



**International Covenant on
Civil and Political Rights**

Distr.
GENERAL

CCPR/C/SR.1566
19 November 1998

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Fifty-ninth session

SUMMARY RECORD OF THE 1566th MEETING

Held at Headquarters, New York,
on Thursday, 27 March 1997, at 10 a.m.

Chairperson: Mrs. CHANET

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE
COVENANT (continued)

Initial report of Georgia (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF THE REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Georgia (continued) (CCPR/C/100/Add.1)

1. At the invitation of the Chairperson, Mr. Alexidze and Mr. Balvashvili (Georgia) took places at the Committee table.

2. Ms. MEDINA QUIROGA expressed surprise at the brief response given by the Georgian delegation to the questions on gender equality and asked whether any research had been conducted into the real situation of women in Georgia and precisely what was being done to resolve problems of inequality. She also wished to know whether methods of family planning other than abortion were available in Georgia. The representatives of Georgia should indicate whether lawyers were being retrained, how easy it was in practice to have access to a lawyer and whether lawyers had ready access to evidence and were genuinely able to defend their clients.

3. Concerning article 19 of the Covenant, she wished to know what procedures were followed and what reasons were given for suspending the activities of the media. Noting that the Aliens Act established principles governing the liability of aliens for crimes, she asked whether there were different regulations in that regard for Georgian citizens. She questioned the 10-year residence requirement for participation in electoral politics. She was surprised that the Committee which had drafted the report had not seen fit to conduct an inquiry into the inviolability of the home and into telephone tapping. The fact that article 20, paragraph 1, of the Georgian Constitution allowed telephone tapping without a legal warrant in emergencies was, in her view, very dangerous.

4. Ms. EVATT stressed the need to separate the role of prosecutors from that of the judiciary in matters coming under article 9 of the Covenant. There was also a need for an independent body which would provide remedies and investigate alleged violations. In that regard, she asked which authority was responsible for prison inspections. A strong, independent legal profession was essential for the rule of law, the protection of human rights and ultimately, the establishment of a strong judiciary. She hoped that the Georgian authorities had plans to reinforce the legal profession. It was also crucial to ensure that all legislation was published systematically and was readily available to the general public. Turning to issue 7, she asked what action the Georgian authorities were taking to secure the return of the Meskhetian Turks to their home territory.

5. Concerning issue 8, she asked what the criteria were for the conduct of searches, who took decisions thereon and whether such decisions were subject to judicial oversight. She also enquired about any remedies for invasions of privacy. In connection with issue 10, the representatives of Georgia should comment on the extent of self-censorship resulting from the intimidation of journalists by the State bureaucracy and indicate what action was being taken to

/...

prevent such intimidation. She also wondered whether any laws had been established pursuant to article 24 (4) of the Georgian Constitution.

6. Turning to issue 11, she noted that while the Georgian Constitution envisaged certain requirements and restrictions with regard to freedom of association, the report did not make clear what those requirements or restrictions were. In that regard, she wished to know what remedies had been provided in response to complaints of violations of citizens' rights by the police. The Committee needed such information in order to test how such rights were safeguarded in practice.

7. Noting that the report painted a depressing picture of the situation of children, she asked what action had been taken to improve that situation, other than the enactment of legislation and the ratification of international instruments.

8. Mr. SCHEININ said that, in addition to the human rights provisions enshrined in the Georgian Constitution, specific measures should be taken to ensure the incorporation of the Covenant and its Optional Protocol into and their precedence over Georgian domestic law. The Covenant and its Optional Protocol should also be published in the national languages of Georgia and distributed to judges, lawyers and the public at large. Noting that the report referred to human rights instruments other than the Covenant, particularly those of the Organization for Security and Cooperation in Europe (OSCE), and also that Georgia had applied for membership of the Council of Europe, he sought clarification as to the relative importance attached by the Government to its obligations under the Covenant and its human rights commitments under OSCE and the Council of Europe.

