THE GOVERNMENT OF GEORGIA
TO THE LIST OF ISSUES TO BE TAKEN UP IN CONNECTION WITH
THE CONSIDERATION OF THE THIRD REPORT OF GEORGIA

Government of Georgia

Replies of the Government

1. With Respect to Paragraph 1 of the List of Issues, the Government of Georgia would like note that it has taken up the concerns of the Human Rights Committee (*hereinafter* Committee) regarding Communication No. 975/2001 (Ratiani vs. Georgia).¹ Namely, the issue referred to the execution of the recommendation of the Committee on granting the author of the communication (Mr. Ratiani) appropriate compensation². According to the well-established practice, the Committee based its decision on Article 2(3(a)) of the Covenant, dealing with the entitlement to appropriate remedy. However, the Committee does not determine the exact amount of the compensation (unlike for example the European Court of Human Rights) and leaves it upon discretion of the state. When the recommendation has been rendered by the Committee in Communication No.975/2001, Georgian legislation did not provide for the implementation of the recommendation of the Committee about compensation as well as for determination of the amount of compensation. Considering the aforementioned, it has been decided to develop a system adequately responding to the aforementioned concerns.
2. The Government of Georgia is currently carefully examining existing practices and Georgian legislation in order to develop an extensive and thorough legislation that will enable to implement the Communication No.976/2001 as well as any other recommendation of the Committee with respect to compensation in good faith.³ Currently, relevant stakeholders are considering the possibility of granting to the judiciary (high level court) the right to determine the adequate amount of compensation when prescribed by the Committee and any other procedural amendments that would be required for proper implementation of the recommendation on domestic level (determination of the relevant authority responsible execution of the judgment rendered by the judiciary i.e. delivering the compensation to the author of the communication, etc.). Hence, we would like to stress the commitment of the Government of Georgia with respect to obligations undertaken under Optional Protocol of the Covenant.
3. The Law on Restitution was adopted on December 29, 2006. The aim of the law is to provide property restitution, adequate immovable property in place or compensation of the material (property) damage to the victims who suffered damage as a result of a conflict in the Former Autonomous District of South Ossetia. Currently, the steps are taken for the implementation of the Law on Restitution.⁴
4. Regarding the practical measures, the Government of Georgia launched the special program “My House” in 2006.⁵ The program is implemented by the Ministry for Refugees and Accommodation and intends to prevent unlawful transactions that take place in Abkhazia and South Ossetia/Tskhinvali Region. The program provides IDPs with an opportunity to be entitled to declare the real property he/she was in possession of before leaving the habitual place of residence. After presenting relevant documents, an IDP is registered as a person claiming right to property and receives relevant documents thereon⁶. Digitalized orthographic photo plans based on photos made from satellites and the identification of exact location of

¹ Note Verbale of Office of the High Commissioner for Human Rights, Reference: G/SO 215/54 GEO(6), Follow Up, 6 August 2007;

² Communication No. 975/2001, Views of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights, 85th Session of 11-29 July 2005, para.12;

³ For that matter, the Government of Georgia is thankful for the briefing paper and general information that the Office of the High Commissioner for Human Rights presented to the Permanent Mission of Georgia to the UN Office and Other International Organizations at Geneva that outlined the practice of other relevant states with respect to implementation of the Committees recommendation on compensation as well as noting the general approach of the Committee with respect to execution of the part of recommendation dealing with the compensation/appropriate remedy;

⁴ The Law envisages creation of the Restitution and Compensation Commission for the realization of the aforementioned goals; The Ministry of Refugees and Accommodation was tasked to create the database of the above-mentioned law by Presidential Decree #763, December 25, 2006. The identification of real estate left by Ossetians is ongoing process together with Association for Protecting Land Owners Rights and USAID in order to form the database foreseen by the law on restitution and presidential decree;

⁵ The procedure of registration of property right of IDPs has been determined by the Presidential Ordinance N124, dated 14 February 2006, and further regulated by the order N30 of Minister of Refugees and Accommodation and the decree of President of Georgia N255;

⁶ Currently, the declaration of real estate residency/use was filled by 61 739 families (216 055 members of families);

each house in geographic database is prepared. The created geo informational system of Gali, Gagra area and Gudauta Region is being polished, which is planned to be available online in the nearest future, so that IDPs or their heirs and other “persons” have opportunity to see their places of origin.

5. As Article 2(1) of the ICCPR states, state parties must ensure that everyone *within their territory or subject to their jurisdiction enjoys the rights therein*. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party.⁷ As such, the requirement set forth for the State would be the exercise of effective control over the territory in order to bear both positive and negative obligations under the Covenant.⁸ The exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputable to it which gives rise to an allegation of the infringement of rights and freedoms set forth in the Covenant. The said proposition is reflective to the customary law principle that state responsibility is established when a) there is a breach of international obligation of that state and b) that breach is imputable to the state.⁹ In the present case, the Government of Georgia submits that it has territorial jurisdiction over Abkhazia and South Ossetia/Tskhinvali Region, since they constitute integral part of Georgia. However, due to the armed conflicts that erupted on the said territories of Georgia in 1992 and 1993 between the Georgian governmental forces and the separatist forces of Abkhazia/South Ossetia-Tskhinvali Region, Georgia lost the *de facto* control over the parts of those regions. All these, resulted in the fact that Georgia was not empowered to secure all freedoms and rights prescribed by the Covenant on the so-called “break away” territories of Abkhazia and Tskhinvali Region. Please further note, that Georgia has obtained full control over Zemo [Upper] Abkhazia and now fall under the full jurisdictional control of the central government.

6. However, Georgia as a Contracting State still bears positive obligations under the Covenant¹⁰ and the Government is taking all necessary steps to comply with the said duty, prevent their repetition and if possible, provide effective remedy in the event of a breach:

- The Government of Georgia¹¹ on numerous occasions informed the Office of the High Commissioner for Human Rights as well as relevant Special Procedures regarding the human rights violations that take place on the territory of Abkhazia and South Ossetia/Tskhinvali Region, requesting for the support and cooperation in prevention of the similar facts/incidents.
- The law enforcement authorities initiate investigations into the facts of human rights violations that take place in breakaway regions.¹²
- With respect to Abkhazia, Georgian side supports application of the confidence building measures during the Geneva Talks format.

7. With respect to Paragraph 4 of the List of Issues, the Government of Georgia would like to note that Chechen refugees are fully covered by the national legislation and the relevant international agreements¹³. On the practical level following measures are implemented:

⁷ General Comment N. 31 (80), Nature of the General Legal Obligation Imposed on State Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 26 May 2004, para.10;

⁸ Ibid, para. 8;

⁹ Article 2 of the International Law Commissions Draft Articles’ on State Responsibility, ILC, 2001;

¹⁰ Ibid para. 8;

¹¹ See for example the Note Verbales 8/129-02 (ICRC), 8/128-02 (OHCHR), 8/127-02 (Special Representative on IDPs), 8/126-02 (UNHCR), of the Permanent Mission of Georgia to the UN Office and Other International Organizations at Geneva regarding illegal acquisition of the government and private property by the *de facto* authorities of Abkhazia and South Ossetia/Tskhinvali Region or Note Verbales of the Mission regarding the ;

¹² The Georgian law enforcement authorities attempt to address human rights violations committed on the territory of Abkhazia, Georgia through initiation of the investigations in 37 criminal cases during 18 months (year 2005 and first six months of year 2006). Unfortunately the law enforcement bodies were not allowed to carry out any operative investigative activities (question the witness, examine the evidences, etc) on the territory falling under control of the *de facto* Abkhaz authorities.

¹³ The information regarding the national legislation of Georgia can be found in an Information prepared by the Government of Georgia in Relation to the Analytical Report to be submitted by the UN High Commissioner for Human Rights to the Human Rights Council in accordance with the Human Rights Resolution 2005/48 of Mass Exoduses and Displaced Persons (January 2007);

- Refugees registered in Georgia have been given monthly allowance 14 GEL, from the state budget since January of 2007;
- In April 2007 amendment has been adopted in the Law on Refugees Issues that allows the refugees registered in Georgia the license of temporary residence¹⁴. The above-mentioned document gives the refugees opportunity to use all the rights given to them by law in Georgia, the lack of what they have been experiencing for 7 years;
- The Ministry of Refugees and Accommodation and the Ministry of Justice prepared the draft regulation of Georgian Government on “Travel Document for Refugees”, which foresees the enforcement of right granted by article 28 of Geneva Covenant of 1951 to the refugees registered in Georgia. The provision of refugees with the above-mentioned document is planned presumably in the first half of 2008;

8. With respect to Committees interest regarding the issue of illegal deportation of Chechen refugees from Georgia to Russia the Government of Georgia would like to note that there is no single fact of deportation of Chechens to Russia. In 2001 Georgia has extradited citizens of Russia of Chechen origin wanted by the Russian Law Enforcement organs. Despite the measures taken by the Government of Georgia in the process of extradition, the European Court of Human Rights found Georgia in breach of its obligations under the European Convention on Human Rights and Fundamental Freedoms¹⁵. Since then, Georgia made significant legislative amendments, such as the precise procedure of appeal of the decision of the Prosecutor General on extradition, clear obligation to inform the detainee on the ongoing extradition procedure, etc. Moreover, Georgia has duly executed the said judgment both in terms of individual and general measures. Namely, Georgia has paid compensation to the victims, annulled the Decree on extradition with respect of those fugitives still waiting for the surrender and improved the legislative basis for extradition. There has been no other case of refugent of Chechens to Russia.

9. With respect to Paragraph 5 of the List of Issues regarding domestic violence, following shall be noted: Domestic violence, Article 9 of the Law of Georgia on Elimination of Domestic Violence (*hereinafter* the Law), must be treated as a crime when it “contains the elements of a criminal offence.” Thus, for example, a criminal offence of murder is considered to be an act of domestic violence when committed among spouses or partners, etc. The objective of the law on domestic violence, is to ensure elimination of this phenomena, protection and assistance to its victims, whereas criminal or administrative responsibility is established under the Criminal and Criminal Procedural or Administrative Violations and Administrative Procedural Codes respectively. Thus, if the act of the domestic violence contains the elements of the crime subject to punishment under the Criminal Code of Georgia, then the criminal proceedings will be initiated.

10. In that respect, rape is criminalized under article 137 of the Criminal Code of Georgia¹⁶. The article does not specify the relationship that a perpetrator has to have with a victim. Accordingly, even a spouse of a victim will be prosecuted on the basis of this article in the same way as a regular rapist committing an offence against unfamiliar victim.

11. The Criminal Code of Georgia does not contain a separate article criminalizing incest. Nevertheless, elements of crime of incest are scattered in several articles, i.e. *Sexual Abuse under Violence (Article 138)*, *Coercion into Sexual Intercourse or Other Action of Sexual Character (Article 139)*, *Sexual Intercourse or Other Action of Sexual Character with One under Sixteen (Article 140)*. All the above articles criminalize coercive acts of sexual nature in one or another form; contain provisions which make penalty especially grave when the offences are committed towards a victim under fourteen. In particular, article 139 criminalizes “Coercion into sexual intercourse, homosexuality, and lesbianism or other sexual contact under the threat of disclosing defamatory information or damaging property or by using one’s material, official or other dependency” and aggravates the penalty when the victim is underage.

¹⁴ To date from 1100 registered refugees in Georgia, the license was received by more than 800 people;

¹⁵ See Shamayev and 12 other v. Georgia and Russia;

¹⁶ “Rape, i.e. sexual intercourse through violence, threat of violence or abusing the helplessness of the victim - ” Article 137, par. 1 *Criminal Code of Georgia*;

12. In September 2006, the Minister of Internal Affairs of Georgia, approved the Form of Restrictive Order, based on Paragraph 3 of Article 21 and Paragraph 4 of Article 16 of Law of Georgia on Domestic Violence. Restrictive Order, which can be issued by Patrol Policemen, inspectors or district inspectors, can impose following limitations on violators: a) Keeping the violator away from the house where the victim resides; b) Prohibiting to the violator to enjoy the right to use the common property exclusively by him/her; c) Prohibiting to the violator to approach the victim and the places of his/her being; d) Restriction to the violator the right to use weapon, including service-regular weapon, as well as prohibition to him/her the right to purchase it; e) Separation of the violator from children, or other measure that could be deemed necessary for the safety of victim. Victims (dependents), on the other hand could be separated from violators and/or placed in shelter.

13. According to the information available to the Ministry of Internal Affairs, if in 2005 the amount of the criminal cases regarding crimes committed on the basis of the “disagreement of family - members” was total to 47, this number in 2006 ascended to 108 cases. From October 2006 till April 2007, 236 protective and defensive orders had been issued by the administrative chamber of Tbilisi city court. Since January 2007 (till September 2007), 937 cases of family conflicts and 319 cases of domestic violence (restrictive orders) have been registered. The law enforcement authorities take effective steps in order to ensure effective and thorough investigation of the incidents of domestic violence. The growth in reported and investigated cases, which is evidenced by the statistics below, demonstrates that a) police has become more sensible towards the problematic, has gained experience and practical knowledge b) trust of society towards police in general and in particular when dealing with domestic violence, has increased.

