



# International Covenant on Civil and Political Rights

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## Human Rights Committee Seventy-fourth session

### Summary record of the 1986th meeting

Held at Headquarters, New York, on Monday, 18 March 2002, at 3 p.m.

*Chairperson:* Mr. Bhagwati

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02-29031 (E)

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*The meeting was called to order at 3.10 p.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant** *(continued)*

*Second periodic report of Georgia*  
(CCPR/C/GEO/2000/2; CCPR/C/74/L/GEO)

*List of issues* (CCPR/C/74/L/GEO)

1. *At the invitation of the Chairperson, the delegation of Georgia took places at the Committee table.*

*Constitutional and legal framework within which the Covenant is implemented (article 2 of the Covenant)*

2. **The Chairperson** read out the questions relating to article 2: how compliance with the provisions of the Covenant was ensured when international treaties ranked second after the Constitution; whether, under article 6 of the Constitution, provisions of the Covenant, as an international treaty or agreement which did not contradict the Constitution and prevailed over domestic legislation, had been directly invoked; progress made since the submission of the report, in giving effect to the Committee's views under the Optional Protocol, particularly with regard to communications Nos. 623-624 and 626-627/1995; and the current situation in Abkhazia and South Ossetia and its impact on the exercise of the rights guaranteed by the Covenant, both for the people currently living in those areas and for refugees and internally displaced persons seeking to return.

3. **Ms. Beridze** (Georgia) said that human rights were guaranteed by articles 7 and 39 of the Constitution. Since the submission of the report, the Constitution had been amended and a new type of legal act, the Constitutional Agreement, was now second in the legal hierarchy. Under the Constitution, the Constitutional Agreement must be fully in line with the norms and principles of international law, including in the field of human rights. For the time being, the provisions of the Covenant had not been directly invoked before the Georgian courts. The Public Defender, however, in his recommendations concerning the violation of the voting rights of internally displaced persons, had made reference to the Covenant. The communications in question involved four complainants, who had been sentenced to long-

term imprisonment. One had been pardoned and another had completed his sentence. The sentences of the other two had been commuted.

4. Unfortunately, there had been no significant change in the situation in Abkhazia and South Ossetia, although unauthorized presidential elections had recently been held in South Ossetia. In her Government's view, the leadership of the self-declared republics was not interested in reaching any sort of compromise settlement. She noted that Security Council resolution 1393 (2002), adopted in January, reaffirmed the principle of inviolability of territorial integrity of Georgia, and that the political status of Abkhazia should be determined only within the existing State of Georgia.

*Right to life, prevention of torture, liberty and security of the person, the treatment of detainees (articles 6, 7, 9 and 10 of the Covenant)*

5. **The Chairperson** read out the questions relating to articles 6, 7, 9 and 10: protection of human rights in Georgia, including the rights of persons in pre-trial detention or serving custodial sentences, and steps to improve the conditions of detention and medical care of detainees and convicts, particularly in police stations and prison establishments; visits by the Office of the Ombudsperson to places of detention, particularly police stations; the role of non-governmental organizations in visiting places of detention, including police stations, and their provision of legal services for arrested and detained persons; information on the number of deaths in prison or pre-trial detention and the results of investigations into such cases; the State party's comments on allegations of torture and other acts of cruel, inhuman or degrading treatment or punishment by law enforcement officials; any steps, particularly under the Criminal Code, to prevent or punish such abuse; how access of detained persons to a lawyer and doctor of their choice is protected in law and practice; measures taken by the State party to inform persons deprived of their liberty promptly of their rights, including the right to complain against ill-treatment; the practice by law enforcement officials of classifying suspects under detention as witnesses, thereby denying them the right to the assistance of a lawyer; further explanation of "short-term detention" (para. 164 of the report) and the rights of a person deprived of liberty during the first 12 hours following arrest; and independent mechanisms

for investigating complaints against members of the police and prison guards, including statistics on the number of such complaints and their outcome.

6. **Ms. Beridze** (Georgia) said that, under the Law on Imprisonment, a number of persons were permitted to enter penitentiary facilities for monitoring purposes, including the President of Georgia and persons authorized by him, the Chairman of the Parliament of Georgia and persons authorized by the Parliament, the Public Defender and representatives of the Prosecutor-General's Office. As a State party to the European Convention against torture, Georgia had recently hosted a delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which had inspected its places of detention and met with detainees and personnel. A modern penitentiary facility was under construction in order to accommodate various categories of prisoners in the required minimum space.