9. Mr. BHAGWATI welcomed Georgia's decision, under a new law to come into force on 25 November 1997, to transfer to judges the power currently vested in prosecutors to extend the period of pre-trial detention. It was extremely important to organize training courses for judges and lawyers on the rights set forth in the Covenant and in other international human rights instruments. He wondered whether Georgia had any comprehensive legal aid programme for civil as well as criminal cases. He asked whether Georgian law provided for the right of conscientious objection and for alternatives to military service. In connection with the section of the report dealing with freedom of expression, it was important to define the term "state secrets" very narrowly; only secrets with a direct bearing on national security should be invoked to prohibit press publications.

10. Expressing concern about government control of newsprint, he asked how the Government distributed newsprint among the newspapers, whether absolutely anyone could start a newspaper or television station and whether the Government could take television stations off the air by executive order or must obtain a judicial order, after proving that such action was warranted.

11. The representatives of Georgia should indicate whether public servants were allowed to form trade unions and whether multiple trade unions were allowed within a single enterprise. If abortion was legal, the representatives of Georgia should indicate what conditions must be met, how many abortions were

performed and why other family planning methods were not generally available, since abortion could be harmful to a woman's health.

12. The report stated that, in 1994, 34 petitions for pardon had been received from prisoners on death row; 22 had been considered by the Head of State and 14 had received a favourable response. He wished to know whether the remaining eight had been rejected and whether any action had been taken on the six decisions pending since November 1995, specifically, whether the people concerned were still on death row. The Georgian delegation should indicate whether anyone had approached the Constitutional Court directly to provide remedies for violations of a constitutional right, what provisions governed the dismissal of judges, who determined the guilt of a judge and whether any independent machinery existed for that purpose.

13. Mr. LALLAH fully endorsed the interpretation whereby Georgia had succeeded to the international obligations of the former Soviet Union, including those under the Covenant, at the moment at which it had become independent. Concerning the administration of justice, he noted that, under articles 2 and 14 of the Covenant, the obligations imposed on a State party presupposed the existence of an independent judiciary, an independent legal profession and an independent system of prosecution that was unaffected by political decisions. He therefore supported the suggestion that Georgia should completely retrain all three branches of the legal profession. Any outside help that the country might require could be provided by the Centre for Human Rights or by a number of non-governmental organizations which had organized seminars on that issue throughout the world. The fact that certain criminal cases could be tried only by the Supreme Court ruled out the possibility of appeal to a higher tribunal. If Georgia did not have such a tribunal, one should be created. Such a safeguard was essential, since mistakes could occur.

14. Mr. ALEXIDZE (Georgia), replying to the questions raised by members of the Committee, said that, so far, no appeals had been lodged with the courts invoking provisions of the Covenant. As far as the dissemination of the Covenant was concerned, although not all judges were conversant with its contents, the Government was making efforts to bridge that gap. He assured members of the Committee that their recommendations would be published and made available to the Georgian public. Upon his return to Georgia, he would report immediately to the President and appear on public television to explain what had occurred at the Committee's session. Georgia had an office of Ombudsman for human rights, and a school of international law and international relations had been established which trained diplomats and legal experts in human rights and the provisions of the Covenant. Several seminars on human rights were also being organized in cooperation with international agencies and other countries.

15. Regarding the relationship between the Covenant and human rights commitments associated with membership of the OSCE and the Council of Europe, he explained that the Covenant provided the basic, universal standard for Georgian human rights legislation. Human rights commitments stemming from other instruments were consistent with the Covenant and occasionally supplemented it; in no case was there a conflict.

16. Apart from what was indicated in the report, he could not provide detailed information about abortion as a means of family planning. The use of abortion as a contraceptive method could not be condoned, of course, and the matter would be taken up with the appropriate authorities in Georgia. He was also unable to provide further information on the incidence and investigation of violence against women. The second periodic report would most certainly contain fuller statistical and factual information. The Committee should bear in mind, however, that women's rights were never violated at the State level in Georgia. Where violations occurred, it was in the context of daily life.

17. He took note of the point that prosecutors should not be involved in matters related to detention. It would be the independent Ombudsman's task to examine complaints of unlawful detention. The Georgian authorities also concurred that it was vitally important to build a strong personnel base. Such an undertaking obviously took time, and foreign academics, including, Mr. Buerghenthal, had been invited to Georgia to give lectures and hold seminar to that end. Trainee judges were also required to attend special four-month courses in which human rights instruments featured prominently.

