Please note that this document is an excerpt from the 3rd Annual Report of the Commissioner for Human Rights (CommDH(2003)7)

FOLLOW-UP REPORT

TO THE RECOMMENDATIONS OF THE COMMISSIONER FOR HUMAN RIGHTS FOLLOWING HIS VISIT TO GEORGIA, FROM 1 TO 10 JUNE 2000

The Commissioner for Human Rights visited Georgia in June 2000. It was the Commissioner's first official visit to a member State of the Council of Europe and the Commissioner would like to repeat his gratitude to the Georgian authorities for the cooperation extended at the time and, again, on the occasion of a follow up visit effected by members of his office from 11 to 14 March 2003. This report is based on the written submissions of the Georgian authorities on the developments since the first report and the conclusions of the second visit, which included two days of site visits of internally displaced persons resulting from the Abkhaz conflict. The members of the Commissioner's Office[1] would like to express their gratitude for the assistance and openness of all those they met with over course of the four days they spent in Georgia.

The Commissioner's first report[2] focused on four issues:

1. The penitentiary system
2. The police
3. The administration of justice, and
4. The situation of displaced persons in Georgia

This report reviews the developments made in this area and the response of the Georgian authorities to the recommendations made by the Commissioner. Whilst it is not the primary intention of such follow up reporting to include new issues, the emergence of certain violent incidents of religious intolerance in Georgia would appear to merit special attention and are examined at the end of this report.

[1] Mr. Markus Jaeger, Deputy to the Director, and Mr. John Dalhuisen, Private Secretary to the Commissioner for Human Rights.

[2] CommDH(2000)3 of 13th July 2000.

The Penitentiary System

During his visit in July 2000, the Commissioner visited three penitentiary establishments (Tbilisi No. 5 prison hospital and pre-trial detention centre and Ortchala Prison "Colony") and was struck by the extremely poor prison conditions and the high overcrowding of many detention centres.

With respect to the latter it is possible to detect some improvement, with the total prison population, including pre-trial detention facilities, having decreased from 9,100 in 2000 to 6,700 in March 2003. Overcrowding remains, however, a persistent problem in pre-trial detention facilities. A return visit by members of the Commissioner's Office to Tbilisi pre-trial detention centre No. 5 revealed that its population in March 2003 stood at 1666 persons compared to a maximum capacity of some 1,000 places. The Commissioner's appeal, under such circumstances, for a restriction in the application of pre-trial detention, seems to have gone largely unattended; the practise of releasing suspects on bail remains underdeveloped. The increased sensitivity of Prosecutors and Judges to this mechanism for minor charges would considerably reduce the burden on pre-trial detention facilities that are currently creaking at the seams. The length of pre-trial detentions (members of the Commissioner's Office spoke to several detainees who had been in Tbilisi No. 5 for in excess of one year) also remains as large a concern as it was before.

The Commissioner was also struck during his initial visit by the high number of prison staff. Indeed the total number of staff in the year 2000 was some 4,000 persons, at a ratio of 1 to 2.5 detainees, which represents an extremely high ratio under any circumstances and, in relation to the budgetary constraints on the Ministry of Justice, a particularly high financial burden in Georgia. Here again some progress has been made, with the total number of prison staff having decreased to some 3,200 in the year 2003 (though the ratio of prison staff to prisoners has if anything increased, the financial burden has, at least, been greatly reduced). At the same time, the Ministry complained of difficulties in attracting sufficient wardens (particularly perimeter guards), owing to the low salaries offered (averaging between 35 and 50 euros a month). The suggestion that the Ministry was considering resorting to conscripts for this purpose would, whilst understandable in the short term, not encourage the development in the long run of the professional civil prison service the Ministry has committed itself to promoting.

Financial considerations were, indeed, according to the Ministry of Justice, at the heart of many of the difficulties it faced in improving prison conditions. Its total budget in the year 2000 was some $4,500,000. The allotment, for 2003, stood at 4,200,000 Euros, compared to the Ministry's estimated needs of 15 millions Euros. Given the rise in prices over the previous two years, the financial situation of the Ministry has, it can only be concluded, worsened.

Such financial constraints have resulted in the Ministry's being obliged to resort to certain 'special funds' at its disposal to finance the reconstruction of the juvenile detention centre in Avchala, which the members of the Office of the Commissioner visited, and the nearby establishment for female detainees, which is only a few months away from completion. With respect to the former, it is necessary to acknowledge the considerable efforts made by the Ministry of Justice to provide

adequate conditions to its juvenile detention population. The total number of juvenile detainees in Georgia currently stands at 21 (with a further 50 in pre-trial detention) and they are all detained at Avchala in conditions and with educational facilities that can only be described as excellent given the overall situation of the penitentiary system and the Georgian economy in general. It is to be hoped that the reconstruction of the women's penitentiary centre will achieve the same results and the Ministry of Justice was confident that this would be the case.