7. On the whole, the conditions in both police stations and prison establishments left much to be desired, owing to the continuing lack of financial resources. With the assistance of a mission from the Organization for Security and Cooperation in Europe, the Public Defender had established a Rapid Reaction Group to deal with complaints requiring immediate action. In addition, legal counselling and other free services were provided to criminal detainees by a number of local non-governmental organizations. In 2001, 31 detainees had died in prison, including 12 in pre-trial detention, a considerable decrease from the figure of 52 in 2000. The main causes of death had been tuberculosis, heart disease, accidents, liver cancer, brain inflammation, sepsis, body injuries and acute intestinal disease. In January and February 2002, 12 detainees had died. The causes of death had been tuberculosis, heart disease, brain inflammation and one suicide. Investigations had been conducted in every case, and no signs of wrongdoing had been found.

8. Although the investigative bodies of the Ministry of Internal Affairs, the Ministry of State Security and the Procuracy were required to abide by the Code of Criminal Procedure and were accountable to the President of Georgia, and the media disseminated the provisions of the Covenant and the Convention against Torture, violations by law enforcement officers were often not characterized as "torture" because the article of the Criminal Code on exceeding official powers was incomplete. In 2001, 58 policemen had been

prosecuted for various human rights violations; 19 had been convicted. For the same reasons, 199 police officers had been dismissed and 65, including senior officers, relieved of their posts. Disciplinary charges had been brought against 3,000 police officers. In one instance, in order to obtain a confession from a suspect in a canteen robbery, a police officer had physically abused a detainee, who had later undergone an operation for appendicitis and died of general intoxication. The police officers involved had been charged under the relevant article of the Criminal Code on exceeding official powers.

9. Another police officer who had inflicted severe bodily injuries on a person accused of stealing livestock, resulting in the suspect's death, had just been sentenced to 10 years' imprisonment. The current Minister of Internal Affairs was particularly committed to the prevention of torture, ill treatment and other forms of police misconduct, and the President of Georgia, Mr. Shevardnadze, had recently declared the country a "torture-free region". The Ministry of Internal Affairs, the Ministry of Justice and the Prosecutor-General's Office were required to elaborate action plans to that end. Information on that initiative and the progress achieved would be included in the country's third periodic report to the Committee against Torture in the first half of 2003.

10. A person under "short-term detention" had the right to have access to a lawyer and a doctor, and to inform relatives. In the case of a violation, complaints could be submitted to the authorities and other institutions, such as the Public Defender. Under the Code of Criminal Procedure, classifying a person as a witness did not amount to a denial of the right to legal assistance. However, if a witness's lawyer failed to appear, it could not impede the investigative action. Although witnesses could not refuse to give testimony, they were not obliged to give testimony that was self-incriminating or incriminated their relatives. The law in force was rather vague concerning the rights of persons deprived of liberty during the first 12 hours following arrest. The legality of the arrest was verified, and the person was not considered a suspect or an accused person at that point.

11. As for an independent investigatory mechanism against police and prison guard abuses, complaints were filed with the Public Defender. In the first six months of 2001, 46 complaints had been lodged in connection with police misconduct, abuse of authority

and brutality. In such cases, the Ombudsperson formulated recommendations with a view to eliminating the violations and punishing the perpetrators. Those recommendations were usually followed.

*Independence of the judiciary and the right to a fair trial (article 14 of the Covenant)*

12. **The Chairperson** read out the questions relating to article 14: information on how the General Courts Act and Supreme Court of Georgia Act ensured the independence of the judiciary in practice; additional information on the judicial reform referred to in paragraph 302 of the report; steps taken to combat alleged corruption in the judiciary; information on the reform of the prosecution service; and a further explanation of how the right to the assistance of counsel (paras. 328-330 of the report) was realized in practice.

13. **Ms. Beridze** (Georgia) said that, of the various reforms undertaken in Georgia, the judiciary reform was considered to be among the most successful. The judicial system of Georgia included three instances: district and circuit courts were courts of first instance; the Court of Appeal was a court of second instance to consider appeals against decisions handed down by district and circuit courts; and the Supreme Court supervised the administration of justice in the courts of general jurisdiction and, as a court of first instance, considered cases determined by law. The Supreme Court was also competent to deal with impeachment procedure and the appointment of a number of judges to the Constitutional Court and was the court of highest instance in the administration of justice in Georgia.

14. District courts were presided over by a judge and the circuit courts, by a panel of three judges. Judiciary reform had been determined by a special 12-member consultative body, the Council of Justice, which was established under the President and oversaw disciplinary proceedings against judges in certain cases. In other cases, such matters were dealt with by the Judges' Disciplinary Collegium of Georgia. In 2000-2001, the Supreme Court of Georgia and the Council of Justice had initiated nearly 500 cases of disciplinary proceedings against judges. As a result, 10 of Georgia's 329 judges had been dismissed. Alleged corruption in the judiciary was dealt with on the basis of the principle of presumption of innocence. During

the period under review, no judge had been prosecuted for corruption.