Domestic Violence – Statistic Data for 2007

	Article 144³¹⁷	Article 126¹⁸	Article 151¹⁹	Article 118²⁰	Article 108²¹ (attempt)	Article 137²²	Article 187²³
Investigation was initiated	12	19	2	8	1	1	1
Cases submitted to the Court	10	11	1	2		1	
Judgment rendered		10	1	2		1	
Accusation	11	14	1	2	1	1	1
Arrest	11	5	1		1		

¹⁷ Inhuman and Degrading Treatment;

¹⁸ Violence;

¹⁹ Threat;

²⁰ Less Grave Injury to Health Inflicted on Purpose;

²¹ Murder;

²² Rape;

²³ Damaging or Destruction of a Subject;

14. Protective orders can be issued by the Court with the objective of protection of victims and ensuring imposition of certain restraints on the offender²⁴. Protective order is a temporary measure and victims, their family members, in case of children – legal guardians have the right to apply to court for the issuance of the latter.²⁵ The written motion to issue a Protective order, among other details, shall contain description of the fact of violence, information on relationship between the offender and the victim, list of supporting evidence, etc. Restrictive orders as well are submitted to court for approval according to the same procedure within 24 hours of their issue. The court can extend the operation of the restrictive order until moment when the protective order is issued. Protective order issued in accordance of the above procedure may envisage measures of protection of victims, including their separation from offenders and placement in the shelter, entitlement of the victim to utilize the common property, treatment of victims, other measures necessary for the security of the victim, etc.²⁶

15. Furthermore, the Action Plan on Measures to Prevent and Combat Domestic Violence (for 2007-2008) was approved by the government in July 2007. Among other objectives, action plan includes:

- The Ministry of Labour, Health and Social Affairs and other relevant government agencies should elaborate standards for shelters and rehabilitation centres for beaters.
- Relevant government agencies and NGOs should train staff of the Ministry of Internal Affairs, prosecutors, judges, health workers and those working in the field of education on international standards regarding domestic violence.
- NGOs should engage in public awareness raising campaigns.
- Two hotlines should be established by the Ministry of Internal Affairs and the Ministry of Labour, Health and Social Affairs, respectively.
- Financial proposals should be made to ensure that sufficient funds are earmarked in the state budget to implement activities outlined in the Action Plan.

16. In addition, domestic violence curriculum is an integral part of the basic police training of patrol officers and criminal police officers, with a special focus on district inspectors that have day to day contact with the local communities. Curriculum is taught with interactive training modules, among other tools using role playing exercises to train officers in situations close to reality.

17. In parallel, Ministry of Internal Affairs actively cooperates with the local NGO and international community and with joint effort over 600 practicing police officers have been given specialized trainings and number of study tours have been organised in EU member countries to share experience. The “hotlines” operate within several units of the Ministry of Internal Affairs where the responsible officials have been specially trained to respond to domestic violence calls. Similarly, all judges of administrative law underwent training on new legal provisions related to domestic violence.

18. With respect to Paragraph 6 of the List of Issues on Bride Kidnapping, the Government of Georgia would like to clarify that 2005 amendment of article 1106 of the Civil Code referred to the changes with respect to registration agency. The former wording concerned the territorial agency for state registration under the Ministry of Justice, while new amendment of 28 December 2005 explicitly mentioned the legal public entity under the Ministry of Justice – the National Agency of State Registries as a proper agency for registration of civil marriages. At the same time, article 1106 explicitly stipulates that marriage is a *voluntary union* between man and a woman. The term “voluntary” underlines the requirement of free and full consent to marriage on behalf of the bride,²⁷ apart from the fact that a woman is granted full and equal enjoyment of the right to marriage that is on equal basis with a man²⁸.

²⁴ Article 21¹³, Code of Administrative Procedure

²⁵ Article 21¹², Code of Administrative Procedure

²⁶ Article 21¹³, Code of Administrative Procedure

²⁷ As noted in General Comment 28: Equality between men and woman (article 3), 29/03/2000, CCPR/C/21/Rev.1/Add.1, para. 24;

²⁸ Ibid at paras. 2 and 23;

19. The Committee has also noted that equality of treatment with regard to the right to marry implies that polygamy is incompatible with this principle.²⁹ In that respect, Article 1120 of the Civil Code of Georgia declares that marriage is forbidden between those persons, one of whom has been already married. The right to equality before the law and freedom from discrimination, protected by article 26, requires States to act against discrimination by public and private agencies in all fields³⁰. The Government of Georgia would like to note, that the National Agency of State Registries in its activities is guided by the Constitution of Georgia, international agreements and other relevant laws³¹. Therefore, the agency as a state organ is bound to comply with the non-discrimination clause envisaged in relevant provisions of the Constitution and the Covenant.

20. The Government of Georgia has undertaken both protective and positive steps in the eradication of the acts of bride-kidnapping. Significant role is played by the effective criminal justice system. The Criminal Code of Georgia does not contain any provision that would serve as a basis for excluding or mitigating criminal responsibility when a person is kidnapped/deprived of liberty for the purposes of marriage. This crime is qualified under Article 143 of the Criminal Code of Georgia as an unlawful/arbitrary deprivation of liberty and respectful sanctions are relatively high. The minimal sanction is 2-4 years of deprivation of liberty while maximum sanction amounts to 8-12 years of deprivation of liberty³². In 2006 investigation has been initiated in 403 cases, while in the course of the first 6 months of 2007, investigation has been initiated in 144 cases.

21. In paragraph 7 of the List of Issues the Committee asked statistic, the general statistic data regarding the deaths of persons deprived of their liberty registered in the period 2001-2007 is as follows:³³

Year	2001	2002	2003	2004	2005	2006	01/05/07³⁴
Number of total Prisoners ³⁵	8181	7635	6274	7200	8895	15423	17130
Number of Deaths	31	39	52	43	46	92	41
Percentage of death out of total number of Prisoners	0.38%	0.51%	0.83%	0.6%	0.52%	0.59%	0.23%

22. The Government of Georgia would like further to note that any case of reasonable doubt that the crime has been committed within the penitentiary establishment is properly investigated. The Criminal Procedure Code directly obliges relevant investigative authorities (investigator/prosecutor) to initiate an investigation when there is information that the crime has occurred. The Penitentiary Department of the Ministry of Justice of Georgia puts detailed information regarding any case of death and the measures taken on its

²⁹ Ibid;

³⁰ Ibid at para. 31;

³¹ See Article 1(2) of the Statute of the National Agency of State Registries – adopted by the Decree N209 of the Ministry of Justice of Georgia, 30 October 2006;

³² Unlawful/Arbitrary deprivation of liberty committed by a group, against a person in vulnerable situation or through the use of violence endangering the health or life of a person or threat of such use of violence is punishable by a deprivation of liberty from 7 up to 10 year. While if the same act is committed by an organized group, the act is punishable by a deprivation of liberty from 8 to 12 years;

³³ Please note that this information is publicly available on the following websites:

Ministry of Justice of Georgia – <http://www.justice.gov.ge>

Penitentiary Department of the Ministry of Justice – <http://www.dop.gov.ge>

³⁴ The statistic data regarding year 2007 includes information as of May 1 of this year;

³⁵ This statistic information includes both persons in pre-trial detention and the convicts and their respective allocation in percentages -

- Year 2001: pre-trial detention – 2686 (32.8%), convicts – 5495 (67.2%);
- Year 2002: pre-trial detention – 2731 (35.8%), convicts – 4904 (64.2%);
- Year 2003: pre-trial detention – 2806 (44.7%), convicts – 3468 (55.3%);
- Year 2004: pre-trial detention – 3300 (45.8%), convicts – 3900 (54.2%);
- Year 2005: pre-trial detention – 5063 (56.9%), convicts – 3832 (43.1%);
- Year 2006: pre-trial detention – 4388 (28.5%), convicts – 11035 (71.5%);
- Year 2007/V/01: pre-trial detention – 4303 (25%), convicts – 12827 – (75%);

website: information about deceased in the prison hospital includes details of the preliminary medical certificate regarding the causes of death.

23. In year 2006, while carrying out armed resistance to the police 18 persons died. In 2007, there have been 2 instances of similar type³⁶. With respect to information regarding investigation on the death of seven inmates in the course of the Disturbance at Prison No. 5 (dated 5 March 2006), please view Annex I.

24. With respect to the regular monitoring by an independent oversight body, as noted in Paragraph 8 of the List of Issues, please note that there are several proper forums within the country; while the new mechanism envisaged under OPCAT is in process of development (please view below detailed information). The Public Defender of Georgia is carrying out an extensive monitoring work to that effect. Apart from this, the Local Public Prison Monitoring Commissions, Human Rights Protection Office of the Department of Prisons, Human Rights Protection Unit of the Prosecution Service of the Georgia, Main Unit for the Protection of Human Rights and Monitoring of the Ministry of Internal Affairs are responsible to monitor respective places of deprivation of liberty within their mandate to prevent and reveal facts of torture and other cruel inhuman or degrading treatment of punishment. Although the latter mechanisms are part of internal structure of relevant governmental institutions, they create an additional circle of oversight within the system (apart from the internal inspections) - they closely cooperate with the civil society and play an intermediary role by bringing the alleged complaints to the investigative units in speedy manner and by implementing sound recommendation by proposing adoption of the rules and/or relevant amendments to the certain provision of laws and/or internal guidelines.

25. The **Ombudsman (Public Defender)** and his/her Office is vested with an extensive set of powers – it is an independent body that abides only to the Constitution and the Law. Coercion or interferences into the activities of the Public Defender is punishable by law.³⁷ Public Defender has a power to enter any detention facility at any time and become acquainted with the relevant information regarding the detainees held in the said detention facility. It shall be noted, that the representatives of the Public Defender vested with full authority to carry out monitoring and visit places of detention (Temporary Detention Cells, Pre-trial Detention Facilities, etc.) on regular basis.

26. The **Main Unit for the Protection of Human Rights and Monitoring** (*hereinafter* the Main Unit) was established in January of 2005 within the Administration of the Ministry of Internal Affairs of Georgia. It is aimed at focusing on the protection of the rights of detainees in the system of the Ministry of Internal Affairs and within its organs and to provide internal monitoring of the places of temporary detention.³⁸ The Main Unit cooperates closely with the Office of Public Defender of Georgia and with NGOs. In order to discover and redress the concrete cases of torture and ill-treatment, staff members of the Main Unit arrange planned or *ad hoc* monitoring in the regional or local divisions of the police (mainly the temporary detention cells and the registration journals are the objects of inspection).

27. Since March 2005, the places of the temporary detention (Temporary Detention Cells), which previously were run by the Regional and Local Organs of the Ministry of Internal Affairs, became structurally subordinated to the Main Unit. Such rearrangement increased supervision opportunity and accountability at the local level.

28. In order to improve the informative-searching system related to the detained persons the Main Unit, since its establishment, has initiated series of reforms within the Ministry of Internal Affairs. In particular, for the purpose of carrying out the comprehensive monitoring, the so-called Unified Standard Forms of the

³⁶ With respect to information regarding injured or deceased policeman, please note:

- In year 2005, 15 policeman have been killed on duty;
- In year 2006, 10 policeman have been killed on duty;

³⁷ Article 4, The Law on Public Defender;

³⁸ Places of temporary detention, the so called – **Temporary Detention Isolators/Cells**, is a place where, according to the Criminal Procedure Code of Georgia, a detainee is kept from its apprehension till he/she is charged and brought to the court that is to decide on the measure of constraint/restraint. According to the Constitution of Georgia and subsequently the Criminal Procedure Code of Georgia this period may not last more then 72 hours from the very moment of the apprehension of the person;

Registration Books³⁹ have been established, which includes the information related to the registration procedure of the detainees placed in the agencies of the Ministry of Internal Affairs (two columns for visual inspection of individuals were added to these forms) and detainees placed in the temporary detention cells.

29. Monitoring of pre-trial and prison establishments constitutes one of the highest priorities of the Prosecution Service of Georgia. The task is carried out by the **Human Rights Protection Unit of the Legal Department** (*hereinafter* the HRPU). The HRPU conducts the monitoring in pursuance of sub-paragraph (a) of paragraph 3 of Article 4 of the Statue of the Legal Department.⁴⁰ The monitoring conducted by the HRPU is aimed at two main subject matters. First, to find out and respond to any kind of human rights violations in prisons, temporary detention cells, pre-trial detention institutions and other institution of deprivation of liberty. Second, the monitoring is carried out to address the facts of torture or inhuman or degrading treatment or punishment in the abovementioned institutions.

30. The regular monitoring of prisons and pre-trial detention institutions is basically directed at revealing the facts of torture or inhuman or degrading treatment or punishment or any other human rights abuses. The monitoring is carried out in response to the protocols received on daily basis from Penitentiary Department. The mentioned protocols contain, *inter alia*, the information about the persons that have been placed in the prisons or pre-trial detention institutions or hospitals of these institutions with the physical injuries and the circumstances surrounding the injuries. In response to this information, the staff members of the HRPU enter the institution to find out if the physical injuries are the result of torture or inhuman or degrading treatment or punishment. In 2006, the HRPU conducted the monitoring in **76** cases. Respective investigations on the basis of the protocols drawn up by the staff members of the HRPU were initiated in **12** cases. During the first three months of 2007, the HRPU examined **24** alleged facts of ill-treatment. Investigation has been launched in **6** cases.