Such improvements cannot, however, be said to have been made in respect of the conditions at Tbilisi no. 5. Detainees continue to be detained in large numbers in cells displaying advanced signs of material disintegration. Sanitary conditions remain dismal and the budgets for food and medical care continue to permit only the most basic survival – and even then: 280 prisoners are currently suffering from tuberculosis and, whilst the majority are detained separately in a special prison hospital, 20 remained in isolated accommodation in Tbilisi No. 5. The Ministry of Interior expressed its gratitude to the ICRC for assisting it in this area, which it feels unable to deal with alone within the limits of its resources.

The difficulties for civil society and Church representatives in accessing penitentiary establishments, for monitoring and material and educational projects, had been a particular concern of the Commissioner's during his first visit. The greater use, since this visit, of the Public Oversight Commissions foreseen by the Law on Imprisonment in all penitentiary establishments has considerably improved the situation in this respect. The openness of the Ministry of Justice was acknowledged by the NGOs working in this area that were met with. The Ministry of Justice has, indeed, gone a step further in this direction and established a central Independent Public Oversight Council within the Ministry, which is composed of 17 representatives of civil society and provides a forum for the transmission of their concerns directly to the Minister of Justice. There was some suggestion on the part of NGOs that this mechanism was, under pressure from the Ministry of Interior, receiving less support within the Ministry of Justice than it was immediately after its establishment. The sensitivity of the Ministry of Justice to the concerns of civil society, as evidenced by this initiative, is to be greatly welcomed and the constructive continuation of this mechanism is certainly to be encouraged.

Indeed, at a more general level, the Ministry of Justice has shown considerable sensitivity to the urgent need to reform the penitentiary system it inherited form the Ministry of Interior. It has, therefore, published a "Concept of Reform of the Penitentiary System" in 2002. The three main elements of the proposal are (1) the transition from large, dormitory style "colony" accommodation to a more conventional cell-type system, (2) the decentralisation of prison management and (3) improvement in the training and qualification of prison staff. The second and third aspects of this programme might be implemented at little extra cost and the Georgian authorities ought certainly be encouraged to do so expeditiously. In respect of the training of prison staff, the Ministry of Justice expressed considerable gratitude for the assistance already being received from the international community and the Council of Europe in particular and hoped that this assistance would be continued.

The attempt to address the poor material conditions of current penitentiary establishments is expressed in the first priority of these reforms. The Concept for Reform proposes, indeed, the construction of entirely new prison facilities. One

cannot but conclude, however, that the costs of so ambitious a project current exclude any realistic possibility of its being fulfilled. Indeed the Ministry of Justice already faces considerable difficulty in finding the necessary 1 million euros for the completion of a prison already under construction (with the same financial deficit) at the time of the Commissioner's visit almost three years ago. The Ministry of Justice again requested the Commissioner's assistance in securing foreign aid for the completion of this prison (in Rustava). Whilst this project certainly deserves to be supported, it is clearly be essential for the Ministry to be able to show a clear breakdown of the costs involved and, most likely, a financial commitment on its side proving the intention to complete the construction within a reasonable time limit and with appropriate financial supervision. These would appear elementary conditions for the attraction of foreign financial assistance for this project and the Ministry is to be encouraged to provide such guarantees if it is really serious in its desire to complete the construction of this facility. With this proviso, the Commissioner appeals to Council of Europe member states to assist Georgia in its efforts to build new prisons in line with Council of Europe standards.

It might be added, moreover, that more limited projects, such as the successfully completed reconstruction of the juvenile and women's detention facilities indicate that greater and more immediate results can be achieved when more realistic goals are set. The current failure to attract sufficient funds for the completion of new facilities ought not, therefore, to be seen as justifying or excusing the failure to address the necessary improvements of existing facilities.

On a final, and particularly sombre note, no progress has been made on the case of Mr. Tengiz Asanidze, who was officially pardoned by the President of Georgia on 1st of October 1999, yet who continues to remain in custody in the de facto autonomous province of Adjaria. Since the Commissioner first became aware of his case during his first visit, the European Court of Human Rights had given a deadline of 5th February 2003 for the finding of a friendly settlement to this issue before the case is due to be heard in the Grand Chamber. Without wishing to enter into the political difficulties obstructing the ordered release of Mr. Asanidze, it is clear that every effort must made, by the Georgian authorities and other international actors to secure the release of an individual pardoned by the President of Georgia, declared innocent by the Supreme Court of Georgia and whose case is currently pending before the European Court of Human Rights.

Another case of particular concern relates to the sentencing in Abkhazia in February of this year of Mr. Djologoua to the death penalty for treason. Without wishing to enter into grounds on which Mr. Djologoua was sentenced, the reintroduction of the death penalty in Abkhazia would be worrying indicator of the Abkhaz regime's commitment to the protection of human rights.