15. Possible approaches to a reform of the prosecution services were still being debated. In December 2001, the President of Georgia had issued a special decree establishing the State Inter-departmental Commission to reform law enforcement and security institutions. Its proposals would be submitted to the President in April. It was eminently clear that the prosecution service was in need of a radical overhaul. Her Government had no information on suspects or accused persons being denied the right to counsel; however, there had been a few cases of undue delay.

*Non-discrimination, equality between the sexes, rights of persons belonging to minorities (articles 2 (1), 3, 26 and 27 of the Covenant)*

16. **The Chairperson** read out the questions relating to articles 2 (1), 3, 26 and 27: action taken or planned to enhance the status of women in public life, including Parliament; steps to eliminate discrimination against women, including through legal remedies, and results; steps taken to reproduce the wording of article 3 of the Covenant in the Constitution; progress in the implementation of the National Plan of Action for the Advancement of Women; existing measures to combat and eliminate violence against women, including domestic violence and sexual harassment in the workplace; efforts to raise public awareness of those issues and increase assistance available to victims; information and statistics on the trafficking of women and girls for the purpose of prostitution; specific measures taken by the State party, in view of its legislation in that regard, to combat sexual exploitation and the trafficking of minors; and progress in the repatriation of Meskhetians expelled from southern Georgia to the Central Asian Republics of the former Soviet Union, and in their acquisition of citizenship.

17. **Ms. Beridze** (Georgia) said that, although the State party acknowledged the need to improve women's representation in Parliament, no amendments to the electoral legislation had been made thus far. Women participated in public life through non-governmental organizations and the civil sector, often in cooperation with State bodies. There was no shortage of legislation providing legal remedies against discrimination; however, it was not always implemented. Some affirmative action measures would be taken to ensure real equality between women and

men, and for minorities; however, no specific decisions in that regard had been taken as yet. Unfortunately the wording of article 3 of the Covenant had not yet been reproduced in the Constitution of Georgia.

18. Progress in implementing the National Plan of Action for the Advancement of Women was described in Georgia's second periodic report to the Committee on the Elimination of Discrimination against Women and its second periodic report to the Committee on Economic, Social and Cultural Rights. Thus far, a department on women's issues had not been established. Migration among women and its impact on the national economy had not yet been studied. Only one woman had participated in negotiations to resolve internal conflicts, and no mechanisms to ensure the return of personal property lost during armed conflict had been developed (largely because the conflicts in question were still ongoing). Other objectives of the Plan of Action were being attained within the framework of other State programmes. The term of the Plan of Action had been extended until 2004. She noted that a well-known female politician had just been elected the Chairperson of the Parliament of Georgia.

19. In order to deal with the problem of violence against women, the President of Georgia had issued a decree, instructing the Ministry of Internal Affairs, in collaboration with the Prosecutor's Office, to record all facts associated with domestic violence and to formulate preventive measures. Under a Presidential Order, an action plan on combating violence against women (2000-2002) had been adopted. The action plan called for improved study and analysis of violence against women; awareness-building; special programmes for potential perpetrators; the adoption of legislation; special programmes on ethnic and ecological violence; and special studies and legislation on violence against girls. The Ministry of Internal Affairs, as a key executing agency of the action plan, had conducted 2,000 seminars at 22 police stations in order to train law enforcement officials. In addition, female officers were assigned to handle cases of violence against women. In 2000, 101 women had been hired as police officers.

20. As crime prevention was a key element of the domestic violence strategy, police had taken preventive measures in some 1,200 domestic conflicts in 2000. The action plan took into account the general recommendation on violence against women adopted by the Committee on the Elimination of Discrimination

against Women and was implemented in coordination with the Ministry of Justice, the Ministry of Labour, the Ministry of Health and the Ministry of Social Affairs as well as non-governmental institutions, trade unions and the media. Recently 50 female representatives from various regions of Georgia had participated in a seminar organized by a non-governmental organization in cooperation with the Council of Europe. The first shelter for female victims of violence had been established by a Georgian non-governmental organization several months earlier. However, thus far only two women had made use of the shelter services, since it was against Georgian tradition for women to speak out about their domestic problems.

21. There were no reliable statistics on trafficking in women for the purpose of prostitution, yet there were good reasons to believe that Georgia, given its geopolitical location and its widespread poverty, was a country of origin and transit. In 2000, the Government had supported a non-governmental organization campaign to make government bodies and the public aware of the problem. A government programme for the protection of minors that had been set up that same year had yet to be funded. In 2001, 11 criminal cases had been brought for trafficking, three times as many as in the previous year.