31. **Local Monitoring Commissions of the Penitentiary Institutions** - the Members of the Commission are selected on the basis of their desire, possibility to work intensively, qualification and reputation. Additionally the candidate should reside within 30 kilometers from the Penitentiary Institution the Commission in question should monitor. The Members are approved by the Minister of Justice. By August 1, 2007, the following 11 local prison monitoring commissions⁴¹ were operating within the penitentiary system of Georgia:

- Public Control Commission of Tbilisi # 5 Penitentiary Institution;
- Public Control Commission of Rustavi # 6 Penitentiary Institution;
- Public Control Commission of Rustavi #1 Penitentiary Institution;
- Public Control Commission of Tbilisi #5 Women and Juvenile Penitentiary Institution;
- Public Control Commission of civil control Batumi # 3 Penitentiary Institution;
- Public Control Commission of Zugdidi # 4 Penitentiary Institution;
- Public Control Commission of Ksani # 7 Penitentiary Institution;
- Public Control Commission of Geguti # 8 Penitentiary Institution;
- Public Control Commission of Kutaisi # 2 Penitentiary Institution;
- Public Control Commission of Ksani Tubercular Condemned Prison Hospital Institution;
- Public Control Commission of Prison Central Hospital.

³⁹ Order №277 of the Minister of Internal Affairs of 25th of March, 2005 “on adoption of several registration documents of the Ministry of Internal Affairs of Georgia” under which there have been adopted a) the registration book for the detained persons in the agencies of the Ministry of Internal Affairs of Georgia, b) the registration book for the suspected persons placed in the temporary detention isolators, c) forms of the “monitoring paper-sheet” of the *Main Unit of the Protection of Human Rights and Provision of Monitoring* and of the Administration of the Ministry of Internal Affairs of Georgia;

⁴⁰ The task of the Human Rights Protection Unit is, *inter alia*, to monitor the situation of human rights protection in prisons, temporary cells, pre-trial detention institutions and other institution of deprivation of liberty and respond respectively to the facts of violation; to find out the facts of torture or inhuman or degrading treatment or punishment;

⁴¹ The composition of the commissions (all of them) is the following: 35 representatives of the NGOs, 11 representatives of local municipalities, 2 students, and 11 priests. Ministry of justice of Georgia till 1 September of 2007 announced open competition for staffing of the rest Penitentiary Institution Local Monitoring Commissions;

This kind of monitoring systems is also envisaged by the Draft Code on Imprisonment. Additionally, in order to make the work of the local commission more effective and coordinate their activities, creation of the Central Council of Public Control is envisaged by the Draft Code. The Central Council will be composed of the members from the local commission and will serve as a consulting body for the Minister of Justice.

32. **Prisoners' Rights Unit within the Penitentiary Department** of the Ministry of Justice established on September 14, 2006 and is specifically aimed to address violations of rights of prisoners as well as persons in pre-trial detention institutions. The main task of the unit is:

- to protect rights of prisoners (pre-trial and convicted) and their relatives;
- to work with famished prisoners (pre-trial and convicted);
- to monitor prisons and pre-trial detention facilities;
- to meet prisoners,
- to meet the family members and relatives of prisoners;
- to organize meetings of prisoners with their family members and relatives;
- to receive of complaints from prisoners concerning the violation of their rights;

33. In the Ministry of Justice of Georgia operates **Penitentiary System Reform, Monitoring and Medical Supervision Department**. On the 20th of March, 2007 the new Regulations of the abovementioned department were approved by the Minister of Justice by the Order #80. Department consists of two divisions: penitentiary system reform and monitoring division and medical supervision division. Department carries out intensive and thorough monitoring in the penitentiary system. Department presents annual reports to the Minister of Justice about existing situation in the penitentiary system and prepares of recommendations for approving and reforming the system.

34. Relevant statistic data is following:

Year 2006	Initiated Investigation	Submitted to Court for Trial	Sentence Passed (Convicted)
Cases	137		4
Persons		16	7

Year 2007 (9 Months)	Initiated Investigation	Submitted to Court for Trial	Sentence Passed
Cases	127	4	4
Persons			14

35. On 20 June 2007, the Interagency **Coordination Council for Carrying out Measures against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment** (*hereinafter* the Council) has been established by the Presidential Decree and its goals are:

- Monitoring of the measures taken with respect to fight against torture, inhuman and degrading treatment or punishment;
- Assistance of the respectful governmental agencies for the effective realization and coordination of the activities, for prevention and effective fight against the facts of torture, inhuman and degrading treatment or punishment, as well as for protection, assistance and rehabilitation of the victims;
- Preparation of the recommendations regarding the eradication of the causes supporting the crime of torture as well as effective fight against this phenomena and presentation it to the President of Georgia;
- Close cooperation within the governmental agencies, with the NGOs, local and international organizations, as well as preparation of the proposals with their participation and presentation to the President of Georgia;

- Assistance in the elaboration of the respective model for the National Preventive Mechanism envisaged by OPCAT.

Apart from high level state officials from relevant Government ministries the Council also includes representatives from judiciary, national and international NGOs, international organizations and independent experts. Subsequently, the participation of the representatives of all stakeholders is ensured⁴².

36. The Council is currently working on the elaboration of the Draft Action Plan on Fight against Torture, Inhuman and Degrading Treatment or Punishment for Years 2008-2009. The two meetings of the Council have been devoted to the discussion of the drafts respectively⁴³. It shall be noted, that the Draft has been prepared based on the recommendation and proposal of the international human rights treaty bodies and experts.⁴⁴

37. With respect to Paragraph 9, please note that Article 42 (9) of the Constitution of Georgia stipulates that every person having sustained damage as a result of unlawful conduct of the officials from the state organs or organs of self-government should receive full compensation from the state funds through *the court proceedings*. The mentioned principle is implemented through the provisions of the Criminal Procedure Code of Georgia providing effective enforcement of the right to compensation for the victims of torture and ill-treatment.

38. In particular: **Chapter IV – Civil Action on Criminal Cases** – Under Article 30.1 of the CPC, a person who sustained material, moral or physical injury from a crime can bring a civil action for compensation on criminal case (attached to criminal case). The provision has a general character and may be applied in every case if there is material, moral or physical injury on face. Consequently, this Chapter (including Article 33) is applicable in cases of torture, ill-treatment and excessive use of force.

39. The civil action is generally brought against an accused. However, Article 33.4 of the CPC contains affective safeguard ensuring the protection of the best interests of the victims of the crimes of torture (Article 144¹), threat of torture (Article 144²), inhuman or degrading treatment (Article 144³). In the aforementioned instances, if the accused is a state official escaping the appearance before the law-enforcement organs and whose whereabouts are unknown, the State takes obligation to appear as a respondent in civil actions for compensation. That is, in case of the mentioned circumstances, a victim may file a civil action against a state through separate civil law proceedings. Consequently, the mentioned provision is an effective tool ensuring the redress of the crimes of torture and inhuman treatment through compensation, even in the cases when the alleged offender is not found.

40. In all other instances it is the offender that should pay reparations on the basis of the court order. The order on the payment of compensation is included in the guilty verdict (Article 41.1 of the CPC).

41. **Chapter XXVIII – Rehabilitation and Compensation for Damages Resulting from Illegal or Unsubstantiated Actions of the Law-enforcement Organs (Articles 221-229)** - This Chapter deals with the

⁴² The following State Agencies NGOs/International Organizations take part in the work of the Council:

- Ministry of Justice;
- Ministry of Interior;
- Ministry of Labor, Health and Social Protection;
- Office of the Prosecutor General;
- Ministry of Education ;
- Judiciary;
- Parliament of Georgia;
- Office of the Ombudsman;
- Human Rights Watch;
- Penal Reform International;
- Liberty Institute;
- Office of the High Commissioner for Human Rights;
- OSCE;
- Georgian Young Lawyers Association;
- Independent Experts.

⁴³ Meeting were held on 6th and 13th September 2007;

⁴⁴ United Nations Committee against Torture, CoE Committee for the Prevention of Torture, UN Special Rapportuer on Torture, etc.

issue of compensation for the damages sustained as a result of illegal or unsubstantiated actions of the law-enforcement organs. The basis for claiming compensation for injuries is the illegal procedural action on the part of state organs that is, arrest, detention, search, seizure, etc. Consequently, Article 224 refers to the compensation for the injuries that had been sustained in the course of an unlawful or unsubstantiated detention. The mentioned Chapter, namely Articles 221 and 224 would thus be applicable in cases of compensation by the victims of torture and ill-treatment as well. Physical as well as material and morale damage is subject to compensation. Compensation is granted no matter whether the state officials are actually guilty.

42. **Civil Law Suit** - Apart from the criminal proceedings, the victim may claim compensation through civil law proceedings.

43. With respect to draft Code on Imprisonment, noted in paragraph 10 of the list of issues, the following shall be taken into consideration: In 2006, the special commission working group of both governmental and nongovernmental representatives developed the draft Code on Imprisonment which was sent for expertise to the experts of Council of Europe⁴⁵. The Experts remarks were rather technical than substantial and the majority of them have been incorporated in the draft.

44. On 27 March 2007, the draft Code was accepted by the Government and in April the draft was sent to the Parliament of Georgia for hearings. At present the draft has passed first hearing in four Parliamentary Committees:

- Budget and Finance Committee;
- Human Rights and Civil Integration Committee;
- Education, Science, Culture and Sport Committee;
- Healthcare and Social Affairs Committee.

The draft Code is directed at the protection of the rights of prisoners and includes different possibilities of involving the prisoners in re-socialization process. The draft covers the long of rights of accused and convicted persons. Upon entering the custodial establishment a convict shall be immediately informed in writing of his/her rights and the procedures of treatment to be applied to him/her by employees, the rules of being informed and filing an appeal, disciplinary and other requirements shall be in the language understandable to him/her. The draft Code includes special chapters dedicated to the education, labour and rehabilitation programmes for the prisoners.

45. The draft Code introduces the system of classification and allocation of the prisoners in accordance with the risk and identifies the types of penitentiary establishments. According to the draft Code, the following types of Penitentiary Institutions will be set up: Pre-trial Institution, Open type penitentiary institution, Semi-open type penitentiary institution and closed type penitentiary institution.

46. The draft Code on Imprisonment identifies the system of separation of persons in the custodial establishments: (i) Women; (ii) Minors; (iii) Convicted for the first time; (iv) Persons recognized as victims of the crimes envisaged by Articles 143¹ or/and 143² the Criminal Code of Georgia (Trafficking); (v) Persons, whose life and health may be endangered due to past official activities; (vi) Particularly dangerous persons, whose personal features, criminal authority, the crime motive, consequences of an unlawful actions or the behavior in a pre-trial detention establishment poses serious danger to the security of the establishment and human environment. Convicts suffering from unmanageable contagious diseases shall be placed in the therapeutic units of the pre-trial detention and custodial establishments.

47. The existing Georgian legislation provides for the right to visits both for pretrial detainees and convicts. A detainee is entitled to no more than two visits a month based on investigator's, prosecutor's permission, whereas a convict is entitled to no less than one hour visit per month with family members and close relatives depending on the category of penitentiary institution. According to the present legislation, long-term visits have been abolished and all prisoners have the possibility to enjoy at least one short-term visit

⁴⁵ Opinion by the Council of Europe Experts on the Draft Code on Imprisonment of Georgia, by Prof. Dirk Van Zyl Smith and Dr. Gerard de Jonge, Strasbourg, 30 November 2006, PCRED/DG1/EXP(2006)54 [Confidential];

per month. However, the quantity of short-term visits varies according to the regime and behavior of prisoners.

48. It should be highlighted that the draft Code on Imprisonment sets the new standards for regular visits to prisoners:

- Pre-trial detainees – 4 short-term visits per month;
- Prisoners in Open type establishment – 3 short-term visits per month, one leave up to 5 days once per 6 months and one such leave can be granted by the administration in a year;
- Prisoners in Semi-open type establishment – 2 short-term visits per month, one long-term visit per 6 months and one such long-term visit can be granted by the administration in a year;
- Prisoners in closed type establishment – 1 short-term visit in a month, one long-term visit in a year and one such long-term visit can be granted by the administration in a year;
- Juvenile convicts – 4 short-term visits in a month, one long-term visit in every three months and one such long-term visit can be granted by the administration in a year;
- Female convicts – 3 short-term visits in a month, one long-term visit in every three months and one such long-term visit can be granted by the administration in a year.

49. The problem of overcrowding and general conditions in some of the Georgian prisons remains serious concern for the Government as noted in Paragraph 11 of the List of Issues. The Government of Georgia acknowledges that treatment of all persons deprived of liberty with the humanity and with respect to their dignity represents a fundamental and universally applicable rule, as well as that application of this rule, as a minimum, cannot be depended on the material resources available to the State.⁴⁶ Consequently, the Government of Georgia is taking all necessary means and measures in an accelerated form.

50. According to the new decree issued by the Minister of Justice on February 28, 2007, the official capacity of the Penitentiary institutions is 15 040 places, while there are 18 443 inmates in the system (as of August 1st, 2007). In order to address the above-said problems, Georgian Government takes three sets of measures

- First, the reconstruction of the existing prisons and the building of the new ones.
- Second, that is more related to the process of prosecution, the decrease of custodial forms of measures of constraint (information is provided *supra*).
- Third, the effectuation of the mechanisms for the pre-term release and pardon of the prisoners.