The Police

In his report of July 2000, the Commissioner expressed considerable concern over allegations of the widespread ill treatment of persons in police custody and called for greater measures to curb such behaviour and combat the prevailing impression of impunity surrounding such acts.

Since the publication of that report, the most significant development with respect to law enforcement agencies has been the creation, by Presidential decree in December 2001, of a Commission on "Reform of Law and Enforcement and Security Bodies", which, headed by the President of the Supreme Court, Mr. Lado Chanturia, has since published its "Concept for reform of the Security and Law Enforcement Services of Georgia".

The "Concept for Reform" seeks to holistically reform all aspects of law enforcement in Georgia. The principal reforms are presented in three Draft Laws on the Police, a Draft Law on the Prosecutors Office and a Draft Code of Criminal Procedure. Whilst the first four laws would appear to have been drafted already and to have taken the recommendations of the Council of Europe into account, considerable ambiguity surrounds the progress of the Draft Code of Criminal Procedure. Its official presentation is scheduled for the end of March this year, but as several such deadlines have already been set and exceeded in the past, there is little optimism that this particular one will be met either, or that, indeed, any Draft Code of Criminal Procedure is likely to be adopted before the end of the year. The centrality of the Code of Criminal Procedure to all the other proposed reforms is inevitably resulting in delays to the reform of the Police and Prosecutor's Office and the need for progress in this area cannot be too highly stressed if the positive features of the "Concept of Reform" are ever to be implemented.

The situation with respect to the Code of Criminal Procedure has been complicated further by a number of recent developments. The Ministry of Interior tabled a number of amendments to the existing Code of Criminal Procedure on November 21 2002. These amendments included the proposal to extend the length of police custody from 72 hours to 240 before it would be necessary to bring the detainee before a judge. The Ministry has also declared its desire to have the administration of pre-trial detention facilities removed from the Ministry of Justice and restored to it, a proposal which the Ministry of Justice and the Prosecutor's Office categorically opposed. At the same time, provisions of the existing Code of Criminal Procedure were declared anti-constitutional by a ruling of the Constitutional Court of 29th January 2003. These included an initial 12-hour period in which suspects might be held incommunicado on remand and the limitation of the right to speak to one's lawyer to only one hour per day. The Constitutional Court set a deadline of 1st May 2003 for the necessary amendments to the Code of Criminal Procedure to be made, though, again, the suspicion remains that this delay is unlikely to be respected.

The resolution of these issues is of the utmost importance when it comes to police ill treatment. It would appear that the majority of cases of police ill-treatment occur in cases when the detainee has spent longer than 72 hrs in police custody. Some statistical indication of the extent of the problem may given by the records of the Ministry of Justice, which conducts medical examinations of all detainees transferred to its establishments for pre-trial detention from police custody. Between 2000 and 2500 persons are transferred from police custody to pre-trial detention facilities each year, and last year alone the Ministry of Justice forwarded in excess of 500 cases in which indications of ill-treatment had been detected to the Prosecutor's and Ombudsman's offices. Indications are that the vast majority (80% according to NGOs) of these cases concern suspects detained for longer than 72 hours in police custody. Other indicators suggest, however, that the number of cases of police ill-treatment and excessive length of police custody have decreased over recent years.

The regional office of the Ombudsman in Kutaisi, for instance, stated that whilst the number of recorded cases of excessive length of police custody between January 2000 and April 2001 was 57, this number decreased, following the intervention of the Ombudsman, to only 8 for the rest of 2001 and only 3 in 2002. At the same time the number of allegations of ill-treatment decreased from 38 in 2001 to only 8 in 2002.

Whilst this progression, if it is representative, is certainly to be welcomed, and the transparency of the Ministry of Justice's medical checks deserves to be praised, the number of cases officially recorded by the Ministry of Justice must give rise to considerable concern (and not least, the 8 instances of electric-shock treatment detected in 2002).

The suggestions made by the Ministry of Interior regarding the extension of police custody and the transfer of pre-trial detention to its administration cannot, therefore, be supported. It was suggested, during a meeting with the Deputy Minster for Interior, that the police faced considerable difficulties in investigating crimes satisfactorily in the short time afforded them owing to the material difficulties they faced. With respect to the exceeding of the current lawful length of police custody, it was maintained that the number of incidents had decreased considerably in recent years and that, when it occurred, it was primarily owing to the lack of means at the Ministry's disposal (notably with respect to the costs of transport to pre-trial detention facilities) and the severe over-crowding at pre-trial detention facilities, which occasionally resulted in inevitable delays. It is hard not to sympathise with these arguments, particularly in view of the chronic over-crowding of the pre-trial detention facility witnessed at Tbilisi No. 5, mentioned above, and the similar difficulties faced by the Ministry of Justice in transporting its own detainees to courtrooms.