22. Pursuant to a Council of Europe recommendation concerning the repatriation of Meskhetians, a special Presidential Decree had in 1999 established a programme to create the legal basis for their repatriation, integration and acquisition of citizenship, in consultation with Council of Europe experts. The final version of a bill on the question that would meet European standards would shortly be submitted to Parliament.

23. **Mr. Solari Yrigoyen**, noting the advances made since the 1997 report, such as the human rights training of judges, the increased representation of women in Parliament and the abolition of the death penalty and accession to the Second Optional Protocol, said that, nevertheless, no progress had been made in a number of other areas like the general equality of women, and especially the continuing practice of torture. Since the absence of a definition of torture in the Criminal Code had been cited as one of the reasons for the absence of prosecutions, it would be interesting to know if the Government was planning to adopt such a definition or to incorporate the broad definition set out in the

Covenant, and whether the Covenant definition could be directly applied in the courts. Statistics about cases of torture should be supplied.

24. He asked whether those guilty of the acts of unlawful deprivation of liberty referred to in the report (para. 170) had been police or other officials or simply criminals, and if compensation was required for victims of such acts. He wondered if detention sentences for administrative offences (report, paras. 184-187) could be appealed in court; and if, when unlawful orders were appealed by convicts (report, para. 199) the orders were suspended during the appeal, and how such appeals were conducted. The frequency of Presidential pardons for those guilty of serious crimes could conceivably result in a climate of impunity, and he would like to know if such pardons were exclusively a Presidential prerogative. He would also like to know whether the Committee's views on the various communications submitted to it by Georgian individuals had been instrumental in securing their subsequent release. The legal provision mandating the house arrest of debtors (report, para. 241) did indeed seem to be in violation of article 11 of the Covenant and should be repealed. The Government should also speed up the legislation on repatriation of the Meskhetians.

25. **Mr. Yalden** welcomed the positive role played by non-governmental organizations in Georgia, and the State party's establishment of the post of Ombudsman, which had had two incumbents thus far. The report provided little in the way of concrete information or statistics, however, on the operation of the mechanisms to provide remedies to ordinary citizens. He would welcome a copy of the report of the Ombudsman or a summary of her activities detailing the number, subject and results of the complaints received, and regarding the Rapid Reaction Group set up to visit police stations and places of detention.

26. Reports from non-governmental organizations indicated that torture or police or prison guard misconduct was a very serious problem in the country. The delegation had provided too little information, and the figures given for the numbers of police imprisoned for human rights violations had been contested by non-governmental organizations. No information had been given about the equality of women in Georgia aside from their representation in Parliament. The State party should indicate what it saw as the lacunae and how and when it planned to deal with them. The Committee had

received no evidence of how the Government had been implementing the existing equal opportunity laws, of which several other human rights bodies had been critical in their concluding observations.

27. **Mr. Ando** asked how the functions of the human rights commissions established at the district level related to the jurisdiction of the Ombudsman (report, paras. 17 and 18). He would appreciate more information on the right of internally displaced persons to political participation, particularly those who had long-standing residence in an area, and about a recent Constitutional Court decision on their right to vote. He would also like an explanation of the age differentiation between men and women who could be remanded in custody (report, para. 172), of the political considerations involved in pardons for detainees (report, paras. 230-231), and of the huge variation in out-patient medical consultations for detainees from year to year (report, para. 234).

28. Non-governmental organizations seem to play a useful role in pre-trial investigations and he wondered why the city lawyers' project providing pre-trial legal aid to suspects had been halted by the Government. Information on the average duration of criminal proceedings, and whether there was any backlog, would also be useful. It was striking that 70 per cent of the judges in the courts of Georgia had not passed the new qualifying exams (report, para. 6), and it would be interesting to know the main cause of failure. He would also like to know whether the Government had taken any action to counter the trafficking in women and girls, specifically on the part of travel agents.

29. **Mr. Lallah** said that despite the fact that some progress had unquestionably been made, disturbing reports had been received from non-governmental organizations, especially the Georgian Young Lawyers Association, regarding the administration of law in Georgia. The death penalty had been abolished, yet arbitrary deprivation of life in police custody or in prison was not uncommon. The delegation had mentioned causes such as "brain inflammation" for the deaths in custody, and further details should be given about the circumstances of such injuries. The State party had an obligation under article 2 of the Covenant to ensure a remedy to victims of violations committed by officials, and should provide more information on how the investigations into such deaths had been conducted, whether they had been judicial investigations and not just police inquiries and whether

the families of the victims could participate in court proceedings.