51. The level of overcrowding varies from prison to prison. It should be noted that the overcrowding is not the problem in all of the penitentiary institutions. As to the August 1, 2007, from 17 Institutions under the Ministry of Justice, serious overcrowding existed in 6 institutions. These are: Rustavi Prison # 1, Ksani #7 general and strict regime institution, Tbilisi Prison # 5, Batumi Prison # 3, Tbilisi Prison # 1 and in Zugdidi prison #4. The adequate steps are taken with respect to the mentioned institutions. During 2006, out of approximately 13.000 inmates 4000 were transferred to new prisons with much improved conditions of detention. It is planned to allocate entire prisons population with similar conditions as of years 2008-2009.

52. Construction of the new prisons is part of the ***Action Plan of 2007-2010 years for the Reform of Penitentiary System.***⁴⁷ Following sums were allocated for capital expenditures of penitentiary system in 2003-2007:

- 2003 - 200 000 GEL;
- 2004 - 768 000 GEL;
- 2005 - 768 000 GEL;
- 2006 - 10 238 000 GEL;
- 2007 - 67 086 000 GEL;

53. The following penitentiary institutions have been/are being built:

- **Rustavi Prison # 2 (Strict and General Regime)** - In line with recommendation of the European Committee for the Prevention of the Torture and Inhuman or Degrading Treatment or Punishment of the

⁴⁶ General Comment 21: Replacing General Comment 9 Concerning Humane Treatment of Persons Deprived of Liberty (Article 10), 10/04/92; para. 4;

⁴⁷ This Action Plan is by itself the part of the Action Plan for the Reform of the Georgian Criminal Justice System.

Council of Europe (CPT), Rustavi #2 general and strict regime institution was abolished. The building of this Institution was fully reconstructed, refurbished and opened a new on December 2, 2006. Its construction consumed more than 7 million GEL. The prison will house around 2000 inmates and is in line with relevant international standards. Currently the work on the 5th building (for 300 additional places) is in progress. The system of gas and energy supply has been changed and installed a new. Kitchen and medical unit as well as the security system of the institution are also built in accordance with international standards. The Prison is also equipped with independent water supply system.

- **Rustavi Prison # 6 (Prison, Common and Strict Regime)** – Rustavi Prison #6 started to operate at the end of March 2006. It was built with the support of European Union and UNDP and lies in full compliance with international standards. The Prison is designed for 830 inmates and as to the August 1, 2007, 711 inmates are serving sentences there. At this moment new block for 1000 inmates is under intensive construction.
- **Kutaisi Prison # 2 (Prison and Strict Regime)** - From December 2005, the Prison # 2 operates in Kutaisi. The official capacity of the prison is 1840 places and currently hosts less than 1580 inmates.
- In February 2005 on the territory of **Tbilisi Women and Juveniles #5 Prison and Common Regime** establishment a new prison for women offenders was constructed according to international standards. The prison is designed for 110 female offenders. In October 2005, on the territory of **Tbilisi Women and Juvenile #5 Prison and Common Regime establishment** a new prison for juvenile offenders was constructed according to international standards. The prison is designed for 108 prisoners. At this moment new block for 300 women inmates is under construction.

54. Apart from this the construction of the following penitentiary institutions is underway or is planned to start:

- **Gldani Prison** - the construction of new prison in Gldani District (Tbilisi) is already underway. The prison will host around 4000 inmates and 40 million GEL has been allocated for its construction. Gldani Prison will also host a hospital designed for 200 inmates. The hospital will have all the facilities to carry out serious operations.
- **Batumi Prison** - the construction of new prison will start in Batumi at the end of 2007. *The prison will be designed for 2000 inmates and it will replace the existing Batumi # 3 prison.*
- **Zugdidi Prison** - Construction of new prison will start in Zugdidi at the end of 2007, *which will host around 500 inmates and is intended to replace Zugdidi Prison # 4.*
- **Kakheti Prison** – Construction of the prison designated for 1000 inmates will start at the end of 2008 in Kakheti Region.

55. It is planned to build new establishments in South Georgia and West Georgia which will be designed to place less number of inmates. Besides Penitentiary Department and Ministry of Justice of Georgia wide the reconstruction works in existing establishments are being held. All construction and reconstruction works are being held with maximum consideration of compliance with required standards.

56. The Government of Georgia would like to pay attention to one particular detail – the relevant governmental authorities are not just aimed at building as many new prisons as possible, but *majority of them are build in order to substitute existing old ones refurbishment or renovation of which will still not satisfy minimum standards of treatment of prisoners.* The Government does not intent to increase number of prisons *per se*. After the completion of the mentioned constructions the results achieved will be twofold: First, the new prisons will resolve the problem of overcrowding; second it will significantly change the situation in terms of prison conditions, since all new prisons are being built according to the respective international standards with the participation of international experts.

57. **Health-care services, Nutrition and Out-door Exercises** - In the scope of Penitentiary Reform several important activities have been carried out with respect to improvement of medical care of prisoners:

- Joint Reform Commission of the Ministry of Justice and the Ministry of Labour, Health and Social Affairs was set up in April 2006 and in cooperation with ICRC is intensively working on the Penitentiary System Medical Service Reform;

- In the scope of the abovementioned reform, a joint commission of the Ministry of Justice and the Ministry of Labour, Health and Social Affairs was set up to study the matters concerning release of convicts for reasons of illness and draft a relevant opinion to be submitted to the court which shall to decide upon release of convicts.
- Number of vacancies of the medical personnel in the Penitentiary System has increased from 269 up to 360 in 2007;
- Increase of funding in medical system - the amount for purchasing medicines for prisoners in 2006 was 295 000 GEL and in 2007 the amount became 781 000 GEL;
- The amount for medical service for prisoners in civil hospitals was identified 50 000 GEL in 2006, while it is 300 000 GEL in 2007;
- The Ministry of Justice cooperates with Germany, France and Greece in providing as a humanitarian aid the equipment for medical units of the Penitentiary System.

On 5 June 2007, new Cooperation agreement was signed between the Ministry of Justice and Ministry of Health, Labor and Social Affairs of Georgia and International Red Cross Committee in Georgia related to the assistance in running the programmes for the prisoners with tuberculoses.

58. The food expenses for prisoners have been increased in all Penitentiary Establishments in 2007. On 30 March 2006 on the basis of Joint Order of the Ministers of Justice and Finance of Georgia #374, the portion of monthly food of prisoners increased from 23.5 GEL to 50 GEL. Furthermore, shops for prisoners started operation in the Rustavi #6, Rustavi #2, Kutaisi #2, Tbilisi #7, Avchala #10 and Ksani #7 Penitentiary Institutions, Ksani Penitentiary Institution for Prisoners with Tuberculoses and in Tbilisi #5 prison and common regime penitentiary institution for juveniles and women and prisoners are able to buy additional food stuff and living essentials by using debit cards. Soon such shops will start operation in other penitentiary institutions as well.

59. The right for everyday out-door exercises for prisoners are identified by the Georgian Law on Imprisonment (articles #79-80). Unfortunately, in recent years the problem of daily out-door exercises for prisoners truly existed in Tbilisi Prison #5 due to huge overcrowding, since it was practically impossible to take out of the cells up to 4000 inmates, even in the shifts. The mentioned problem will be solved by the end of this autumn, when the new Prison in Tbilisi (Gldani) for 4000 inmates become operational.

Years	2005	2006	2007	2008
Total Budget	15,828,100	29,642,100	56,152,200	60,466,800
Food	2,760,00	3,607,200	9,000,000	9,450,00
Medication/Treatment	250,000	350,000	600,000	650,000

60. Georgian legislation provides relevant provisions regulating the access to information, mass-media and radio communications for prisoners.⁴⁸ The Law also provides that prisoner with his own finances (with bank account) can receive different kind of literature, newspapers and magazines. All penitentiary institutions have special wall of rights, where all rights of prisoners and regime rules are given. The wall is accessible for every prisoner.

61. With respect to the use of alternatives to the pre-trial detention (Paragraph 12 of the List of Issues), following shall be noted – the application of the non-custodial preventive measures shall take place in an effective, objective and self-sustainable manner. Therefore, the Government of Georgia has chosen gradual introduction of the said alternatives.⁴⁹

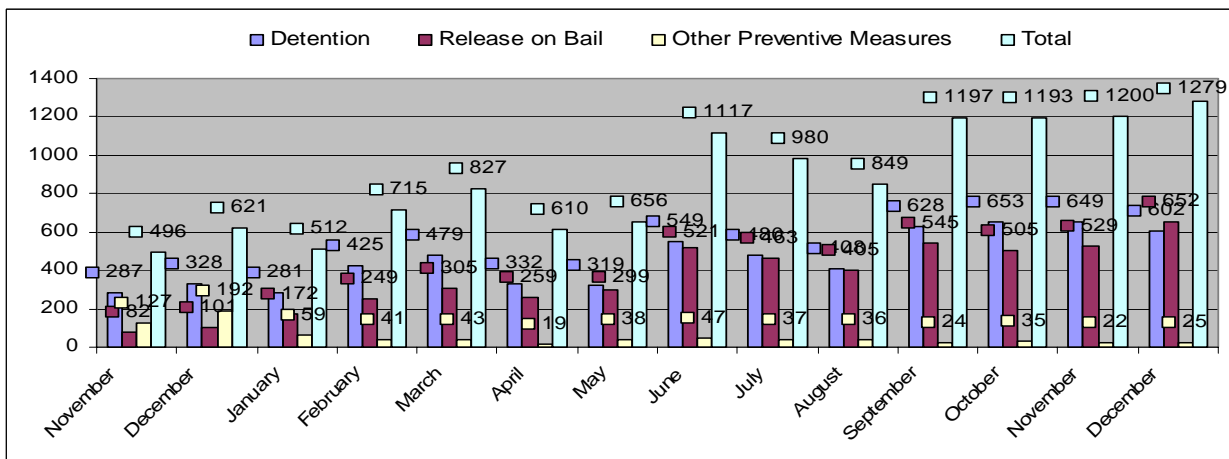
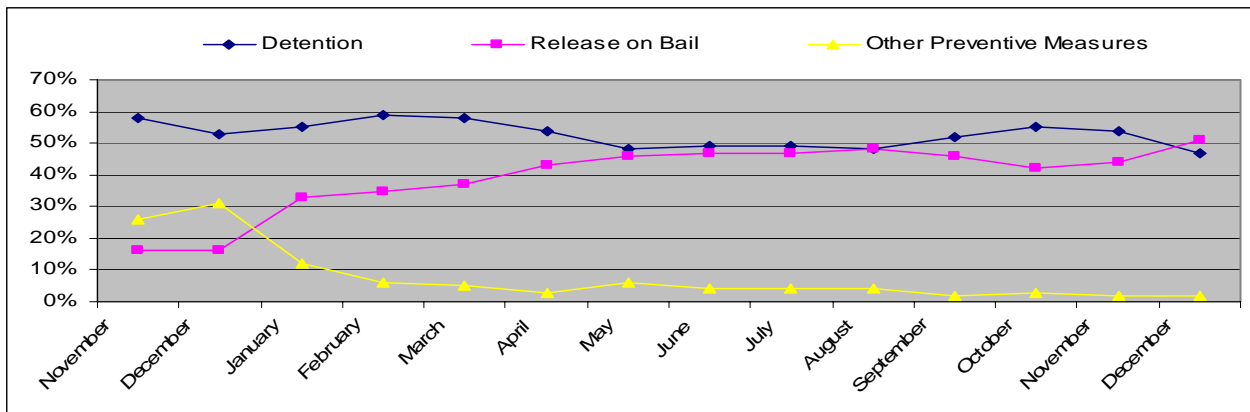
⁴⁸ Article 50 of Law on Imprisonment identifies that the prisoner has the right of sending correspondence without any limits and enjoy the phone talks in accordance with the regime of the institution; Article 51 of Law on Imprisonment identifies that the prisoner should have opportunity to be aware of press and mass-media, article also identifies TV and radio translation in penitentiary institution. Prisoners according with regime of institution can have their own TV's and radios, if it does not violate other prisoner's rights

⁴⁹ Article 197 of the Draft Criminal Procedure Code of Georgia lists following alternatives to pre-trial detention: bail, subjecting a juvenile under surveillance; personal undertaking; agreement not to leave certain premise and not to pursue certain activity; subjecting of the military personnel under surveillance of the commander; pre-trial detention. (Article 198-203 regulate those measures in detail

62. In current context, the application of the bail as a non-custodial preventive measure shall be considered. Georgian legislation has been strict towards application of pre-trial detention since March 2005⁵⁰. Any measure of constraint is applied so that accused would not avoid appearing in the court, to prevent him/her from committing further criminal activities, and to ensure enforcement of judgments. The measure of constraint shall be applied only if the reasonable suspicion exists that the accused will commit a new crime, will flee or will interfere with the course of the investigation by replacing or fabricating evidences or threatening witnesses⁵¹.

63. At the same time, Georgian legislation envisages and the courts efficiently apply other non-custodial measures such as personal guarantee and placement of a juvenile defendant under supervision. The chart below clearly indicates on the steady tendency towards the raise of application of non-custodial measures on monthly basis.