However, none of these reasons can excuse police ill-treatment and the desired increase in the powers of the Ministry of Interior can, in the current climate, only be seen as likely to increase the risk of abuses. The appropriate solution can, indeed, only lie in the necessary and pending reforms and an increase in the material resources of investigators. Moreover, increasing the ease with which confessions might be extracted over a longer period of police custody would run counter to the professed and sincere intentions of the Ministry of Interior to encourage a culture of respect for human rights amongst its staff and police officers and to which end its reforms are primarily directed.

The main thrust of the reforms focus, indeed, on separating the investigative and preventive work of the police force and are designed, in the words of the Deputy Minister of Interior, to transfer the Ministry into a proper administrative Ministry rather than, as he conceded, the large police station it might all to easily be perceived to be at the moment. These reforms are indeed to be welcomed greatly and their speedy implementation must be a priority. Also to be welcomed is the emphasis the Ministry appears to be placing on the human rights awareness of its staff. It has, for instance, issued a Code of Police Ethics by Ministerial Decree rather than waiting for its integration in the reforms still being held up in Parliament. At the same time, the Ministry of Interior has placed considerable emphasis on the training of police officers and investigators and the Deputy Minister expressed his desire to increase cooperation with international experts in this area. The Ministry was, indeed, particularly sensitive to the fact that the proposed reforms would not succeed if the same persons were to perform new functions with new requirements but with same old-fashioned mentalities. This emphasis on training and the appeal for foreign assistance ought to be endorsed.

Training cannot, however, on its own be sufficient to eradicate abuse by police officers. Greater transparency in its workings and the prosecution of offences must play a considerable part in reshaping the culture and practise of police officers. With respect to the first of these issues some developments can be noted. The Ministry, has for instance, sought to improve its relations with NGOs and the Georgian Ombudsman. Pilot projects, in the form of public monitoring councils similar to those established by the Ministry of Justice for its penitentiary establishments, providing for inspections by civil society of the district police stations of Kutaisi and Gori, have been welcomed by NGOs and their extension to other regions is to be encouraged. Indeed, NGOs met with acknowledged the greater openness of the Ministry of Interior to their concerns, though a number considered the change to be reflected more in the Ministry's discourse than in its actions. Be this as it may, the development is a positive one and the Ministry is encouraged to increase and expand on this cooperation.

With respect to the disciplining and prosecution of human rights abuses by police officers the situation is more ambiguous. The position of the General Inspectorate, the internal disciplinary organ, has been strengthened within the Ministry and its staff has been increased, notably with respect to its legal personnel. The results for 2002, in the statistics provided by the Inspector General, were as follows: on the basis of 1200 random inspection of police stations, 287 cases were forwarded to the prosecutors office (resulting in 57 pending criminal cases), 92 policemen were dismissed (12 of high rank), 72 were demoted (33 of high rank) and 382 received other disciplinary measures. Precise indications of the nature of the offences alleged were not provided. If these figures are to be compared with those provided for the Commissioner's initial report, it is hard to detect a notable improvement: it was claimed at the time that between 1996 and 2000 there had been some 5200 disciplinary measures and almost 2000 dismissals (averaging, therefore, some 1000 and 400 respectively per annum, and as such more than were recorded in the year 2002). At the same time the Deputy Prosecutor General provided statistics which revealed an increase in the number of criminal proceedings opened in respect of human rights abuses by police officers compared to those recorded in the Commissioner's earlier report: namely 171 criminal proceedings opened (against 203 officers) in 2002 compared to 468 over the period 1996 to 2000. The Deputy Prosecutor was adamant that no allegations of ill-treatment or other human rights abuses, whether received from the Ministry of Justice, NGOs, the Media or the Ombudsman, went without an appropriate reaction on the part of his Office. The difficulty, he insisted was that, whilst offending police officers might previously have been able to come to a convenient arrangement with the prosecuting authorities, the closing of this avenue had resulted in alternative 'arrangements' being reached between the officers and the victim's themselves, who were increasingly reluctant to testify. At any rate, a slight improvement in the activity of the Prosecutor's Office in respect of police abuses was, indeed, acknowledged by the Ombudsman herself.

The extent of the problem, as revealed by the Ministry of Justice's reporting and, indeed, conceded by the Ministry of Interior itself, is such that considerable improvements still need to be made in this area. Much of the difficulty stems from the simple fact that ordinary police officers receive only 80 Lari (or 40 Euros) per month in wages. As the minimum subsistence level is considered to around 300 Lari (for a family of four), and the majority of police officers are said to live in manner

beyond such as even this sum would afford, little speculation is needed as to how the shortfall is commonly made up for. It must be insisted, however, that no economic hardship can justify the ill treatment of persons in police custody and that further efforts are still required if this problem is to be satisfactorily addressed now.