18. The law in Georgia stated that laws and edicts entered into force only after they had been published. All statements addressed by the President to law enforcement officials and bodies were broadcast and published in several languages.

19. Articles 6 and 7 of the Georgian Constitution stated that international law always took precedence over domestic law. In cases where no domestic norm existed, it was necessary to refer to the Constitution and to the relevant international instruments. More work would be done to publicize that fact.

20. The authorities had put in place a number of mechanisms for monitoring and investigating alleged human rights abuses, including the parliamentary human rights committee, the Ombudsman, the assistant to the President on questions affecting national minorities and the subcommittee on prison institutions. The machinery in place ensured that a provisional response was given to all complaints of alleged human rights abuses. The parliamentary committee was empowered to dismiss and prosecute officials found guilty of abuses, and an annual report thereon was submitted to Parliament.

21. Active efforts were under way to re-educate lawyers who, under the Soviet system, had become accustomed to bureaucratic interference in the judiciary and to strict compliance with central directives. Such efforts were being centred on young people, who often went abroad to complete their legal training. In addition, foreign governments had provided technical assistance in remodelling the Georgian Civil Code.

22. On the issue of freedom of movement, the police were finding it more difficult to keep track of criminals now that the propiska system had been abolished.

23. Although the Constitution provided for the possibility of strike action, there was as yet no law on strikes. Until such a law was passed, the right to strike was governed by the relevant provisions of the Constitution and hence of the Covenant.

24. An investigation had been conducted into the single case in which an individual had been imprisoned for refusing to perform military service without being offered some form of alternative service; as a result, that individual had been released.

25. On the issue of freedom of speech, he could not rule out the possibility that pressure was occasionally exerted on journalists; however, legislation was currently being prepared that would outlaw such practices. Foreign assistance had been forthcoming at every stage in the preparation of such draft legislation. The Covenant provided for certain limits on press freedoms, particularly where issues of national security were concerned, and that provision had been flagrantly abused by the Soviet regime in respect of Jewish emigration. The definition of national security should be very clear, which was why the recently adopted law on State secrecy actually listed what circumstances were covered by that term.

26. Georgian citizens had no difficulty obtaining foreign cable and satellite broadcasts, including Russian programmes which, regrettably, propounded a pro-separatist line. People holding anti-government views appeared frequently on domestic television. Government control of the mass media in Georgia was minimal.

27. Georgia fully endorsed the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by General Assembly resolution 47/135 of 18 December 1992. Given that the population was divided principally along religious lines, he was proud to state that Georgian society was especially tolerant in religious matters.

28. Mr. BALVASHVILI (Georgia) said that in the turbulent conditions of civil war, many senior figures in the Georgian Government had regrettably colluded in human rights violations. Some officials had been arrested and investigations were under way. However, President Shevardnadze was laying the foundations for an open and democratic system of government, and law enforcement agencies were committed to that policy. The most obvious result of their sterling work had been the sharp decline in the crime rate. Two years previously, the police had routinely issued warnings that the streets were not safe after dark. Since then, the situation had changed completely, reflecting positively on the work of law enforcement bodies.

29. Judicial reform was making steady progress. Parliament was at the final stage of adopting the Civil Code and was considering a law on the functions of procurators. Work was proceeding apace on the overhaul of the Criminal Code, the Criminal Procedure Code and the Civil Procedure Code. Approximately 200 amendments had been made to the Criminal Procedure Code, all of which were concerned with protecting and strengthening citizens' rights. Certain provisions of the Criminal Code which hampered the development of economic activity had also been struck down.

30. It was true that there had been cases of extraction of evidence by coercion. Those cases had been followed up and were currently before the courts, but it was important to stress that no criminal case had ever been based on evidence obtained by coercion. Confessions could be used in court only when supported by other material and sufficient evidence. Likewise, there were no political prisoners in Georgia. Georgian legal terminology did not recognize such a concept. Many people who claimed to be politically motivated had been tried and convicted for terrorist offences, but nobody had been imprisoned on account of his ideas or beliefs. Common criminals could not claim that they were being persecuted for political reasons.

31. On 3 August 1992, while civil war and ethnic conflicts were raging, a general proclamation had been issued on the initiative of the President providing for persons accused of especially dangerous crimes to be released and for all cases against them to be dropped.