Years 2005 – 2006

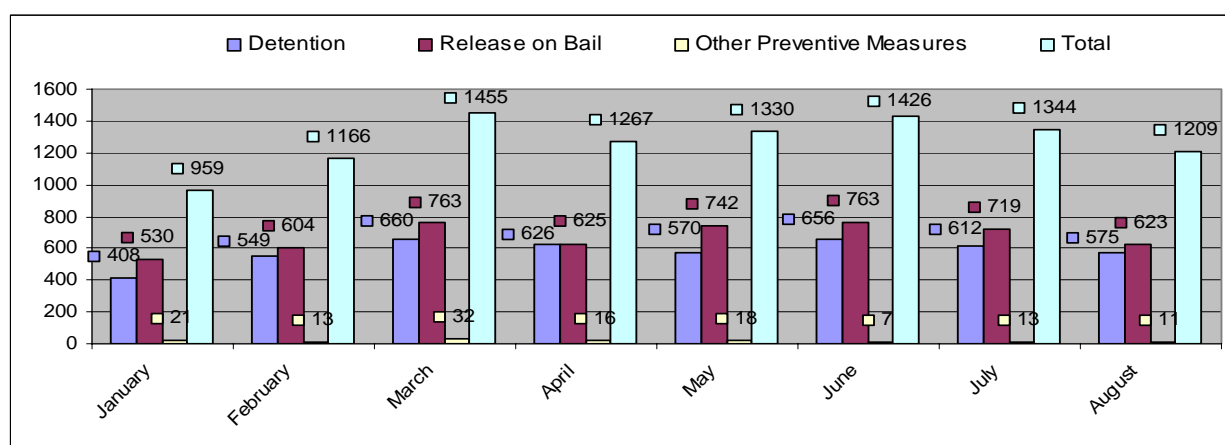
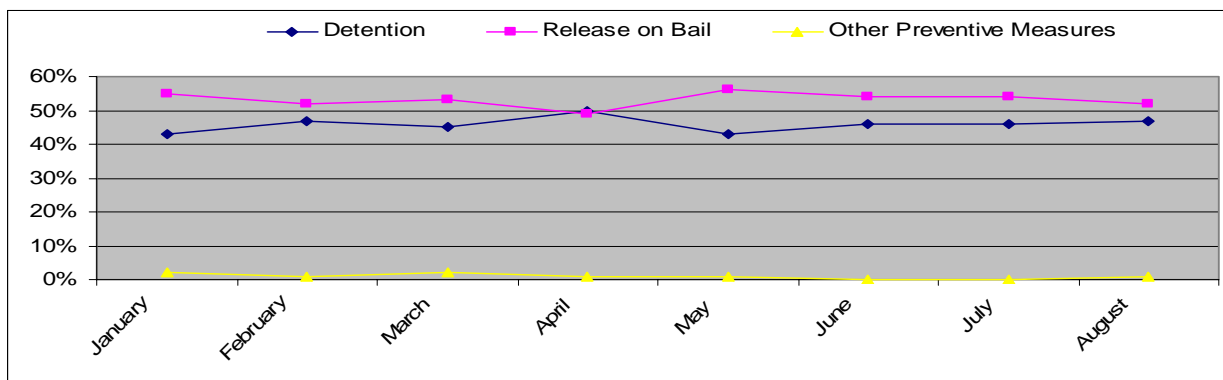


manner); Apart from the aforementioned measures, the Court may prescribe in parallel the application of the following ones: the duty of the person to appear before the court during prescribed time or upon summon; ban on certain activities or professional work; periodic appearance and reporting before the court, police or other prescribed state agency; monitoring by the respectful authority assigned by the court; electronic monitoring; the duty to appear at certain place or at certain place at certain time; obligation not to leave certain territory or on the contrary not to enter certain territory; ban on meeting certain persons without special authorization; obligation to return to the authorities the passport or identification documentation;

⁵⁰ Current Criminal Procedure Code of Georgia recognizes following non-custodial measures: bail, personal guarantee, transfer of the juvenile accused under the supervision and supervision of the actions of the military serviceman by the superior (Article 152 of the Criminal Procedure Code of Georgia);

⁵¹ Article 151 of the Criminal Procedure Code of Georgia;

Year 2007 (First 8 Months)



64. The aforementioned statistic data is given in percentages for comparative analyzes, while identical numeric data would look in the following way:

YEAR	Pre-trial Detention	Bail	Other Non Custodial Measures
2005 (November-December)	615	183	319
2006	5805	4904	426
2007 (8 months)	4645	5369	102

65. In 2006, the Prosecutor General of Georgia has issued Internal Guidelines (*hereinafter* I.G.) promoting application of non-custodial measures such as bail. Namely, the I.G. directly recommends application of bail to certain types of crimes.

66. In Paragraph 12 the Committee referred to the establishment of **National Preventive Mechanism** (*hereinafter* NPM) as envisaged under Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (*hereinafter* OPCAT), ratified by Georgia on 9 August 2005 and which has entered into force on 22 June 2006.

67. The Government of Georgia is fully committed to the implementation of all the obligations stemming from the OPCAT. The extensive preparatory work is going on with the aim of elaborating the most appropriate structural model of the NPM and the respective legal framework that will further strengthen the existing systems. The work is being carried out within the frameworks of the Interagency Coordination

Council for Carrying out Measures against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

68. In particular, the Council analyzes existing monitoring systems in Georgia (Public Defenders Office/Ombudsman's Office, Human Rights Units within the Ministry of Internal Affairs of Georgia, Penitentiary and Prosecution Service of Georgia. Monitoring Commission within the Penitentiaries⁵² as well as discusses the examples of NPM that have been or are in process of creation in other OPCAT member states. Two meetings of the Council have already taken place respectively on September 6, 2007 and September 13, 2007 and through the dialogue and cooperation the Council shall deliver its results in a nearest future.

69. With respect to Paragraphs 13-14 of the List of Issues, the Government of Georgia has adopted the State [National] Strategy for the Internally Displaced Persons (IDPs) based on principle of durable solution⁵³ which aims at securing for IDPs the conditions to live in dignity, and their integration into Georgian society as well as creates necessary conditions to enable IDPs to return voluntarily, in dignity and in safety⁵⁴. The Draft Action Plan has been elaborated for the implementation of the State Strategy for Internally Displaced Persons. It has been submitted for discussion and adoption to the Government of Georgia.

70. The Committee further inquired about the concrete cooperation measures that Government of Georgia carries out with *de facto* authorities of Abkhazia and South Ossetia/Tskhinvali Region. The Government of Georgia remains strongly committed to the peaceful resolution of internal conflicts through intensification of international efforts, activation of existing negotiation formats, strengthening direct dialog with local communities, economic cooperation, advancement of rehabilitation programs, and negotiating broad political status. The Government of Georgia remains strongly committed to the peaceful resolution of internal conflicts through intensification of international efforts, activation of existing negotiation formats, strengthening direct dialog with local communities, economic cooperation, advancement of rehabilitation programs, and negotiating broad political status.

71. Regarding South Ossetia/Tskhinvali Region following shall be noted - In April 2007, Parliament of Georgia adopted the Law of Georgia on Creating Appropriate Conditions for the Peaceful Resolution of the Conflict in the Former South Ossetian Autonomous District. The Law established a framework for setting up provisional administrative-territorial unit in Tskhinvali region, on the territory of former South Ossetian Autonomous District.⁵⁵ After the adoption of the Law, the Georgian Government invited all political forces and representatives of local communities in Tskhinvali Region/South Ossetia to start the process of political consultations in order to reach an agreement on formation of administration for the provisional administrative-territorial unit. Invitation to the dialogue was inclusive; current *de facto* leadership of Tskhinvali was also offered a possibility to participate in the process of consultations. As a result of consultations, political forces willing to engage in conflict resolution and representing interests of the local communities received the mandate to form the new administration. Accordingly, based on the Law, a month later, on May 10, 2007, the Administration of the provisional administrative-territorial unit was established by a decree of the President of Georgia and with the consent of the Parliament of Georgia. Head of the administration was not directly appointed by the President. Instead, decree delegated authority to the head of the new administration to represent interests of local population in the conflict resolution process.⁵⁶ As a

⁵² See above at para. 29.

⁵³ Adopted by the Decree #47 of the Government of Georgia, 2 February 2007;

⁵⁴ National Strategy has been elaborated with active participation of the international organizations (UNCHR, NRC, DRC) and local NGOs, as well as through the consultations with the Special Representative of the Secretary General on the Human Rights of Internally Displaced Persons;

⁵⁵ Main objectives of a creation of the provisional administrative-territorial unit are:

- promotion of the process of a peaceful resolution of the conflict;
- restoration of constitutional order in the area;
- protection of the rights and interests of local community including all ethnic groups represented in the region;
- creation of appropriate conditions for democratic elections;

⁵⁶ The Administration, *inter alia*:

- participates in negotiations on defining the region's political status within the Georgian state;

logical follow up of the above developments, the State Commission on Elaboration of Proposals on the Future Autonomous Status of Former South Ossetian Autonomous District was established by the decree of the Prime Minister of Georgia in July 2007.⁵⁷ Invitation to participate in the activities of the Commission is inclusive: current *de facto* leadership of Tskhinvali was offered such possibility; Russian Federation was officially asked to be involved in the work of the Commission. Representatives of the Republic of North Ossetia/Alania are invited to contribute. Special focus is placed on the broad participation of local communities, including all ethnic groups, political forces, NGOs and other interested partners. Under current composition, the Commission reflects the will of the majority of the local population, both Ossetians and Georgians, who are widely represented as members of the Commission and its working groups, and can therefore contribute, to a peaceful, lasting and fair resolution of the conflict⁵⁸.

72. With respect Abkhazia, absence of motivation among the local *de facto* authorities to start political negotiations aimed at achieving progress in the conflict resolution process is even further aggravated by efforts of high-ranking Russian officials to support the process of *de facto* integration of Abkhazia into the Russian Federation. On the other hand, there is very strong institutional presence of the international community in Abkhazia – UN, UN mission to Georgia (UNOMIG) and the Group of Friends. Therefore, central goal of the Government of Georgia is to use existing international framework more efficiently, to increase activities of the UN and Group of Friends, and to make their presence more visible. This, *inter alia*, includes evaluation of existing security arrangements, including mandate, configuration and composition of peacekeeping forces deployed in the region. In order to support political dialogue, the Government of Georgia initiated 2 high-level meetings of the Group of Friends of the UN Secretary General in 2007, respectively in Geneva and Bonn, alongside with several efforts to arrange high-level bilateral meetings between the Georgian leadership and representatives of *de facto* authorities. At the meetings within the framework of the Geneva Process in Bonn, Georgian representatives once again stressed their concern what

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- advances its own proposals developing European-style autonomy in consultations with the local communities;
 - channels humanitarian and reconstruction assistance to the region and its population;
 - carries out the process of governance and the administrative functions within its competences;
 - implements economic development projects;

⁵⁷ Main objectives of the Commission are, to:

- continue previous peaceful initiatives of the Georgian government and promote process of political negotiations leading to a peaceful resolution of the conflict. While previous initiatives (Peace Plan, Road Map, etc) are mostly focused on current steps how to resolve the conflict, objective of the Commission is to table a comprehensive offer covering also the post-resolution period;
- create conditions and to prepare comprehensive offer for granting wide European-style autonomy to the region, guaranteeing political self-governance and preservation of national identity and cultural rights of ethnic Ossetians residing in the area;
- facilitate participation of local communities including all ethnic groups and political forces in the process of conflict resolution;
- promote confidence building between the central Government and the local communities, to improve general climate in support of political conflict resolution process, economical rehabilitation and social development;
- create a positive precedent for the conflict resolution in Abkhazia, Georgia;

⁵⁸ In order to prepare a comprehensive proposal covering all major aspects of European-style modern autonomy, 5 working groups had been established within the Commission:

- *Working group on constitutional and legal issues* – to elaborate legal framework of the future autonomy, to prepare legal scheme for the division of power between the center and the region in a way guaranteeing broad political rights and protection of the state integrity;
- *Working group on fiscal and financial issues* – to elaborate basis for the fiscal and financial autonomy, to set up relevant financial institutions, to work out special tax distribution and budgetary money transfer arrangements for the region;
- *Working group on economic issues* – to elaborate a special incentive scheme for region's economic development, to regulate issues related to the distribution of property, to set up mechanisms for trans-frontier trade and economic cooperation;
- *Working group on education issues* – to elaborate proposals guaranteeing the special status of Ossetian language, to set up principles of education system for the region;
- *Working group on cultural issues* – to elaborate mechanisms for the preservation of national identity and cultural rights of ethnic Ossetians residing in the area.

is described as a persistent lack of will of Sokhumi *de facto* authorities to engage in direct dialogue and expressed their readiness to address some of the obstacles to its resumption.

73. In Paragraph 15, the Committee requested information regarding implementation of the reforms within judiciary. The process of judicial reform is carried out in line with the Judicial Reform Strategy and Criminal Law Reform Strategy and Action Plan of the Government of Georgia. The main directions of the reform had already been implemented, though the process is still ongoing and is envisaged to be fully completed by the beginning of the year 2009.