30. The report from the Georgian Young Lawyers Association maintained that the State party did not recognize the role which lawyers played in the defence of human rights, that for the first 12 hours of detention it denied suspects the right to legal assistance guaranteed under article 9 of the Covenant and even that lawyers themselves had been arrested by the police. It was unclear if the State party had investigated such incidents. The delegation had indicated that the Ombudsman had inquired into some 50 cases of alleged police misconduct; yet it was the obligation of the State party itself to investigate police brutality and torture. The investigatory body should be independent of the police and meaningful steps had to be taken to prosecute guilty officials. Had there in fact been any case of prosecution and punishment of a law enforcement official in Georgia? Also, if the State party was to satisfy the rigorous requirements of the Covenant, it had to make an effort to deal with apparent corruption in the judiciary and ensure its independent functioning.

31. **Mr. Scheinin** said that many promising advances had been made in the area of human rights in Georgia, including the abolition of capital punishment. He commended the report for its full and detailed discussion of states of emergency, under article 4. Although the Government should be praised for proclaiming Georgia a torture-free zone, torture remained a serious concern. While declarations were important, some ills could not be cured by decree. He questioned whether the Office of the People's Advocate (Ombudsman) was the appropriate body for the review of police torture and brutality and would like to know what the powers of the Office were. The fact that the Government referred to the findings of the Ombudsman as recommendations indicated that the Office had insufficient power to handle such abuses.

32. Georgia seemed to be invoking an inadequate definition of a crime under the law as an explanation for the absence or scarcity of convictions: that was an unacceptable justification. He would like to know whether any police officers had been convicted of torture or brutality, or whether the definition of torture had been employed to exonerate them. With reference to article 2, paragraph 3, of the Covenant, he inquired whether the right to an enforceable remedy was a self-executing provision of Georgian law. It would also be

useful to know whether under the criminal law, victims were compensated. In addition, he wondered whether Georgia agreed with paragraph 10 of the concluding observations on the initial report (CCPR/C/79/Add.75), which asserted that, since Georgia had succeeded to the Covenant when it had become independent from the former Soviet Union, its obligations under that instrument were continuous, or whether paragraph 1 of the second periodic report was meant to rebut that view.

33. Regrettably, the rank of the Covenant in the legal hierarchy of Georgia seemed to have dropped from second to third place. What counted, however, was implementation. Article 7 of the Constitution accorded quasi-constitutional status to human rights and freedoms; article 89 established the jurisdiction of the Constitutional Court. He would like to know whether the Covenant was an inherent part of the Constitution by virtue of article 7, so that the compatibility of domestic legislation with the Covenant could be examined on the basis of that article, or whether the Constitutional Court, on the other hand, examined the constitutionality of the Covenant.

34. Turning to the matter of Communications Nos. 623-624 and 626-627/1995 (question No. 2 on the list of issues), he reminded Georgia that the Committee had determined that the deprivation of liberty of the authors violated their rights under article 9, that they had not been accorded a fair trial in accordance with article 14, and that they had been subjected to torture in violation of article 7. It was insufficient to reply that those persons had committed serious crimes and would be released in several years' time. Article 2, paragraph 3, of the Covenant guaranteed the right to an effective remedy, and required the authorities to enforce such remedies.

35. He would also like to know, with respect to the question of the independence of the judiciary, whether, as alleged by certain non-governmental organizations, there were instances in which judges were not paid. That was worrisome because the failure to pay judges tended to foster corruption. In addition, he questioned whether the Council of Justice could ensure independence of the judiciary if it was responsible for the selection, appointment and dismissal of judges. According to independent sources, as many as half of all Georgian families suffered from domestic violence. What were the official statistics in that regard? It would also be useful to know whether rape by a

husband or partner was considered a crime and what provisions of the Criminal Code were applicable. There had also been allegations that police were involved in beating and raping prostitutes. Had Georgia identified that as a problem? What steps was the Government taking to eradicate that practice?

36. The International Helsinki Federation had reported an alarmingly high incidence of tuberculosis in Georgian prisons, a major cause of death. Tuberculosis was often contracted in prisons, and inadequate heating, clothing and food fostered the spread of the disease. According to non-governmental organizations, medical treatment was inadequate in Georgian prisons mostly because of corruption. If adequate treatment was unavailable, that amounted to a de facto death sentence. He would like to know whether the Government was taking measures to guarantee treatment for inmates with tuberculosis or had considered releasing persons with the disease.