It is, in conclusion, difficult to detect a real improvement with regards to police behaviour despite a number of positive signs. Whilst the Ministry of Interior has shown considerable sensitivity to the problem of police ill-treatment, and professes an increased desire to transparently resolve the problem, its proposed amendments to the Criminal Procedure Code risk undermining many of the improvements it officially aspires to. Operational efficiency, cannot, in a country governed by the rule of law, be allowed to be achieved at the expense of fundamental individual rights. The need for the full and speedy implementation of the "Concept for Reform" is obvious, as is the provision of the necessary funding to make these reforms effective.

The Administration of Justice

In his earlier report the Commissioner raised two specific concerns regarding the administration of justice. These were the execution of court judgements and the absence of an independent and effective bar association.

1. The Execution of Judgements

The first of these concerns would appear to have been partly addressed by an amendment in December 2002 of the Law on the Enforcement of Proceedings of 7 May 2002, which strengthens the powers of the relevant department within the Ministry of Justice. The rate of execution of civil judgements would appear, in any case, to have improved on the 80% level recorded three years ago and was, somewhat surprisingly, no longer considered a serious problem by the lawyers, NGOs and judicial officials spoken to on this matter.

2. The Establishment of a Bar Association

The situation with respect to the establishment of a Bar Association and the regulation of the role of, especially, criminal defence lawyers remains more complicated. Whilst it was and is widely acknowledged that the standard of legal representation in Georgia is, at best, variable, attempts to regulate the activity of lawyers have been strongly resisted by many within the legal profession. Indeed a Law on the Bar was adopted in Parliament in June 2001, but its implementation has subsequently proved impossible, to such an extent that recent legislative amendments to have passed two out of three parliamentary readings are in danger of effectively killing off the Act altogether. The origin of the problem would appear to reside in the fact that the legal profession in Georgia is almost totally unregulated, or at least, knows no state intervention whatsoever. At present the Collegium of Advocates functions more or less as a trade union for lawyers without, it would appear, membership's being a precondition for practising law or representing clients in court. Indeed, at the time of the Commissioner's report and still today, there are no formal requirements whatsoever for becoming a professional lawyer. The law on the Bar was intended, therefore, to introduce some order into this state of affairs and to raise the standard of lawyers notably through the requirement of examinations. The main thrust of the legislation is

to establish a Bar Association that would come into being at the moment 100 persons would have passed an examination set, initially, by the High Council of Justice, but which would subsequently be autonomously regulated by the Bar Association itself. The first attempt to organise such examinations was in 2002, but it proved impossible to secure the cooperation of existing lawyers. The second such attempt is due in June 2003 but, as indicated above, resistance remains strong.

It would appear that resistance focuses on competing conceptions of the role of lawyers between those, primarily represented by the Collegium of Advocates, who believe that the State has no business interfering in the free exercise of such a profession, and the Ministry of Justice, which is concerned to address the poor standard of many lawyers currently practising in Georgia. Whilst vested interests on the part of certain lawyers clearly concerned by the prospect of failing such a qualification procedure, there remains, at the same time, some concern that the procedure itself will not be free from improper influence.

Given the importance of raising and maintaining the standards of the legal profession in Georgia, it would appear imperative that the Ministry of Justice adopt a more insistent attitude to implementation of the Law on the Bar and that the High Council of Justice make every effort to ensure the transparency an objectivity of the initial examination procedure.

The situation of refugees and persons displaced within and outside Georgia

The Commissioner's first report focused on the situations of various categories of displaced persons either in Georgia or currently wishing to return. These included the situation of Chechen refugees primarily residing in the Pankisi valley, the Meskhetian Turks deported from Georgia in 1944 to other parts of the Soviet Union and currently wishing to return, and IDPs resulting from the de facto independence of South Ossetia and Abkhazia. The follow up mission concentrated on the situation of the officially registered 250,000 internally displaced persons from Abkhazia who constitute the bulk of those displaced persons currently residing in Georgia.

1. Chechen Refugees

Since the Commissioner's first report numerous, and occasionally worrying, developments have taken place in respect of the Chechen refugees in Georgia. As of February 2003, this number 4174, the vast majority of which continue to reside in the Pankisi Gorge and of which 181 are currently registered in Tbilisi.

At the time of the Commissioner's initial visit, the valley was largely uncontrolled by the Georgian authorities, giving rise to widespread criminal activity and claims, on the part of the Russian authorities, that the valley provided refuge to recuperating Chechen combatants. This was not, following a visit to the valley, the Commissioner's impression. Nonetheless, under increasing pressure from the Russian authorities (including notably a letter sent by President Putin on September 11th 2002 to the UN Security Council, the UN Secretary General and the OSCE announcing possible strikes in the valley), the Georgian authorities made several moves to bring the situation in the Pankisi gorge under some sort of control. As of September 2002, troops from Georgian Ministry of Interior have conducted several checks in the

valley. Similar operations have also been conducted in Tbilisi, notably on 7th December 2002, when 100 Chechens were detained and questioned. In a separate incident, on the same day, 5 Chechens were allegedly killed. The extradition of 5 Chechens to Russia on 4th October 2002, and a further 8 afterwards following the obtaining of procedural guarantees from Russia by the European Court of Human Rights has increased the feeling of insecurity amongst the Chechen refugee population in Georgia.