74. Well defined sequential order of court instances has been introduced in November 2005. Current organization of Georgian common courts is fully in line with classical systemic layout of judicial systems of European countries and is composed of first instance district (city) courts, second instance Appeals Courts (of which there are 2 in Georgia) and the Court of Cassation (the Supreme Court).

75. Next step in this direction will be the completion of the process of enlargement of small first instance district courts into the less but bigger district courts enabling establishment of more effective and efficient management of first instance courts as well as introduction of specialization of judges. Instead of 70 small first instance courts 18 larger district (city) courts will be established. Six enlarged district courts were already established in Tbilisi, Mtskheta, Khashuri, Akhalkalaki, Sachkhere and Gori. Enlargement of first instance courts enabled introduction of specialization of judges (before the reform in first instance courts each judge had to deal both with criminal and civil cases).

76. Institute of Magistrate Judges is being introduced in judiciary since November 2005 in order to ensure that enlargement of first instance courts will not be to the detriment for the access to justice for persons in the remote areas. Selection and appointment of Magistrates proceeds in line and hand in hand with the enlargement of first instance courts, i.e. as soon as one more enlarged District Court is established Magistrate Judges are appointed in the remote areas of that district. The whole process of enlargement and subsequent appointment of Magistrates is envisaged to be completed by the beginning of 2009.

77. High School of Justice in its new format becomes operative since October 2007. The aim of the School is the professional preparation of future judges with the purpose of staffing the common court system with highly qualified specialists; periodical retraining of judges and upgrading their qualification with the purpose of their professional refinement remains as one of the aims of the School. Only graduates of the School will be eligible for the selection process. In order to fill the existing judicial vacancies the competitions are held periodically by the High Council of Justice. During September 2006 – August 2007 - 32 new judges were appointed.

78. The court buildings are being intensively reconstructed. In general, 27 buildings have already been totally renewed and equipped; the reconstruction of the remaining courts is under way. The process of reconstruction is funded entirely from the state budget. During the year 2007, 5 850 000 GEL were allocated from the state budget for the reconstruction and equipment of courts. In the nearest future the special recording system will be implemented, which will allow for the automatic recording of court sessions and for the assignment of some other legal tasks to the secretaries previously engaged in record-keeping of the court sessions.

79. Salaries have been raised significantly; consistent raise of salaries for judges and non judicial staff of judiciary was envisaged by the budget of 2007 as according to Georgian legislation budget for judiciary for the upcoming year cannot be less that for the current year which contributes to the financial independence of the judiciary. The budget for the current year (2007) equals to 35 912 million GEL. The salary of judges in the first instance courts is from 1550 to 1750 GEL, in second instance Appeal Courts – from 1750 to 3100 GEL and in the Supreme Court – from 3100 up to 4100 GEL. The salaries of non judicial staff have been raised accordingly.

80. In order to upgrade the professional level of journalists and to facilitate the relationships between the court and the media with the assistance of ABA/CEELI, in cooperation with the press center of the Supreme Court and GTZ, a brochure “Journalists' Guide to the Courts” was drafted that will help the media to understand the court system and some of peculiarities of court proceedings. The Media Guide will be published in October-November of the current year.

81. The most substantial amendments were to the Constitution of Georgia adopted on 27 December 2006 as a result of which President was deprived of the right either to appoint or dismiss judges. The authority was granted to the High Council of Justice, the decisions of which are subsequently signed by the Chairman of the Supreme Court of Georgia.

82. Due to the same constitutional amendments High Council of Justice, which is the main institution for initiating the judicial reform, has ceased to be the advisory body to President and is instead chaired by the Chairman of the Supreme Court of Georgia. Thus, President is no more *de jure* head of the High Council of Justice which became a full part of judiciary. The rules set for the composition of the Council enable that judges elected by Conference of Judges form the majority in the Council (8 of 15 members) and consequently are granted with the decisive vote in the decision making process. In addition, the Secretary of the High Council of Justice, who also is the member of the Council, is now elected for three years period by the Conference of Judges upon the recommendation of the Chairman of the Supreme Court of Georgia in contradiction to the previous law which authorized the President to personally appoint the Secretary for period of four years.

83. Amendments passed to the Law on “Disciplinary administration of justice and disciplinary responsibilities of judges of common courts of Georgia” on 15 March and 29 December of 2006 emphasize full autonomy of judges from any branches of government except of judiciary. The Disciplinary Panel is formed at the High Council of Justice for the examination of disciplinary violations committed by judges. It consists of six members, three of which are judges of the common courts and are elected to the Disciplinary Panel by the Conference of Judges upon the recommendation of the Chairman of the Supreme Court of Georgia. The decision of the Disciplinary Panel can be appealed both on substantive as well as legal grounds to the Disciplinary Chamber of the Supreme Court (consisting of three judges of the Supreme Court), which reviews disciplinary cases substantially (with the former system it reviewed the issues within the cassation framework only, i.e. the case was not investigated) and represents the court of the final instance that hears the disciplinary issues of judges. The judges are granted the full opportunity to attend the hearing of disciplinary case by the Panel and the Chamber, to express their position and to defend themselves either through person or through legal assistance.

84. According to recent amendments to the Law on “Disciplinary administration of justice and disciplinary responsibilities of judges of common courts of Georgia” adopted by the Parliament the existing concept of “gross violation of law”, which gave rise to various suspicions regarding the ambiguity of the mentioned concept, has been clearly defined. The law now indicates that only “the violation of imperative norms of the Constitution of Georgia, international conventions and agreements of Georgia and the legislation of Georgia that caused (or could have caused) the substantial damage to the party of the hearing, legal rights and interests of third person or public interests will be regarded as the gross violation of law”. Besides, it is imperatively stated that the wrongful interpretation of the law that was based on intimate convictions of the judge can not form the bases for disciplinary prosecution and the judge cannot be prosecuted for such a conduct.

85. In order to fully ensure that the decision rendered by a judge cannot be evaluated by anyone except the higher judicial authorities, the amendments to the Criminal Code of Georgia were already adopted by the Parliament that decriminalizes the adoption of illegal decision by a judge. The legality of the court’s decisions can only be assessed as a result of disciplinary procedures initiated on the bases of the relevant law and be discussed only by the Disciplinary Panel and Chamber. Therefore, a judge cannot be held criminally liable for such a conduct.

86. The Law on the “Rules of Communication with Judges of General Courts of Georgia” adopted by the Parliament on 11 July 2007 regulates the *ex parte* communication of a judge and thus aims to guarantee even *de facto* independence and impartiality of judiciary. The relevant provisions of the law ensure that from the moment of transferring the case to the court until entering of the court’s decision into force as well as on the stage of preliminary investigation the communication of parties to the hearings and interested persons with a judge that is connected with the discussion of concrete case or issue and violates the principles of independence, impartiality and competitiveness of judiciary is prohibited. In case of such

communication, a judge is obliged to immediately inform about the latter the chairman of the court in written form (in case of communication with the chairman the chairman of the superior court should be informed). Infringement of the requirements of the mentioned law by a judge will be considered as the violation of rules of judicial ethics that on its side will lead to the initiation of disciplinary proceedings against the latter. The law implies as well the obligation to pursue investigator, prosecutor and lawyer on the bases of disciplinary prosecution in accordance with relevant professional ethics codes in case the illegal communication of the mentioned persons with a judge will be revealed.

87. The old Code of Judicial Ethics was substantially revised. Rules of Judicial Ethics which are in full compliance with the European standards of judges' ethical behaviour were presented to the Association of Judges of Georgia and respectively approved. It will be presented to the Conference of Judges on October 20 for final adoption.

88. The statistic applications of plea agreements in the recent years have been following:

- In year 2005, only 7% of cases have been decided via please agreements;
- In year 2006, in 29% of cases the plea agreement has been applied;
- In year 2007 (first 6 months), in 34,9% of cases the plea agreement has been applied.

The Committee in Paragraph 16 of the List of Issues commented on the fact that the plea agreements have been used to stop full investigation into allegations of torture by dropping charges. It shall be noted, that the amendments in the Criminal Procedure Code Georgia (namely, articles 679¹(7¹) and 679³(2¹)) as well as Internal Guidelines of the Prosecutor General of Georgia regulating application of the Plea Agreement, as noted in paragraphs 241-247 have been introduced taking into consideration similar comments of the international organizations and experts. No allegation on these grounds has appeared after the introduction of the aforementioned amendments.

89. In Paragraph 17, the Committee underlines the status of legal public entity of the Orthodox Church of Georgia (hereinafter OChG) and extension of the status to other religious groups. The following aspect should be taken into account. In a great number of states, there exist church-state models where one or number of religious denominations are in a more or less privileged position, though they me not officially established churches. These so called "multi-tier" systems were established as a result of strong historical and social factors.⁵⁹ Georgia represents clear example of such system. Because of its important role throughout the history, the OChG acquired special status of "historically established entity of public law."

90. In deciding whether to extend this status to other religious denominations the two-fold test should be applied. First, whether the granting of the special status to the OChG is unsubstantiated and gives rise to discrimination. Second, whether other denominations are capable of realizing their religious rights within the framework of the status they are granted.

91. The Government of Georgia submits that the granting of the special status to the OChG does not discriminate other religious groups. The Committee has noted that "not every differentiation of treatment will constitute discrimination, if the criteria for such discrimination are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant."⁶⁰ The internationally recognized right to freedom of religion does not necessarily preclude preferential treatment of particular religious denomination, Unless it is administered in a discriminatory manner, or in a way that either directly or indirectly results in coercion which would impair freedom to have or adopt a religion of one's choice or some other impermissible limitation on a manifestation of religion.⁶¹

92. The Government submits that the current status available for religious groups other than OChG fully satisfy international standards. In particular, the status of "Non-Commercial Legal Entity" under the 2005 amendment provides for necessary religious autonomy, be it the autonomy of belief or institutional or functional autonomy. The registration process is clear and does not impose burdensome or unreasonable

⁵⁹ Italy, Spain;

⁶⁰ Human Rights Committee General Comment No.18 on Non-discrimination. Adopted by the UN Human Rights Committee on November 10, 1989, UN. Doc. CCPr/18/ Rev.2;

⁶¹ Lindholm Tore; Durham, W. Cole, Jr.; Bahia G. Tahzib-Lie, *Facilitating Freedom of Religion or Belief. A Deskbook* (2004), at-329;

requirements on religious groups. In sum, religious groups are granted all the rights and possibilities to enjoy their religious freedom without any interference. Imposing of any restriction related to the limitation or prohibition of their activities is prohibited and is punishable.⁶² Religious groups are also capable to carry out various activities freely without having an official registration.

93. Prior to the 2005 amendments of the Civil Code, the definition of a public entity was given in the Article 1509, paragraph “e” of the Civil Code: “Non-state organizations (political parties, religious unions, etc.) established in accordance with the law for promoting public purposes.”

94. According to the Article 2 of the Law on Judicial Persons of the Public Law: “A Judicial Persons of the Public Law (public entity) is an organization, independent from any state governmental organ, created on the basis of the Order of the President or **Administrative Act** in accordance with the Law, which implements political, state, educational, cultural and other public activities independently, under supervision of the state, also an organization created by the Normative Acts of the High Executive Organs of the Autonomous Republics, independent from any state governmental organ, which implements social, educational, cultural and other public activities independently, under supervision of the state.” An amendment of the Law of 6 April 2005 [#1233-I] changed Article 1509, paragraph “e” and took out the words “religious organizations” from the norm thus giving the right to the religious organizations to be registered as private entities.

95. Some religious organizations declined to be registered in the form of the Union or Fund. They claimed that the name Union/Fund and a registration in a form of the Union/Fund and the respective requirements were not in conformity with the character of the religious organization. Consequently on 14 December 2006, number of amendments had been made to the Civil Code changing the principle of *Numerus Clausus* (exhaustive list of private entities). Prior to that, Article 1510 of the Civil Code stated: “non-commercial private entities might be established in the form of a union or foundation” The amendment abolished the said wording (namely there is no list of the forms of private entities) and therefore, nowadays a religious organization can choose any name and legal form for its registration within the framework of non-commercial legal entity.

96. In alternative, religious groups can be registered as a representation of the foreign religious centre or local religious organization. Namely, Georgian legislation provides for the possibility to register as a “Branch of Foreign Non-Commercial Organization” under Article 28 of the Civil Code of Georgia. The rights and duties of the Branch are rather similar to the rights and duties of the “Non-Commercial Legal Entities of Private Law”.

97. With respect to the information requested by the Committee in Paragraph 18 and in follow up of the 3rd Periodic Report of Georgia (Paras. 308-315 on Freedom of Religion), following additional information shall be noted, the Human Rights' Protection Unit of the Office of the Prosecutor General of Georgia continues monitoring of the criminal cases concerning the religious intolerance Under the Order #18 of January 30, 2007 of the Prosecutor General of Georgia all structural units of the Prosecution Service are obliged to inform the Unit on the cases concerning the commission of any above enumerated crimes and any significant development in respect of these cases.⁶³

98. The training of the prosecutors include the issues on the prohibition of any discrimination based on race, religion, ethnicity, nationality, sex, and origin, place of residence, property or title. The trainings are offered within the Project of the British council on the Reform of Prosecutor's Office. Similarly, the human rights course, including the aspect of prohibition of discrimination, is incorporated in the curriculum of the Police Academy of the Ministry of Internal Affairs and the special training courses for Patrol Inspectors.