37. **Ms. Medina Quiroga** said that advances had evidently been made since the time of the initial report. She had understood the delegation to state that the Covenant ranked lower than the Constitution in the legal hierarchy, but that the Constitution protected all human rights, even those not enshrined therein. Paragraph 54 of the report suggested that it might be useful to insert the wording of article 3 of the Covenant directly into the Constitution. If the Constitution protected all human rights, why was it important to introduce a Covenant article into it? If a human right was not enshrined in the Constitution, did that mean that it had lesser force than a right that was? Paragraph 45 indicated that the rights of foreigners living in Georgia were the same as those of nationals, except where otherwise stipulated. It would be useful to know what those exceptions were.

38. She would like to know the nature of the solitary confinement mentioned in paragraphs 121 and 220, which could be administered for up to one year, in particular since solitary confinement in itself might be seen as constituting cruel and unusual punishment. In addition, she would like an explanation of all forms of detention that differed from the usual regime. Paragraph 140 indicated that in cases involving possible violations of article 7 brought to the attention of the authorities, no actions had been categorized as torture. She inquired whether that meant that no abuse had occurred, or that the abuse that occurred was not considered sufficiently grave to qualify as torture, even

though cruel and unusual punishment might have occurred.

39. Paragraph 164 indicated that a person detained on suspicion must be formally questioned within 24 hours. That suggested that some persons were not detained as suspects. It would be useful to know what other reasons for detention existed. A reading of paragraph 174 led her to wonder whether Georgia was aware that article 9 referred to pre-trial detention and did not cover detention during the trial. In that regard, she would like to know the average time that persons were held in pre-trial detention. Paragraph 186 indicated that persons held in administrative detention were employed in physical labour: it would be useful to know the nature of such work. It was regrettable that no official statistics existed on domestic violence. Moreover, the Government should focus attention on trafficking in women for the purposes of prostitution, which was a form of slavery and violated article 8 of the Covenant. The lack of information on that matter was deplorable.

40. **Mr. Klein** commended Georgia for the timely submission of the report; it was clear that progress in the area of human rights had been made since the time of the initial report. Nevertheless, unlawful deprivation of liberty and torture continued to be major concerns. Since so many violations had been alleged to have occurred in Georgia, it was astonishing to learn from the Government that the Covenant had never been invoked before the courts. He therefore wondered whether the population was unaware of their rights under the Covenant. Although a constitutional court existed, it apparently heard few cases. According to the Georgian Young Lawyers Association, which had prepared an alternate set of responses to the Committee's list of issues, the Constitutional Court had a rule of continuous trial, which meant that only one case was before the court at any one time, and it had rendered only 12 decisions over the course of six years.

41. The matter of article 12 had not been raised in the list of issues. Paragraph 257 of the report indicated that the freedom of movement of Georgians could be restricted by other circumstances provided for under Georgian legislation. It would be useful to know what the meaning of that phrase was, and in particular whether it meant that holders of State secrets, an old Eastern-bloc concept, were prohibited from leaving the



country. In that regard, he would like to know what the current concept of State secrecy was.

42. The Georgian Constitution prohibited citizens from having multiple citizenship. By birth, however, a person could have multiple citizenship. It would be useful to know whether citizenship was a narrower concept than nationality, and whether a person could be stripped of either citizenship or nationality. Moreover, he wondered whether that provision meant that another country would not be considered a person's country, as reflected in article 12, paragraph 4, of the Covenant. What, finally, was the relationship between that constitutional prohibition and article 12, paragraph 4, of the Covenant?

43. **Mr. Rivas Posada** commended Georgia for the seriousness with which it had replied to the list of issues, for the timely submission of the report, and for its willingness to cooperate with the Committee. Despite various strides made by Georgia in reforming its legal and judicial system, problems remained, particularly in the area of judicial administration. He would like additional information on administrative detention. In particular, it would be useful to know if paragraph 187 of the report provided examples of offences or constituted an exhaustive list. He would also like to know who determined the length of the detention, and whether a detainee had any legal recourse when detained for reasons other than those provided for in the Criminal Code.

44. The reply to question No. 7 of the list of issues suggested that Georgia did not understand that an arrested person who had not been charged should be held for a maximum of 12 hours. The statement that the law had no definite provisions as to the rights of persons not yet considered suspects or accused, was flagrantly unacceptable. He would like to know whether the State party envisaged introducing into its legislation the provisions of article 9, paragraph 4, which recognized the right of a person deprived of liberty to expect a prompt decision on his situation.

45. **Sir Nigel Rodley** welcomed the positive developments in Georgia with regard to the protection of human rights, such as the abolition of the death penalty, the right of access of Georgians to the European Court of Human Rights and the fact that places of detention could be visited by representatives of the European Committee for the Prevention of Torture. However, some of the concerns expressed by

the Human Rights Committee in its 1997 observations on the initial Georgian report remained valid, as a number of recommendations had not been fully complied with.

