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The Permanent Mission of Georgia to the United Nations Office and other International Organizations in Geneva presents its compliments to the United Nations Office of the High Commissioner for Human Rights (OHCHR) and in reference to its Note Verbale, dated 2 August 2012 (Reference: UA G/SO214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (53-24) GEO 1/2012) has the honour to transmit herewith the Information of the Government of Georgia regarding the case of Irakli Beraia.

The Permanent Mission of Georgia to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the United Nations Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Enclosure: 8 pages



United Nations Office of the High Commissioner for Human Rights
Geneva

**The response of the Government of Georgia to the Joint Urgent Appeal
regarding the case of Irakli Beraia**

On August 2, 2012 Office of the United Nations High Commissioner for Human Rights communicated a Joint Urgent Appeal of Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the rights to freedom of peaceful assembly and of association, Special Rapporteur on the situation of human rights defenders, and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to Government of Georgia (hereinafter GoG) regarding detention and alleged torture of Mr. Irakli Beraia. GoG enquired detailed information from all relevant state institutions regarding the circumstances of administrative arrest and the conditions of the detention of Mr. Irakli Beraia.

In this response GoG presents information regarding Mr. Irakli Beraia's case and the measures taken to guarantee that his rights and freedoms are respected. Hereby, the GoG is providing responses to the questions posed by the Special Rapporteurs in Joint Urgent Appeal.

1. Are the facts alleged in the summary of the case accurate?

Detention and placing in Kvareli TDI

On 29th of May 2012 Mr. Beraia and seven other persons blocked the Rustaveli Avenue in Tbilisi, Georgia. The police officers asked the protesters to free the road, but Mr. Beraia refused to obey the lawful demands of the police and resisted to it. Accordingly, the police arrested Mr. Beraia and brought him to Tbilisi City Court at 16:40 of the same day (detailed information on administrative case #4/2296-12 is provided under the question 4 of the present non-paper). The Court found Mr. Beraia in breach of Articles 166 (petty hooliganism) and 173 (disobedience to the legal orders or instructions of law enforcement or military officers) of the Code on Administrative Offences and sentenced him to 30 days of administrative detention. The detailed information about the nature of the charges is described below.

Ministry of Internal Affairs (hereinafter MIA) placed Mr. Beraia at Temporary Detention Isolator (hereinafter TDI) in Kvareli District. This decision was adopted due to the lack of available space in Tbilisi TDIs. Mr. Beraia had been duly informed about the reasons and the location of his placement. According to the Kvareli TDI official records, he arrived at the TDI at 00:30 of May 30, 2012.

Pursuant to requirements of Georgian legislation, all individuals entering detention facilities undergo medical examination and their state of health is documented¹. In line with this procedure on May 30, 2012, upon arrival to Kvareli TDI, Mr. Beraia underwent visual examination and relevant protocol² was

¹ the relevant document

² The Visual Examination Protocol contains the following information: date and time of drawing up the record, the identities of the inspecting and of the inspected person, body injuries of the detainee (including all injuries received before, during and after the detention; also, including all kinds of injuries, *inter alia*, any traces on the

drawn. According to the protocol, upon entering the TDI, Mr. Beraia did not have any apparent injuries and he had not reviled about any injury known to him. Moreover, no complaints had been protocolled on his behalf.

Access to the lawyer

With regard to the concern of his right to access to a lawyer, the GoG underscores that unfounded allegations have been submitted to the Office of the High Commissioner. More precisely, Mr. Beraia claims to have been beaten for the first three days of his detention, before meeting his lawyer. Official records of the Kvareli District TDI show that Mr. Beraia entered the TDI on May 30, 2012. The records further reveal that Mr. Beraia had access to his lawyer on the very next day, May 31, 2012.

Overall, Mr. Beraia was visited by his legal representative Jumber Milorava three times (on May 31, 2012; on June 5, 2012, on June 25, 2012).