For so long as the situation in the Chechen Republic is such that the refugee population in Georgia cannot freely return, it is incumbent on the Georgian authorities to provide all the protection afforded by the Geneva Convention. Whilst the restoration of order in the Pankisi Gorge must remain a priority for Georgian authorities and a concern of their Russian counterparts, it is essential that the necessary measures be conducted, by the Georgian authorities, in an even-handed manner and in full respect of the rule of law.

Whilst the Commissioner is unable to comment on the presence of Chechen combatants in the Pankisi Gorge, and his Office did not visit the area on its recent visit, the possibility of the sporadic infiltration of such elements cannot be excluded. At the same time, it is of the utmost importance that the civilian population seeking refuge in Georgia receives the assistance and protection they require. The work of the UNHCR and other international donors is vital in this respect and it is important that their work is not disrupted or undermined by the security measures undertaken by the Georgian authorities.

2. The Return of Meskhetians to Georgia

Very little to no progress has been made regarding the elaboration of a legal framework permitting the return of Meskhetians to Georgia, which represents one of Georgia's commitments on its accession to the Council of Europe, since the Commissioner's visit in 2000. A preliminary Draft Law on Repatriation (officially the "Law on the repatriation of persons deported from Georgia during the 1940s under the Soviet regime") was, indeed, submitted to the Council of Europe for expertise in 2001. However, unable to accept the proposed law, the Council of Europe requested a certain number of amendments, which were, in turn, not adequately incorporated in the second Draft Law presented to the Council of Europe in 2002. A third such attempt is currently underway.

Whilst the return of Mesketians to Georgia evidently raises a number of political and practical problems, there is a clear need to make some progress on this matter. In connection with this issue, the Deputy Minister for Foreign Affairs raised the discriminatory treatment of the approximately 15,000 Meskhetian Turks currently residing in the Krasnodar region of Russia. It must be stressed, however, that quite

regardless of the treatment received by Meskhetians in this region and the offer, the terms of which remain to be finalised, of the United States to grant entry to its territory to some or all of these persons, a primary responsibility remains with the Georgian authorities to provide, at least, for the legal possibility of the return to Georgia of Meskhetians wishing to do so.

3. The Ossetian Conflict

Of all those persons displaced as a result of internal or neighbouring conflicts, the 60,000 persons displaced as a result the Georgian-South Ossetia conflict have received the least attention from the international community. The humanitarian situation, however, particularly in South Ossetia, remains precarious, whilst international aid has steadily decreased.

Despite a hitch in the peace settlement talks in early 2002, the settlement machinery has since resumed its negotiations and a meeting of the Joint Control Committee (composed of Georgia, Russia, North and South Ossetia and the OSCE) met in May 2002 in Borjomi to elaborate a final draft of the Programme on Return, Integration and Reintegration of IDPs and refugees. It is not clear, however, what progress can be made in the near future.

Freedom of movement is generally enjoyed across all the borders involved. The main obstacles to return, in all the directions involved, would appear rather to be economic than political. The extreme poverty, and rampant criminality, in South Ossetia greatly discourages the return of the approximately 10,000 Ossets to have left South Ossetia for North Ossetia and the 10,000 Georgians to have left South Ossetia for Georgia. Similar economic factors would appear to apply to the return of the estimated 30,000 Ossets to have left Georgia for North Ossetia, where the economic opportunities are greater. Indeed successful long-term returns are apparently only viable with the economic assistance of the UNHCR, which has, as of December 2002, contributed to the return of some 1320 families (4,442 persons) in the various directions between South and North Ossetia and Georgia proper.

4. The Abkhaz Conflict

A political solution to the Abkhaz conflict appears no closer now, than it did during the Commissioner's first visit. Whilst the Georgian authorities declare themselves ready for further negotiations and piecemeal progress on the political settlement of the conflict and the return of IDPs, they heavily lament the absence of a similar attitude on the part of the Akhaz authorities and regret the influence, as they see it, of Russian involvement preventing greater progress being made towards the restoration of Georgia's territorial integrity as upheld by the United Nations Security Council.

During his visit to Georgia the Commissioner raised, in cooperation with Mr. Boden, the then Special Representative of the Secretary General of the United Nations for Georgia, the possibility of organising a meeting between the Georgian and Abkhaz authorities to discuss the constitutional aspects of a possible solution to the conflict with both of the respective authorities. A first seminar to this effect was indeed held in Pitsunda, Abkhazia, in February 2001, through the organisation of Ambassador Boden and with the participation of the Venice Commission. The second such meeting, scheduled to be held in Tbilisi in June 2001, was regrettably cancelled owing

to violent incidents in Abkhazia and it has not, since, proved possible to resurrect the initiative. Should an interest be expressed by all concerned in the resumption of this avenue of dialogue, the Commissioner would certainly be glad to contribute all he could.

