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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Working Group on Arbitrary Detention

Addendum

**Mission to Georgia: comments by the State on the report of the
Working Group***

* Reproduced in the annex as received.

Annex

Comments of the Government of Georgia on the report of the Working Group on Arbitrary Detention

The following document represents the views and comments of the Government of Georgia in respect of the Report of the Working Group on Arbitrary Detention, drafted following a country mission to Georgia between 15 and 24 June 2011.

1. In paragraph 4 of the Report, it is noted that the Working Group had hoped to have the opportunity to visit the regions of Abkhazia and Tskhinvali Region/South Ossetia and regrets that it was not able to do so. The Government of Georgia would like to observe that it requested and encouraged the Working Group to visit the named regions, and offered for that purpose, all necessary assistance. However, since Georgia's named regions are under foreign military occupation, due to the unwillingness of the proxy regimes of these regions to grant access to the Working Group, it was unable to enter therein. At the same time, the Government of Georgia underscores that notwithstanding the occupation of two of its regions, in accordance with respective international human rights norms, it considers itself under the positive obligation to take all possible measures for the protection and promotion of human rights. Nevertheless, the foreign military occupation of these regions deprives the Government of Georgia of the possibility to provide any international human rights monitoring access to the regions.

2. As per paragraph 16, the Government notes that pursuant to the Law of Georgia on Common Courts, in a three-tier court system, the first instance – city (regional) courts – are empowered to consider all cases of criminal, civil and administrative nature and not only petty criminal and civil cases.

3. In paragraph 21, the Report refers to the National Preventive Mechanism as a “State entity.” It should be underscored that the Office of Public Defender of Georgia, which in 2008 was designated as the National Preventive Mechanism is an “A status”, independent constitutional human rights institution that in its functions is guided solely by the Constitution, the Organic Law on Public Defender, international treaties and agreements of Georgia, universally recognized principles and rules of international law and other legislative acts.

4. With regard to the low acquittal rate noted in paragraphs 38, 44, 54 and 60, it should be underscored that out of all cases considered by courts on merits in 2011, 4.6% ended up in acquittal or were terminated by courts. In addition, according to statistical data of the Prosecution Service of Georgia, in 2011, prosecution was initiated against 14,396 individuals, while prosecution was terminated against 545 people. Thus, criminal proceedings were terminated against 3.8% of people at the investigation stage, before it went to the stage of hearing on merits. The Government of Georgia has always noted that prison overcrowding is a consequence of the “Zero Tolerance Policy”, which in its own right has led to significant decreases in both organized crime and petty crimes. The challenge of ensuring public safety has always been addressed by the Government through measures in line with due process and through a balancing of security considerations vis-à-vis prison population growth. Since 2010, the Ministry of Justice has carried out a Crime Survey¹ that aims at verifying the level of public safety. The survey also allows the

¹ Results of the survey are available at http://www.justice.gov.ge/index.php?&sec_id=650&lang_id=ENG

identification of problematic fields and the further development of policies within the criminal justice sector. The results of the survey, carried out in 2011, confirmed that public safety in the country has significantly improved in recent years. Consequently, the Government of Georgia has started a liberalization process. The challenge of prison overcrowding is part of this evolving process. This process includes the implementation of special measures aimed at the reduction of number of prisoners through the use of alternative sanctions, such as: discretionary prosecution, diversion among juveniles (84 juveniles were subject to a diversion program in 2011) and adults (19 persons were diverted as of December 2011, three months from entry into the force of the diversion program for adults) etc. It should be also mentioned that the new Code on Imprisonment, which entered into force on October 1, 2010, established new councils for early conditional release (parole boards), which discuss cases for release on a monthly basis and are an efficient tool for decreasing the prison population. As a result of these measures, in 2011, for the first time since 2004, the prison population not only did not rise, but in fact decreased. The Government is determined to continue and build on these measures to address the challenge.

5. As to the qualification and trust in Legal Aid Service (LAS) lawyers, referred to in paragraph 40, the results of a 2010 public opinion survey² on the state funded legal aid service, conducted with the assistance of the European Union Rule of Law Support Project, demonstrated that 78.2% of respondents surveyed evaluated the level of professionalism of the LAS staff as higher than average; 74.2% of respondents, rated the results of the services rendered as very satisfactory; 71% stated that they had achieved favourable outcome in courts.

6. Paragraph 40 of the Report also raises concerns in relation to difficult cassation procedures; the cassation procedures prescribed by Georgian legislation are similar to those under many other legal systems establishing admissibility criteria for appeals to supreme courts.

7. As per information regarding lawyers in detention, it should be underscored that the Government is implementing stringent policies against corruption and fraudulent activities, especially in regards to sectors providing services to citizens. In this regard, statistical data referring to lawyers should be read in line with similar measures taken with regard to public officials.

8. Regarding the concerns raised in paragraph 52, related to limited authority of judges to intervene in the plea bargain process, particularly, in relation to the application of a sentence, it should be underlined that the right of a judge to intervene has not been revoked but rather has been bolstered. Notably, the amendments introduced into the Criminal Code of Georgia on October 28, 2011, widened the authority of judges to examine whether charges in plea agreements are substantiated, if the sentence requested in a motion on review of a case is legitimate and fair and if the plea was made voluntarily. Therefore, judges are not only mandated but obliged to review terms of a plea bargain, including the sentencing ranges.

9. With regard to paragraphs 64 and 65, the Government of Georgia hereby underscores that the Criminal Justice Reform Coordination Council has initiated a review of the Code on Administrative Offences with the participation of representatives of national and international non-governmental organizations. In December 2011, a team of experts revised the Draft Code in two directions, in line with the recommendation contained in the Report: (1) improvement of the procedural/fundamental safeguards for persons from the

² Results of the survey are available at <http://www.legalaid.ge/>

moment of arrest through the end of the court-proceedings (including *inter alia* evidentiary standards, access to a lawyer, adequate timing in preparing defense and appeal, etc.) and (2) improvement of treatment/living conditions of administrative detainees in temporary detention isolators (to afford them similar rights to those detained in criminal proceedings). The revised Draft Code has been submitted for additional review to the Council of Europe.

10. In addition, Order N1074 of the Minister of Internal Affairs of January 28, 2011, amended the Statute on Temporary Detention Isolators Regarding Additional Rules and Conditions of Administrative Detention, based on recommendations of NGOs and civil society representatives. The amendment already provides the same safeguards in detention centers as are prescribed in the Draft Code.

11. With regard to paragraph 69 to 75, it should be noted that all individuals detained on May 26, 2011 were promptly brought before a judge within 12 hours as prescribed by the law. A judge examined each and every case and decided on the measure of constraint accordingly. As indicated in the registration journals administered by every Temporary Detention Isolator, most detainees (around 97%) were visited by an attorney speedily and almost immediately, by representatives of the Public Defender. The International Committee of the Red Cross (ICRC) was given the opportunity to visit detainees freely.