Access to food and sanitation

According to the official records of the Kvareli District TDI, Mr. Beraia had access to the first parcel on the very next day of his placement at the TDI, namely on May 31, 2012. Overall, he received parcels of extra clothes, food and beverages of his choice for 6 times during his 30 days of detention. Detailed information regarding each parcel Mr. Beraia has received is document in the protocols of MIA.

The recently renovated Kvareli District TDI is fully supplied by the unpolluted water via the Centralized Water Supply Lines. None of detainees had raised any complaint with regard to the water supply during Mr. Beraia's detention period.

Access to healthcare

As for the health conditions and a medical care, it should be mentioned that Mr. Beraia was visited by medical personal of "Aldagi BCI" Medical Center for 5 times during his 30 days arrest. The first visit took place on May 30, 2012, the very day of his placement at the Kvareli TDI. The Medical documentation indicates that Mr. Beraia had no physical injuries. Mr. Beraia complained to the doctor regarding his chronic health condition, which he developed before his arrest and for which Mr. Beraia has received adequate medication.

2. Has a complaint been lodged?

body, even minor scratches, old surgery scars or wounds, etc., what often amounts to the reason for the big number of injuries.)

Neither Mr. Beraia nor his counsel has lodged complaint concerning the alleged ill-treatment. Information regarding alleged ill-treatment became known to Georgian authorities through the United Nations High Commissioner for Human Rights letter dated August, 2, 2012.

3. Please provide the results, of any investigation or judicial inquiries which would be relevant, to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

As noted, Mr. Beraia's allegations regarding his ill-treatment became known to Georgian authorities through the United Nations High Commissioner for Human Rights. In light of this communication, on August 14 2012, Kakheti District Prosecutor's Office³ opened criminal investigation under article 144³ 2 (a) (b) (g) (inhuman and degrading treatment) of the Criminal Code of Georgia. The investigation is still ongoing.

4. Please provide information concerning the legal grounds for the arrest and detention of Mr. Beraia and how these measures are compatible with relevant international norms and standards stated, inter alia, in the UDHR and the ICCPR.

On May 29, 2012 the Tbilisi City Administrative Court heard the case of Irakli Beraia, concerning the minor hooliganism and disobedience to lawful order of the law enforcement official under Articles 166 and 173 of the Code on Administrative Offences.

It should be highlighted that the right to freedom and peaceful assembly is guaranteed in the Constitution of Georgia and Georgian Law on Assembly and Manifestations (hereinafter the Law). Pursuant to the Law, any individual has the right to freedom of assembly and manifestation without any preliminary permission.

The Parliament of Georgia has adopted the amendments to the Law in July 2011. These amendments were initiated in order to bring existing regulations in compliance with the recommendations of the Council of Europe's Venice Commission; Due to the amendments of the Law prior notification is not required if the assembly or manifestation is held at a transport movement place and the road is already blocked for other reasons. However, if the manifestation is held on the roads and hinders the transport movement, the prior notification/authorization is required.

According to the circumstances of the case, Irakli Beraia, along with seven other individuals, blocked the Rustaveli Avenue in Tbilisi, hindering the traffic flow. Despite repeated lawful requests of the police officers Mr. Beraia and seven other perpetrators continued the blockage. In addition, Mr. Beraia resisted to the police that was forced to remove the blockage.

³ Kvareli makes part of the region of Kakheti.

Beraia was brought to Tbilisi City Court immediately for examining his case. The law enforcement officials requested 60 days of administrative detention for Mr. Beraia. The Court rejected the police request and imposed 30 days of detention. While imposing a sanction, the Court took into consideration Mr. Beraia's record of repeated violation of the Code of Administrative Offences and his failure to pay fines imposed for an offence in the near past. More precisely, he was fined for Minor Hooliganism (Article 166, Code on Administrative Offences) and Disobedience to Lawful Order of the Law Enforcement Official (Articles 173, Code on Administrative Offences) on January 28, 2012 and on May 26, 2012. None of these fines had been paid by the time of Mr. Beraia's detention.