In the meantime, the ongoing attempts of the Special Representative of the United Nations in Georgia (currently Mrs. Tagliavini) to promote the peaceful settlement of the conflict have concentrated on gaining the acceptance of both side of "Basic Principles for the Distribution of Competences between Tbilisi and Sukhumi". These attempts have to date met with considerable opposition on the part of the Abkhaz authorities. Indeed, the most recent report of the Secretary-General of the United Nations, of 13th January 2003 expressed considerable pessimism with respect to a likely resolution of the conflict.

Whilst this situation continues, the Georgian authorities and the vast majority of IDPs themselves, continue to insist on the enjoyment of the right to return, on which very little progress has been made since the Commissioner's initial visit. Already at the time of the Commissioner's visit, it was estimated that between 40 to 50,000 IDPs had, on a more or less permanent basis, returned to the Gali region. The estimates have not changed since then and nor have the precarious security and economic conditions in which they live. The total number of IDPs from Abkhazia currently registered in Georgia was as of December 31st 2002, 249,173,, of which 90,000 are said to residing in Tbilisi and 130,000 in the regions neighbouring Abkhazia. The real number of IDPs currently residing in Georgia is estimated at significantly less since many are said to have emigrated, having either sold or retained their IDP cards. The current living conditions of IDPs continue, in many cases, to be dire. Some 117,000 of (all) IDPs continue, ten years on, to reside in some 800 collective centres and those in private accommodation frequently live no better.

Registration as an IDP entails a number of benefits. Most importantly, IDPs in private accommodation receive 14 lari (7 euros) a month. Those in collective centres receive 11. The delays in the payment in this allowance recorded by the Commissioner 2 years ago, would appear to have stopped. However, the allowance has not been raised in 7 years, though the cost of living has increased in this time, and is far from covering even the most elementary needs of those in the worst situation. IDPs in collective centres receive free water and electricity with the same irregularity as other citizens. Their access to healthcare and education is also the same as for other Georgian citizens, though 10th and 11th grade schooling, which is usually subject to a fee, is free for IDPs. IDPs complain that the health care received is inadequate and that they frequently have to pay prohibitive sums for medication. They are, in this field, discriminated against only in virtue of their relative poverty and not in the de jure denial of rights enjoyed by other sectors of the population. Officially, indeed, certain particularly vulnerable categories of person enjoy additional benefits with respect to health care.

International aid to IDPs has decreased substantially in recent years and the State no longer distributes aid in kind or food supplies as was still periodically the case two years ago. Under such circumstances, the living conditions of those unable to find employment has, if anything, worsened over the last few years. With respect to employment, it might be noted that the situation is difficult for almost everyone in Georgia. IDPs continue, however, to bemoan a general stigmatisation that frequently

obstructs their access to regular employment. The UNHCR has been running numerous non-formal education and micro-finance programmes, the reach of which has been quite wide and the results of which, if the impressions gained by the members of the Office of the Commissioner in discussions with beneficiaries are representative, have been extremely positive (15,000 were said to have benefited from such programmes in the Imereti region alone).

Regarding the improvement of the current living conditions of the IDP population, there is a noticeable concern amongst the Georgian authorities that their greater integration will lessen the pressure, both internationally and domestically, for a political settlement to the Abkhaz conflict and it is difficult to escape the conclusion that similar fears are encouraged within the IDP community itself. IDPs spoken to almost all insisted on their right to return as the sole possibility for improving their current living conditions. There was a general impression that abandoning the official IDP status and the meagre entitlements entailed would result in the forfeiting of the right to return and reclaim one's property in Abkhazia.

The Georgian authorities have, however, since the Commissioner's earlier visit, removed certain discriminatory provisions obstructing the integration of IDPs, notably with respect to electoral rights. Whilst IDPs were, previously, unable to vote in local and majority (1st past the post) parliamentary elections, they may now do so in virtue of the new Unified Electoral Code of 2001. Their ability to do so effectively, however, is greatly undermined in practice by lack of information regarding their rights (many spoken to were quite unaware of the current situation) and vagaries in drawing up of the supplementary lists on which IDPs registered. It is important that this situation be clarified in the run up to the forthcoming Parliamentary elections in November.

As regards the right of IDPs to stand for elections, the situation is somewhat more complicated. Neither IDPs nor many officials spoken to appeared to be aware of the exact situation, with the former frequently decrying their inability to stand for election, and several of latter seeking to justify the limitation. The actual situation is that IDPs are in fact entitled to stand for all elections. Their ability to do so, however, is conditional on their abandoning their IDP status and reregistering as a resident of their current administrative region. They would, under these circumstances, stand for election as any other citizen of Georgia. However, many IDPs are reluctant to take this step for fear losing their right to return, though, it might be said, the reality is such that any IDP actually interested and, under the current conditions in Georgia, in a position to do so would be unlikely to have great concerns on this account. The confusion surrounding this issue is, however, symptomatic of the general attitude towards the greater integration of the IDP community.