99. On 19 June 2006, the Prosecutor General of Georgia issued Order № 5 approving the Code of Ethics for the Employees of the Prosecutor's Office of Georgia (*hereinafter* the Code). As anticipated by European

⁶² Sanction are provided for in Article 155 and 156 of the Criminal Code of Georgia;

⁶³ From the beginning of the initiation of the investigation, the Unit conducts constant monitoring of these cases in order to ensure their proper investigation and bringing the perpetrators to justice. Additionally, the Unit is entrusted with the analysis of the recommendations, applications, claims and materials related to human rights violations and provision of adequate response. It also elaborates proposals related to the effective fight against crimes entailing human rights violations;

Commission against Racism and Intolerance, the Code includes *several anti discriminatory provisions*. Namely, Article 5(2) of the Code prescribes the general obligation for the employee of Prosecutor’s Office *to facilitate the elimination of all forms of discrimination*. Article 6(2) prohibits *in public relations, the expression by the employee of the Prosecutor’s Office, opinion intended to insult or restrict the rights of the person on the grounds of race, color, language, sex, religion, political or other opinion, national ethnical or social background, property, birth or other status*. Furthermore, Article 7(3) prohibits *apparent expression by the employee of the Prosecutor’s office religious opinion that infringes the rights of others*. Therefore, the Code reinforces the general obligation of the employee of the Prosecutor’s Office (including Prosecutors, Advisors of the Prosecutor’s Office, Supporting Staff and etc.) to facilitate the elimination of all forms of racial discrimination. Furthermore, it specifically prohibits the insults on racial, religious and other discriminatory grounds.

100. The violation of the respective provisions of the Code represents an inappropriate conduct for the employee of the Prosecutor’s office and entails his/her disciplinary responsibility (Article 38 (6)) of the Organic Law on the Prosecutor’s Office)⁶⁴.

101. Much the same principles are incorporated in the Code of Ethics for police that was adopted by the Minister of Internal Affairs on January 26, 2007. It is worthy to note that the Code of Ethics applies to all the officers of the Ministry of Internal Affairs.

102. For the statistical data related to the investigation of the facts of religious intolerance

Year 2006

	Article 142 ¹	Article 155 ¹	Article 156 ¹	Article 118 ¹	Article 239 ¹	Article 333 ¹	Article 178 ¹
Criminal cases on which investigation was commenced	4	7	3	3 ¹	3	1	1
Criminal cases submitted to the court	1	1	2				
Criminal cases on which the judgment was rendered		2	2				

⁶⁴ Under the above-mentioned Article the following sanctions can be imposed on the employee of the Prosecutor’s Office:

- a. Admonition;
- b. Reprimand;
- c. Severe reprimand;
- d. Dismissal from the position held;
- e. Expulsion from the Prosecutor’s Office;

General Inspection of the Office of the Prosecutor General of Georgia is investigating the cases of the violation of the Code. The materials of the investigation and the proposal on the relevance of imposing the disciplinary sanction on the employee are forwarded to the Prosecutor General who makes the final decision (Article 22 (3) of the code).

Year 2007(9 months)

	Article 142	Article 155	Article 156	Article 187	Article 144 ³	Article 239	Article 118
Criminal Cases on which the investigation was commenced	8	9	2	4 (later 2 cases were qualified under Article 142 and 1 case was qualified under Article 156)	1	1	6 (later 2 cases were qualified under Article 142 and 1 case was qualified under Article 156)
Criminal cases submitted to the court	1	2	1		1		
Criminal cases on which the judgment was rendered	1	1	3		1		

103. Apart from the information noted in paras. 385-389 of 3rd Periodic Report following shall be considered: the National Council on Tolerance and Civic Integration (*hereinafter* The Council) has been established by the Order #639 of the President of Georgia on August 8, 2005. The Council, *inter alia*, is entitled to collect, analyze and summarize international, governmental, public and academic experience, programmes, initiatives, researches and opinions; ensure a consensus on civic integration and tolerance issues through the dialogue with political, social, ethnic and religious groups and active participation of all interested people; collaborate a mechanism for civic participation in creation of the national concept and working plan on tolerance and civic integration; find out and study factors stipulating intolerance and discrimination; collaborate political, financial, institutional and legislative schemes for the implementation of the concept and working plan on tolerance and civic integration; analyze Georgian legislation and draw out complex program of legislative changes in order to eliminate the legislative gaps supporting the intolerance and discrimination; collaborate monitoring mechanisms for the implementation of national concept and working plan on tolerance and civic integration. The Council is actively working out the general directions of the National Concept and Working Plan on Tolerance and Civic Integration. A draft version of the Concept and the Plan will be consulted with the representatives of minority groups before the implementation.

104. Office of the Public Defender of Georgia is actively engaged in promotion of awareness and tolerance of religious and cultural diversity in Georgia. The Tolerance Centre under the auspices of the Office of the Public Defender has been active since February 2006. Two Councils function within the Centre: the Religious Council and the National Minorities' Council. The former is comprised of the representatives of the existing religious groups in Georgia, while the latter includes representatives of national minorities living in Georgia.

105. On July 31, 2006 the Office of the Prosecutor General of Georgia hosted the meeting concerning protection of freedom of religion. The meeting was supported by the State Council of Tolerance and Civil Integration and Public Defender's Office of Georgia. It was attended by Ms. Zinaida Bestaeva, State Minister on Civil Integration Affairs, representatives of Georgian Orthodox Church, religious minorities, Ministry of Internal Affairs, international and non-governmental organizations. During the meeting, presentations were made by the Office of Prosecutor General of Georgia and Public Defender's Office. The representatives of the Office of Prosecutor General described measures taken by Prosecutor's Office with the view of ensuring protection of freedom of religion. The representative of Public Defender's Office underlined importance of the newly established Religious Council and focused on its activities as well as its future plans. The organizers of the meeting expressed their readiness for dialogue and offered to the participants to share their opinions and recommendations, as the exchange of ideas is one of preconditions

for the effective protection of religious rights. Consequently, the second part of the meeting was taken by the discussion, in the course of which the participants of the meeting positively evaluated the initiation of dialogue by law enforcement agencies and raised the issues relevant to their activities. At the end of the meeting the desire of continuing the dialogue between law enforcement agencies, Georgian Patriarchate and religious minorities was expressed.

106. Due to the sensitivity of the persons who have not attained certain age, some general provisions regulating the issues concerning the Freedom of Religion exist in case of secondary education. Article 13(2) of the Law of Georgia on General Education (*hereinafter* the Law on Education) provides that the use of the educational process for the purposes of religious indoctrination, proselytism and forcible assimilation is prohibited. In addition, pursuant to Article 18(3) of the Law on Education, placement of religious symbols on the territory of public school *should not pursue non-academic ends*.

107. Article 14 of the Law on Education, ensures the freedom of expression of a pupil/student (*hereinafter* student), parent and teacher. Paragraph 6 of said Article states that the school is entitled to introduce the school uniform on condition that it does not restrict the freedom of expression of a student and a teacher. The student and the teacher are entitled to refuse to wear school uniform on reasonable grounds. The latter provision is the only one that addresses the issue of dressing in the school. Its analysis shows that students and teachers enjoy wide margin of freedom of expression.

108. On the other hand, the Law on Education seeks to strike legitimate balance between individual and social interests, through the general provision given in Article 8(3). Under this Article, the school may impose non-discriminatory and neutral regulations restricting the rights of pupil, parent or teacher applicable in the school time or on the territory of the school for enforcing the provisions of the law on General Education, including reasonable and unavoidable peril of *inter alia* incitement of ethnic or religious hatred. In accordance of paragraph 4 of this Article any restriction of the rights of pupil, parent or teacher should be reasonable, proportionate and minimal. It shall be implemented pursuant to established rule, fully protecting ethical norms and in accordance with just and due procedure. Furthermore, paragraph 5 of the Article stipulates that restriction of the rights (be it of pupil, parent or teacher) that substantially equates their abolition is prohibited. Any restriction and regulation may include such neutral restrictions of place, time or form of enjoyment of their rights and freedoms which do not affect the substance of the information or idea or their expressive effect and leaves the effective possibility of their enjoyment in alternative ways. In addition, Article 18(2) of the Law on Education prohibits imposition of such obligations that fundamentally contradict their (student's, parent's or teacher's) belief and conscience, as far as their freedom does not infringe the rights of others and does not prevent the overcoming the level of achievement prescribed by National Educational Plan.

109. Public Broadcaster⁶⁵ is one of the main mechanisms for promotion of tolerance and diversity. In Program Priorities, developed by the Board of the Public Broadcaster, promotion and education of cultural, ethnic, religious diversity and tolerance was set as one of the main aims and is a cross-cutting issue for all other priorities.

110. Principles on freedom of religion, equality and religious tolerance are incorporated in the “Law on Broadcasting” as well as in the Code of Conduct for Public Broadcasters. Further, the existence of the Religious Council at the Board of Trustees serves as a preventive mechanism.

111. Religious Council was created by the decision of the Board of Trustees on 26 April 2006 on the basis of Article 31 of the “Law on Broadcasting.” The Council is made up of the representatives of religious minorities and is entitled to draw up respective recommendations for the Public Broadcaster. The work also includes regular meetings with the leading officials of the Public Broadcaster. As regards the legal regulations, Article 16 of the “Law on Broadcasting” obliges the Public Broadcaster to provide programs free of any political, commercial or *religious* influence.

⁶⁵ According to Article 15 of the “Law on Broadcasting” Public Broadcaster is Legal Entity of Public Law, operating on the basis of public financing that is independent from all the State Organs, political or commercial interests and is created to prepare diverse programs for the information of public.

112. Additionally under the Code of Conduct for the Public Broadcaster one of the purposes of the latter is to respect the rights of ethnic and religious minorities and support their development. In the course of broadcasting it is prohibited:

- to discriminate on the basis of *race, skin color, language, sex, religion, political or other opinion, national, ethnic or social belonging, origin, property, titles or place of residence*;
- to draw a line between the criminal activity and ethnic belonging that may generate stereotypes;
- to generalize the act of an individual member of ethnic or religious minority.

Journalists should never agree with the racist or xenophobic expressions by the respondent and should always depart themselves from such expression. In a course of religious programs it is prohibited to insult or/and promote any religion.

113. Another Religious Council was created according the initiative of the Patriarch of Georgian Apostolic Orthodox Church. The Council is named as the “Coordinating Council of the Religions supporting the building of the State.” The Council aims at directing the Religious organizations joint effort to take active part in the building of the state and promotion of religious tolerance.

114. In December 2006, The Council of Religions under the auspices of the Office of the Public Defender and Department of Prisons of the Ministry of Justice signed the joint memorandum. On the basis of this Memorandum, the religious personnel of the confessions united under the Council of Religions are granted access to the penitentiary establishments.

115. Georgian government actively cooperates with all relevant international organizations. One of the recent examples is cooperation with European Commission against Racism and Intolerance, (ECRI) an expert body of the Council of Europe.

116. It is notable that after publishing the second report⁶⁶ on Georgia ECRI organized roundtable, on June 12 2007 in Georgia. Representatives of ECRI, government officials, representatives of religious and ethnic minorities and NGO discussed the mentioned report adopted by ECRI, the positive developments outlined in the report, as well as identified problems and the ways for their resolution.

117. Concerning the freedom of expression (Paragraph 19, List of Issues), the Government would like to note that protection of the lawful activity of journalist falls within the priorities of the Government. The investigation is launched on each case of alleged harassment of a journalist and perpetrators are being brought to justice. As regards the draft law on “Suspension of Activities, Liquidation and Banning of Extremist Organizations” has never been put into practice. The idea to draft such a law was expressed in the course of the parliamentary debates, but has never been considered or discussed.

118. With respect to Paragraph 20, the Committee requested information with respect to national minorities and their involvement in governmental sectors. According to Article 8 of the Constitution of Georgia, “the state language of Georgia is Georgian, in the Autonomous Republic of Abkhazia – also Abkhazian”. According to Article 12 of the Georgian Law “On Public Service”, “the public service in Georgia is realized in Georgian, and in Abkhazia – also in Abkhazian. Service in organs of local self-government is realized according to the Georgian Law “On State Language”. According to Article 14 of the General Administrative Code of Georgia, “the language of administrative proceedings is Georgian, and in Abkhazia – also Abkhazian.”

119. It should be mentioned that according to the survey financed by the USAID and implemented by the United Nations Association - Georgia, in the regions mainly populated by national minorities, the usage of minority language is very frequent in practice: in Kvemo Kartli, 26.6% of the population uses Azeri language when speaking to local officials. In Samtskhe-Javakheti, 29.5% of the population speaks Armenian with local officials. These figures drop to 8.5% and 20.7% respectively when it comes to written communication. Therefore, minority languages are often used in the work of local administrations. Such adjustment, although not in compliance with the law, is allowed by the competent ministries, bearing in mind the specific situation of those regions. The Russian language is also actively used. This language was the main mean of communication during the Soviet times among various national groups living in the Soviet

⁶⁶ Available at http://www.coe.int/T/e/human_rights/ecri/4-Publications/

Union. Nowadays, Russian is becoming less and less popular. The majority of population uses Georgian as a language of interaction with local administrations, both orally (89.6% country-wide, 47.9% in Kvemo Kartli and 51.8% in Samtskhe-Javakheti) and in written (respectively 91.2%, 67% and 66.9%). Georgian language thus remains a very important requirement to perform as a civil servant. The correspondence with the central authorities is done in official language and where necessary, the local councils use professional translation. The State is working actively to teach national minorities the state language.