32. On the question of the protection of the rights of detained persons, under articles 43 and 46 of the Criminal Procedure Code, the interrogation of suspects or detainees in the absence of a lawyer was categorically prohibited. The detained person had to be informed in writing of his rights, including his right to refuse to answer questions when no lawyer was present. In specific cases, the Supreme Court had ruled that testimony or confessions taken without a lawyer present had no legal force and had to be expunged from the record.

33. On the question of how lawyers prepared for the defence of accused persons, he said that, prior to July 1996, the system had been that the lawyer, after meeting the client in private and with his agreement, was given all the materials pertaining to the case. On 7 July 1996, changes had been made to the Criminal Procedure Code and the materials were now supplied directly to the defence lawyer. The lawyer did not pass on the materials to the investigator or the prosecutor. The lawyer had to be present at all stages of the investigation.

34. Unfortunately, there were cases in which the press violated the principle of presumption of innocence, even though there was a law on the press and on the mass media which formulated the responsibilities of journalists. Judges sometimes sent explanations of such responsibilities to newspaper editors or to the Federation of Journalists, an independent body, which could take steps against journalists.

35. There had been one case of a person being convicted for refusal to perform military service; the Supreme Court was currently reviewing the legality of the conviction.

36. Although there was no higher tribunal, the decisions of the Supreme Court were not final; about 12 to 16 per cent of judgements were amended or appealed each year. The presidium of the Supreme Court heard appeals and could decide to repeal or amend judgements. A new procedure for review and appeal was being introduced.

37. He could recall only one case in which a court had ordered that the publication of a newspaper be stopped; the editor had been sentenced to one year's imprisonment for calling for the extermination of persons of Armenian and Jewish origin.

38. Inspection of prisons was the responsibility of special sections of the Procurator's office. Prosecutors took up complaints and ruled on them.

39. Searches could be authorized only by the courts, after a review of the relevant materials, except in cases of particularly serious crimes in which there was a high degree of urgency.

40. There were no special provisions for the prosecution of aliens; all persons who committed crimes in the territory of Georgia were subject to the same laws.

41. Mr. ALEXIDZE (Georgia) said that a presidential decree of 26 June 1996 had provided for the Code of Conduct for Law Enforcement Officials to be disseminated by law enforcement bodies and published in the press.

42. Mr. BUERGENTHAL said that it appeared that Georgia was laying the foundations for its transformation into a democratic State. If the various bills were enacted in the form in which they had been described, that would be an important step towards democratization and the protection of human rights.

43. It was important to appoint a human rights Ombudsman of high moral standing who would not be intimidated by political pressure, and to provide adequate resources for his work. The new Constitution provided a good basis for building a democratic society. Much remained to be done, including early adoption of the new Penal Code, a drastic improvement in prison conditions, abolition of the death penalty, curbing of police abuses, a crackdown on corruption in all government institutions, and the removal of all officials who had been responsible for human rights abuses.

44. Mr. KRETZMER said that the Committee was aware of the difficulties faced by Georgia in moving towards a democratic regime; society could not be changed overnight. However, there seemed to be an attempt to gloss over some aspects; for example, it was hard to accept the claim that, despite abysmal prison conditions, the State party was in compliance with article 10 of the Covenant.

45. The State party's admission that torture and mistreatment by law enforcement officials existed was the first step towards addressing the issue. A presidential edict was now needed to make government policy quite clear to all law enforcement officials. It was difficult to believe that no convictions had been made on the basis of confessions extracted by illegal means; information from non-governmental organizations, although not infallible, suggested that there had been a large number of such cases. The State party must review all the cases in which such allegations had been made, with a view to reversing the convictions and retrying the cases.

46. It was not acceptable for the Supreme Court to be the final court of appeal; article 14, paragraph 5, of the Covenant clearly established the right to review by a higher tribunal.

47. Mr. KLEIN said that while Georgia had done much to reduce the crime rate and increase public safety, serious problems remained, including torture and inhuman treatment, as well as appalling prison conditions which could not be justified by lack of funds. It was vitally important for the Government to increase the credibility of the system, enhance trust in public institutions, and take an unequivocal stand against all human rights violations, which would include establishing an independent unit to investigate such violations. Officials guilty of violations must be prosecuted and removed from office. Freedom of information must be ensured, and an Ombudsman must be appointed immediately. All persons concerned with the administration of justice must be educated about human rights, and the independence of judges must be safeguarded. It was gratifying that the results of the Committee's work would be published and discussed in Georgia.