46. The current report suggested, for instance, that individuals could be held for up to 72 hours in police detention before being sent to a remand institution by a judge, which seemed like a very long time. The Committee was also concerned about the quality of legal counsel provided by the court to those in need, since it had received information that Public Defenders were poorly paid, if at all, which cast doubts on the seriousness of the Public Defender mechanism. In that connection, the Georgian Young Lawyers Association project, which had provided useful legal assistance on a volunteer basis, had, apparently, been declared illegal, but the law cited in connection with that decision seemed very vague and arbitrary. Furthermore, the Committee remained concerned about continued reports of torture in places of detention. The delegation of Georgia had implied in its replies to the list of issues that there was some variance between the definition of torture in Georgian law and that in the Convention against Torture. He asked what measures were being taken to bring the domestic definition in line with the international conventional one, which must prevail.

47. The delegation's replies also mentioned that charges had been brought against some police officers for exceeding their official powers. He asked whether they had been tried and sentenced, and if so, for what specific offence. The detainees in the cited cases of police abuse had died in detention and it would be unfortunate if only such extreme cases received serious attention. On the subject of forensic services, the Committee had received some information that independent services might be available but they had to be fully State-owned, in which case it was hard to see how they could be fully independent. He asked about the current status of the rule granting witnesses access to legal counsel, which had been enacted and then annulled several times. Lastly, he welcomed Georgia's issuance of an open invitation to the United Nations Commission on Human Rights to visit the country.

48. **Mr. Amor** asked for further clarification of the purpose and scope of the amendment to the Constitution mentioned by the Georgian delegation, in particular with regard to its effect on the status of the Covenant and the protection of human rights. He also

wished to know the scope of articles 6, 7 and 89 of the Constitution and how they related to the Covenant, especially to its articles 2 and 26. The Committee needed to get a clearer picture of the place of the Covenant in the hierarchy of legal norms, including the Constitution.

49. **Mr. Henkin** said that the Committee remained troubled by information received regarding torture and deaths in custody, especially alleged suicides, in Georgia. He shared the view that the status of the Covenant in the constitutional system was not clear. The Constitutional Court would, apparently, not apply the Constitution in a case unless the relevant provision of the Constitution had been incorporated into law. Did the Covenant count as law for the purposes of bringing some matter before the Constitutional Court? He noted that the majority of those arrested were detained in custody, which was contrary to the provisions of the Covenant. Was there a bail system and how many detainees had been able to take advantage of it?

50. He shared the views of others with regard to the lack of support for a strong Public Defender system and the implications of that on the quality of legal counsel. On the subject of the freedom of religion, there had been reports of religious violence, particularly against minority religions. Similarly, there had been reports of attacks on the offices and work of non-governmental human rights organizations, whose information had been very valuable to the Committee. He asked what information the Government could provide on such cases and on measures to combat the violence and attacks.

51. **Mr. Kretzmer** said he shared the concerns expressed by other Committee members with regard to torture, conditions of detention, criminal process and the status of women. With regard to article 9, paragraph 3, of the Covenant, which dealt with pre-trial detention, he noted that paragraph 173 of the current Georgian report mentioned various types of prosecutors who apparently had the power to extend such detention for as long as six to eight months. What was the status of such officials who seemed to exercise judicial powers and what ensured their independence? Furthermore, under article 9, paragraph 3, of the Covenant, detention in custody pending trial was supposed to be exceptional, yet paragraph 180 of the report suggested that the majority of those arrested were remanded into custody.

52. Paragraph 172 mentioned the severity of the offence as a condition for such remand. Were there other grounds? Finally, he asked about the minimum legal age for marriage. Paragraph 502 of the report stated that 18 years of age was the normal minimum but 16 was allowed with the written consent of one's parents or legal guardian. There were, however, reports of young women in Georgia being married off at an early age. Could the delegation provide some information about whether such practices were common and about measures taken to control such practices?

53. **The Chairperson**, speaking in his personal capacity, asked about the Ombudsmen and their security of tenure and whether they had an independent staff to carry out investigations. He also asked about the grounds for removing judges. Some of the grounds cited in paragraph 309 of the report seemed very vague and subjective, which could seriously threaten the independence of the judiciary.

*List of issues (continued) (CCPR/C/74/L/GEO)*

*Freedom of religion (article 18 of the Covenant)*

54. **The Chairperson** read out the questions relating to article 18: the implications of the special role of the Orthodox Church in law and practice; religious intolerance, the results of any inquiries and criminal proceedings and action taken to prevent such incidents in future; alleged mob violence against religious minorities, especially Jehovah's Witnesses, and the alleged failure of the police to intervene or to prevent and prosecute such acts; and the Non-Military Service Act and its application.