120. The general policy of the Georgian State is that there should be no difference between the national groups living within the State and that it is not polite from the State to demand from civil servants the information about their national belonging and to collect statistical information in this direction.

121. According to the memorandum signed by the State Minister of Georgia in Civil Integration Issues, the United Nations Association – Georgia, within the project “National Integration and Tolerance in Georgia” made a survey. Accordingly, the proportion of civil servants is almost identical in Samtskhe-Javakheti (11.7%) and country-wide (11.4%). This figure is slightly lower in Kvemo Kartli (8.4%), but as the difference is within a margin of standard statistical error, it is difficult to assess whether it is related to difficult access to such employment in Kvemo Kartli, or to relatively smaller size of administrations as employers in this region. At the state level, the wish to join the executive or of the legislature seems slightly lower in Samtskhe-Javakheti (12.8% respondents indicate readiness) and Kvemo Kartli (14.7%) than country-wide (17.1%). Analysis of the reasons given by respondents for not being ready to such involvement gives interesting results: only 8% names among the reasons poor knowledge of the state language.

122. The ability of persons belonging to national minorities to speak Georgian varies depending on the region. In Tbilisi, only 5% of population belonging to national minorities state that they do not speak Georgian. In Imereti, which is the region almost exclusively populated by ethnic Georgians (1.5% of the population belongs to the national minorities), every person belonging to national minorities speaks Georgian. On the contrary, in Samtskhe-Javakheti and in Kvemo Kartli, respectively 75.4% and 83.1% of the inhabitants who belong to national minorities say that they do not speak the state language.

123. Notably, persons belonging to national minorities are more interested to participate in self-governance than in central executive or legislature. The representatives of national minorities participate in the local elections both through majoritarian and proportional systems. According to the Central Election Commission of Georgia, during the 2006 local elections, 444 national minority candidates were nominated (including 230 through majoritarian system and 214 through proportional system). Out of them, 114 were elected through the majoritarian system and 214 through the proportional lists. In the districts with significant number of persons belonging to national minorities (Sagarejo, Gardabani, Marneuli, Bolnisi, Dmanisi, Tsalka, Akhaltsikhe, Akhalkalaki, Ninotsminda), there is a total number of 260 city councilors, out of which 126 (48.5% of the total) belong to national minorities. Three persons belonging to national minorities, who gained seats in the local city councils, were later elected as council chairmen.

124. During the 2006 local self-government elections, voter turnout was rather high (from 41% to 63%) in the regions densely populated by national minorities. The representatives of national minorities participated in the activities of the precinct election commissions. To improve participation for the 2006 local elections, electoral bulletins were prepared in Russian, Azeri and Armenian languages. Some 5,000 booklets and 15,000 posters in minority languages on electoral procedures were printed for distribution among the electorate and the polling stations.

125. As for the detailed information on the availability of civil service for the representatives of national minorities, first of all, representation of national minorities in the judicial and law enforcement system should be mentioned. Out of 261 judges of Georgia 6 (2.5%) belong to national minorities. Two of them work at the Supreme Court of Georgia, wielding high-level national influence. 4% (1,222 employees) of the Ministry of Interior Affairs staff belong to national minorities. These employees are dispatched between administrative functions (552 employees) and law enforcement or field functions (670 employees). The number and percentage of employees belonging to national minorities in the Ministry of Interior Affairs is as follows:

- Armenian – 518 employees (1.6%);
- Azeri – 224 employees (0.7%);
- Russian – 176 employees (0.6%);
- Greek – 90 employees (0.3);
- Kurt/Yesdi – 61 employees (0.2%);
- Ossetian – 60 employees (0.2%);
- Ukrainian – 26 employees (0.08%);
- Jew – 12 employees (0.03%);
- Assyrian – 6 employees (0.01%);
- Abkhaz – 6 employees (0.01%);
- Other – 22 employees (0.07%).

It should also be mentioned that in the Police Academy, positive efforts are currently being made to enroll persons belonging to national minorities.

126. In the sphere of inter-agency cooperation, it shall further be noted, that with the initiative of Office of the Prosecutor General of Georgia and Ministry of Internal Affairs of Georgia, the meeting of the law enforcement bodies, State Council on Civic Integration and Tolerance and the members of the Council of National Minorities at Office of Public Defender (Ombudsman) of Georgia was held at the Office of the Prosecutor General of Georgia, on 2 August 2006. The Advisor to the President of Georgia for Civil Integration Affairs Ms. Anna Zhvania, international and local NGO's also attended the meeting.

127. The Deputy Minister of Internal Affairs, the Deputy Prosecutor General and their colleagues presented the current state regarding protection of national minorities' rights, briefly addressed the issues of current legislation provisions and regulations, changes in the criminal procedure aimed at simplification and transparency of the investigation, mechanisms ensuring implementation of professional and ethical standards of the employees of these two bodies, introduction of the Codes of Ethics (Codes of conduct), challenges and problems existing in the field, directions of the reform processes as well as statistic data and analysis of the crimes. In the course of the meeting, emphasis has been paid to the importance of involvement of society in reform processes, especially for the representatives of minority groups from the regions.

128. In the course of the meeting, it has been agreed that this cooperation will continue on regular basis, including development of recommendations by the minorities' representatives, exchange of information, facilitation of employment of young professionals belonging to minority groups, etc.

129. The "State Language Program" is part of the Civil Integration Program and it has been implemented since 2004. The budget of the Program amounts to 460 000 GEL for 2007 and it contains two main directions. First, the Program is aimed at facilitating the knowledge of Georgia as a state language. Second, it is directed to protect minority languages existing in Georgia. The guiding principle of the Program is to promote the establishment of the society based on tolerance and respect of different cultures and languages. In line with international standards, the Government takes responsibility to assist minority groups to preserve and further develop their cultural identity. In order effectively to achieve the afore-mentioned goals the Program, *inter alia*, contains the following sub-programs:

- **Program on Georgian Integration and Language Problems** is aimed to reveal the current level of integration of minority groups and to research the problems they are facing in order to elaborate effective ways for their solution.
- **Program on Minority Protection** is also dedicated to promote the minority languages⁶⁷.
- **Program on Teaching State Language for Adults** has been implemented since 2004 year⁶⁸.

⁶⁷ Within the framework of the program the process of the elaboration of the Abkhaz and Ossetian textbooks is being financed. Additionally, Sunday Schools are organized for minority representatives.

⁶⁸ During 2004-2005 years, 40 highly qualified teachers of Georgian language were sent to the schools in the regions populated by minority groups. Currently teachers of Georgian language at those schools are submitting small-scale projects of learning state

- *Program on Facilitating Teaching of State Language in Non-Georgian Schools* has been implemented since 2005⁶⁹.
- *Joint Programs of OSCE and Ministry of Education and Science*⁷⁰.

130. The Government of Georgia is dedicated to inform the public and the state officials about the international human rights instruments Georgia is bound by. The Covenant falls within the list of these instruments. The principles and standards established by the Covenant and further elaborated and developed by the Committee constitute one of the central components for the human rights trainings delivered for judges, prosecutors, police officers, penitentiary staff and teachers. The Training Centre at the Prosecutor's Office, the Training Center of the Ministry of Justice, Training Center for Penitentiary and Probation at the Ministry of Justice, the Police Academy of the Ministry of Internal Affairs, the High School of Justice have been providing regular training in human rights for the respective personnel. As mentioned above, the covenant is the part of these training and consequently the knowledge of its principles and standards is ensured.

language for the adults. The special commission allocates financial recourse for the mentioned projects. To date, this kind of projects are being implanted in 4 (four) districts;

⁶⁹ The budget amounts to 250 000 GEL annually. The program incorporates the following activities: elaboration of the teaching standards and methods, trainings for teachers, elaboration of the textbooks for teachers and students, etc.

⁷⁰ Implementation of the new teaching methodologies and textbooks is not possible without the respective trainings for teachers. Hence, training of teachers is one of the components of the mentioned program that is being implemented in cooperation with the OSCE High Commissioner for Minorities. In 2005 for the trainings covered the non-Georgian schools of Samtskhe-Javakheti Region. In 2006 the same program took effect in Kvemo-Kartli schools. Currently the following projects are being implemented:

- Facilitation of Teaching of Armenian Language as a Mother Tongue in Samtskhe-Javakheti Armenian Schools;
- Facilitation of Teaching of Azerbaijanian Language as a Mother Tongue in Kvemo-Kartli Azerbaijanian Schools;
- Facilitation of Teaching of Georgian as a Second Language in Samtskhe-Javakheti Non-Georgian Schools;

Language Houses (Language teaching courses, library, translation services, etc.)

Investigations Related to the Prison Riot of March 27, 2006

On March 25, 2006, the Investigative Department of the Ministry of Justice initiated the investigation for the criminal case №073060138 into the fact of alleged attempt to disorganize the work of the Department of Prisons, the crime envisaged by Article 378 of the CCG.⁷¹ By the decree of the Deputy Prosecutor General of Georgia, the case was subjected to the Investigative Department of the Office of the Prosecutor General of Georgia.

The investigation was commenced in response to the information received from the Hospital of the Department of Prisons according to which the so-called “thieves in law” (P. Mamardashvili, M. Zedelashvili, N. Makharadze) and criminal authorities (G. Avaliani, Z. Vibliani and L. Tsindeliani) placed in the hospital were organizing mass disturbances.

In response to the notification, the Head of the Department of Prisons together with the officers of the Department arrived in the mentioned medical establishment in order to transfer the criminals in question to other penitentiary institution for the purpose of their isolation. With the view of preventing further complication of the situation, it was decided to carry out the operation at night.

The operation started on March 27, 2006, approximately at 00.45 a.m. P.Mamardashvili, M.Zedelashvili, N.Makharadze, G.Avaliani, Z.Vibliani and L.Tsindeliani disobeyed to the legitimate requests of administration, put up resistance and incited other prisoners placed in the medical establishment to initiate mass disturbances. The mentioned persons were taken from the medical establishment, while remaining prisoners started mass disturbance. The mentioned disturbances reached Tbilisi Prisons №5 and №1 and other establishments.

The most serious situation was in Prison №5, where cell doors and bars were broken, as well as the fire was set, endangering the lives of the inmates. In order to regain the control of the Prison №5 Special Task Force of the Department of Prisons was order to free the entrance to the Prison №5 that had been blocked by the inmates. After the blocked entrance of the building had been cleaned, the Director of the Prison №5 together with several Special Task Force officers entered the building and once again called on the prisoners to calm down. However, their request was followed by the counter-reaction of the inmates as they began to move towards the officers, throwing stones and pieces of metal and wood at them. In response, the special task force used the guns with rubber bullets. The prisoners responded with firearms. As a result two officers of the Department of Prisons were wounded. The decision to open a fire by the Special Force was taken only after the inmates had used firearms. As a consequence seven prisoners died and 22 prisoners received injuries of different gravity.

In order to verify the lawfulness of the measures taken by the law-enforcement officers, in particular the fact of opening fire at the inmates, the criminal case №74068237 was separated from the mentioned criminal case №073060138 and the investigation was initiated under the paragraph 1 of Article 333 of the CCG.⁷²

In a course of the investigation 190 inmates were interrogated as witnesses. 37 of them, all being the inmates of the Prison №5 stated the following: on March 27, 2006, around 2 a.m. they heard the shouting from the Hospital of the Department of Prisons. Shouting and disordered soon started in the Prison №5. The door of the cell they were sitting in was broken from outside and they went out in the hall. They followed other inmates and found

⁷¹ **Hampering or Disorganizing the Work of Pre-trial or Penitentiary Institution.**

⁷² **Exceeding the limits of official authority:**

1. Exceeding the limits of official authority by an official or a person equal thereto that has inflicted a substantial damage to the right of a natural or legal person, legal public or state interest.

themselves in the vicinity of the entrance to the Prison №5 that had been blocked by the inmates. From the yard area of the Prison they heard the callings to stop the disturbances and go back to the cells. However, the organizers of the disturbances did not let them to obey to the orders of the staff of the Department of Prisons. Soon the officers of the Department of Prisons broke the blocked door from outside. The officers called on inmates to stop resistance. In response one of the inmates fired at them with a pistol. The officers opened fire with rubber bullets. The inmates started to move towards the officers and soon they heard the shouting that one of the staff members was wounded. After this the officers opened fire. However they were firing in the air and not in the direction of the inmates.

The forensic medical examination confirmed that the reason for the death of seven inmates were the wounds from the bullets of firearms.

Although the investigation under paragraph 1 of Article 333 of the CCG involved that into the death of the inmates, taking into consideration the recommendations of the Human Rights Watch, the separate investigations has been initiated to ascertain the cause of the deaths of seven inmates under article 108 of the CCG⁷³ on October 23, 2006.

In a course of the investigation forensic medical, forensic biological, ballistic, forensic phonoscopical and forensic dactylic examinations have been appointed.

⁷³ **Deliberate Murder.**