48. Mr. EL-SHAFEI said that there was some confusion about which laws and bodies were in operation, the outcome of police investigations, and the status of the Covenant in Georgia's legal framework, especially since it was reported that the judiciary was not aware of the supremacy of international law. The State party should provide the Committee with supplementary written information. The Centre for Human Rights was available to provide technical assistance.

49. Ms. MEDINA QUIROGA said that Georgia's difficulties during the period of transition were understandable. She felt that it was imperative to review the criteria for pre-trial detention and to ensure that it was not imposed unless absolutely necessary, so as to relieve the pressure on the prison system and make it easier to improve prison conditions. It was not enough for the State not to violate women's human rights, it must ensure the exercise of those rights; for example, although abortion was available, no other methods of family planning were accessible, and research needed to be carried out into the reasons for women's under-representation in the professions.

50. Mr. ANDO said that, while Georgia's recent past had caused undeniable difficulties in implementing the provisions of the Covenant, they did not exempt the State party from fulfilling its obligations in respect of international human rights standards. Many concerns remained to be dealt with, particularly prison conditions, the eradication of torture, and the need for an improved criminal law system. What was needed was a new culture of human rights, which would require not only the education and training of judges, lawyers and law enforcement officials, but also a change of attitude among the general public. Georgia should also take urgent steps to deal with the situation of the large numbers of internally displaced persons, particularly children. He hoped that Georgia's second periodic report would show some improvement in the situation.

51. Mr. POCAR stressed once again that the Covenant had become applicable in Georgia as soon as the country became independent, although it was true that Georgia's recent history had made it difficult to implement. It could be argued that some international obligations were not binding on successor States, but that was not true of human rights treaties. The Government therefore had an obligation to provide remedies for the victims of human rights violations which had occurred since independence. It was also important to strengthen the autonomy of the legal profession, particularly in a country where the judiciary still had some weaknesses.

52. Mr. PRADO VALLEJO drew particular attention to the State party's obligations under article 2 of the Covenant. There was still a lack of legal provisions in Georgia for the implementation of rights set forth in the Covenant, and the number of human rights violations of various kinds was cause for concern. Urgent efforts must be made to investigate and punish such violations, end impunity and compensate victims.

53. Ms. EVATT shared the concerns expressed about prison conditions and torture and emphasized the need for firm measures to be taken to curb human rights abuses. There was still a lack of effective remedies. The Government should also take positive action to protect the rights of women and children. She commended the Government's undertaking to publicize the dialogue that had taken place with the Committee.

54. Mr. BHAGWATI congratulated the delegation of Georgia for its frank and candid response to the questions and concerns raised by the members of the Committee. The aim was to establish a dialogue with the State party and to help and encourage it in its efforts to improve the implementation of the Covenant. Remarkable progress had already been made towards establishing a democratic society in Georgia and the new legislation in preparation would, when implemented, remove certain deficiencies. A strong and independent Ombudsman was needed to oversee the implementation of human rights measures. Human rights education and training for judges, lawyers and law enforcement officials were essential. There was an urgent need to eradicate the use of confessions extracted under torture; a mechanism must be set up to detect and punish such practices.

55. The CHAIRPERSON thanked the delegation of Georgia for the information which it had provided and for having engaged in a very constructive dialogue with the Committee. That showed the Government's lucidity and its willingness to build on the considerable progress already achieved. There were still some matters of considerable concern, including the death penalty, torture, prison conditions, systematic pre-trial detention, and the methods used against the political opposition. She hoped that, in its second periodic report, the State party would be able to give details of significant progress on all the problems raised by the Committee.

56. Mr. ALEXIDZE (Georgia) thanked the members of the Committee for their kind and understanding attitude towards his Government and all the problems which it had encountered since independence. He hoped that the political situation in Georgia would make it possible for the Government to continue to make progress in the human rights field, and he looked forward to providing more positive information to the Committee in the future.

The meeting rose at 1 p.m.