55. **Ms. Beridze** (Georgia) said that the recognition of the special role of the Georgian Orthodox Church had had no special implications in the law up to the present, but a special constitutional agreement determining the relationship between that Church and the State was being drawn up. As no other religious institution would benefit from such an agreement, a bill on the freedom of religion and religious association was needed. The President of Georgia had ordered the Ministry of Justice to draft and submit such a bill by July 2002. With regard to religious intolerance, she said that a series of criminal proceedings had been instituted following incidents of religious extremism and mob violence. Trial on those cases would begin in April 2002. Another case involving the recent burning

of religious books belonging to a particular minority religious community was still under investigation.

56. Referring to the Non-Military Service Act, she said the law provided for a non-military option in peacetime, of equal difficulty and of somewhat longer duration than regular military service. Applicants were examined by a local enlistment commission. The State Commission on Non-Military (Alternative) Service compiled a list of jobs for alternative service, including work in medical facilities, municipal services and agriculture.

*Freedom of opinion and expression and the right to receive information (article 19 of the Covenant)*

57. **The Chairperson** read out the questions relating to article 19: possible conflicts between the restrictions on freedom of opinion and information, in particular for the suppression of crime, and article 19; restrictions on access to non-classified information on the grounds of professional, commercial or personal confidentiality; and whether the new Criminal Code had eliminated the possibility of prosecuting political opponents for their beliefs.

58. **Ms. Beridze** (Georgia) said that the question on possible restrictions on the freedom of information was based on a mistranslation in the English version of her country's report, which spoke of the "suppression of crime". A more accurate translation of the original Russian would be "prevention of crime". If one took into account the misinterpretation, one saw that there was no inconsistency between the Constitution and the Covenant. Article 19 of the Covenant allowed for restrictions "for the protection of public order", as did article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. She noted that the Constitution listed additional grounds for restriction, namely maintenance of territorial integrity, prevention of the release of classified information and upholding the independence and impartiality of the judicial system.

59. Her Government was willing to discuss with the Committee the compatibility of those provisions with article 19 of the Convention. On the status of domestic legal provisions restricting access to non-classified information, she said that the information on the subject in paragraph 459 of the report remained valid. With regard to the possibility of prosecuting political opponents for their beliefs, she said that neither the

Constitution, nor the Criminal Code nor any other legislation provided for such prosecutions.

*Rights of the child (article 24 of the Covenant)*

60. **The Chairperson** read out the questions relating to article 24: progress in implementing the State Programme for the Protection, Development and Social Rehabilitation of Minors, especially with regard to street-children; and steps to establish a code of standards to ensure adequate care and protection for children deprived of a family environment.

61. **Ms. Beridze** (Georgia) said that both questions dealt with social programmes that were underfunded under the current extremely difficult budget conditions. To some extent, measures to deal with children deprived of a family environment had been covered in Georgia's second periodic report to the Committee on the Rights of the Child.

*Right to take part in the conduct of public affairs (article 25 of the Covenant)*

62. **The Chairperson** read out the questions relating to article 25: effect of the new Electoral Code and the Organic Law on local government and self-government on enjoyment of rights under article 25 of the Covenant; and compatibility of legislation reducing the electoral rights of internally displaced persons with the principles of universal and equal suffrage.

63. **Ms. Beridze** (Georgia) said that there had been no elections since the promulgation of the new Electoral Code, but it was her Government's view that the new Code provided more effective guarantees of fair elections. She agreed that the old laws regarding the voting rights of internally displaced persons were quite incompatible with the principles of universal and equal suffrage. Those laws had been superseded by the new Electoral Code, and internally displaced persons were now entitled to participate in elections of any kind.

*Dissemination of information relating to the Covenant (article 2 of the Covenant)*

64. **The Chairperson** read out the questions relating to article 2: measures to publicize Georgia's report and the Committee's Concluding Observations within Georgia; and programmes to train members of the judiciary, law enforcement officials and other public

officials about the provisions of the Covenant and their application.

65. **Ms. Beridze** (Georgia) said that the report was available to any person or group through the Service on Human Rights Issues of the National Security Council and that the Committee's Concluding Observations would be published in Georgian official newspapers. With regard to awareness of the provisions of the Covenant, she said that judges had to pass an exam that included international human rights treaties. Law enforcement officials were also trained to know such instruments. Both the Office of the Public Defender and the Service on Human Rights Issues of the National Security Council were actively involved in awareness-raising activities regarding international standards in the field of human rights.

*The meeting rose at 6 p.m.*