The situation is complicated still further by the extension of the parliamentary mandates of the 10 Abkhaz parliamentarians elected to the Tbilisi Parliament prior to the conflict. It is currently foreseen that these Members of Parliament will be allowed to continue sitting following the forthcoming elections. The presence of these MPs was previously offered as a reason for not allowing IDPs to vote for constituency parliamentarians as they were, it was argued, already represented. This situation no longer prevails. However, whilst the political imperatives of retaining such members of Parliament, as indeed, of continuing to support the separate Abkhaz Government in Exile, are clear, the situation is certainly somewhat awkward. No longer being

elected, it is not clear whom these MPs are really representing. At the same time, their presence in Parliament is, at least, no longer enjoyed at the expense of the direct representation of IDPs in the constituencies in which they are currently residing, for it is clear that the changes to the electoral laws permit IDPs to be represented as residents of a particular region. Their continuing representation through "Abkhaz" parliamentarians, might therefore, be perceived as a double representation, but it does, at the same time, at least loosely permit their specific representation as Abkhaz IDPs. Some suggestions have been made that special elections might be organised within the IDP community for the renewal of the Abkhaz parliamentary seats, so as to encourage the greater representativity of these members. This would, however, obviously lead to a much more obvious double representation. Whatever solution is finally adopted, it is important that the right to vote as any other citizen in constituency elections be maintained.

Whilst the free exercise of the right to return must remain the key priority of all concerned with situation of Abkhaz IDPs, it is important that the message is passed to IDPs that greater integration need not entail the forfeiture of this very right. It is clear, that the Georgian authorities face considerable material difficulties in improving the living conditions of their IDP population. However, greater sensitivity to their current needs and rights, as citizens of Georgia on a par with all others, is to be encouraged. The separation of the humanitarian benefits associated with IDP status from the legal rights enjoyed with respect both to return and integration has certainly begun with the restoration of certain electoral rights and must be continued now, not only with respect to the right to stand for election, but, more importantly, in the attitudes of both officials and IDPs themselves.

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It is, in conclusion, certainly possible to detect an improvement in some of the areas of concern to the Commissioner since his initial visit. It is clear, however, that the current economic climate, the political instability and the various unresolved internal conflicts, continue to delay several much needed changes, both legislative and, most importantly, in practise. Despite the ambitious reforms proposed in many of the areas of concern to the Commissioner, improvements have, to date, been made only around the edges. The need to pursue these reforms, many of which are purely organisational and entail no additional cost is, for the most part therefore, purely a matter of political will. The Council of Europe is playing an important role in the consolidation and implementation of these reforms, both through legislative expertise and extensive training programmes. The expressed commitment of the Georgian authorities to this cooperation remains, however, to be transformed into concrete results in many areas.

The recommendations provided below outline the main areas of concern that remain to be addressed, or have subsequently arisen, since the Commissioner's first visit:

The Penitentiary System

1. Reduce the burden on pre-trial detention facilities through the greater use of bail procedures for minor offences;

2. Ensure that the competence for the running of pre-trial detention facilities remains with the Ministry of Justice;

The Police

3. Rapidly implement the police reforms proposed in the "Concept for reform of the Security and Law Enforcement Services of Georgia";

4. Enact a new Code of Criminal Procedure in line with Council of Europe standards and the recent judgments of the Georgian Constitutional Court;

5. Extend the human rights training programmes for police officers with the continued assistance of the Council of Europe;

6. Extend the pilot projects for NGO monitoring of police stations in Kutaisi and Gori, in the form of public monitoring councils, to other districts;

The Administration of Justice

7. Implement the Law on the Bar adopted in June 2001 through the organisation of transparent and objective examinations;

Refugees and Displaced Persons in Georgia

8. Ensure that all Chechen refugees receive the protection afforded by the Geneva Convention and enjoyed under the Georgian Constitution;

9. Ensure the unhindered access of humanitarian organisations assisting Chechen refugees in the Pankisi valley;

10. Provide for the legal possibility of the return of Meskhetian Turks to Georgia through the enactment of a Draft Law on Repatriation in line with Council of Europe expertise;

11. Ensure the transparent and accurate drawing up of voting lists for all IDPs;

12. Encourage and facilitate the integration of IDPs on a par with ordinary Georgian citizens.

Finally, the Commissioner finds that the conditions in many prison facilities in Georgia remain extremely poor and may amount occasionally to inhuman and degrading treatment in contradiction to standards required by Council of Europe instruments.

Consequently, the Commissioner recommends that the Georgian authorities, in the coming months and with the assistance of competent bodies of the Council of Europe, elaborate realistic prison reform programmes for the material infrastructure of the Prison service, including of the estimated financial costs, so as to attract international support for the construction of new detention facilities.