According to Georgian legislation, the Court decision on imposing administrative detention is appealable at the Court of Appeal, however, Mr. Beraia has not availed himself of this legal right.

5. What measures are being taken by your government to ensure that conditions of detention in the Temporary Detention Isolator in the Kvareli District of Georgia as well as other detention facilities comport to relevant international standards?

MIA devotes considerable resources to constant maintenance of TDIs, which are designed for keeping detainees while awaiting trial on administrative charges, for those found liable on administrative charges and given a custodial sentence in the isolator, or for keeping detainees on criminal charges in cells. Many of the isolators considered below international standards were abolished; vast majority of the rest have been renovated. At this moment TDIs operated by MIA correspond to international standards.

Furthermore, it is noteworthy that most of the reforms have been carried out in line with international (UN CAT and CoE CPT) recommendations.

In order to ensure transparency and accessibility of information, in 2005 Main Division of Human Rights Protection and Monitoring adopted so-called Unified Standard Forms of the Registration Books⁴, where all information related to the registration procedures of detainees placed under the MIA facilities, was recorded. The registration books contained the information on state of health of the detainee, on his/her rights and complaints from the moment of his/her placement in the cell until s/he was moved out.

In 2005 a special centralized custody registering software system was created and introduced in all TDIs, providing the opportunity to register and collect detailed data on detainees. From the perspective of operative activities, this unified database has facilitated and improved the process of search and

⁴ Order № 277 of the Minister of Internal Affairs of 25 March 2005 "On Adoption of Some Registration Documents of the Ministry of Internal Affairs of Georgia", under which the following was adopted: a) the registration book for the detained persons in the agencies of the Ministry of Internal Affairs of Georgia, b) the registration book for the suspected persons placed in temporary detention isolators, c) forms of written act "Monitoring Sheet" of the Main Division of Human Rights Protection and Monitoring and of the Administration of the Ministry of Internal Affairs of Georgia.

identification of detainees in the shortest period of time. Moreover, the information about any detainee can be obtained from any MIA division, including police offices in regions, being adequately equipped with computers and having internet access; and providing that every police officer has access to the custody database software system. Also, along with running a centralized computer database of detainees in TDIs, custody records filled in written form were maintained before being fully replaced by electronic registering system in 2011.

As for the present situation, all TDIs in Georgia are equipped with computers and have access to the internet, what further supports running of electronic registration of all detainees and maintaining relevant centralized computer database thereto.

Furthermore, it is noteworthy that registration of each detainee is obligatory; and that registration is not performed by a police officer, but by a TDI staff member. Besides, Main Division of Human Rights Protection and Monitoring continuously carries out monitoring (both scheduled and *ad hoc* visits) in TDIs to identify and respond to any violation in this regard.

Every person brought into TDI, before placing him/her in the cell, undergoes compulsory medical examination/check by professional medical staff, in accordance with the TDI regulations. Medical examination is conducted visually, externally, examining general health conditions of the detainee. In order to give the detainee an opportunity to complain, examinations, generally, are carried out in a separated room without the presence of police officers. Afterwards, Visual Examination Protocol is drawn up and signed by the TDI Officer.

In case of deterioration of health conditions, if the state of health of the detainee requires further medical treatment, which cannot be provided at TDI, emergency assistance team is called up; following an examination a doctor decides upon the transfer of such person into a medical facility providing proper medical care. Thus, access to independent medical examination/doctor is ensured.⁵

MIA devotes considerable resources to constant maintenance of TDIs, which are designed for keeping detainees while awaiting trial on administrative charges, for those found liable on administrative charges and given a custodial sentence in the isolator, or for keeping detainees on criminal charges in cells. According to the 2011 statistical information, the overall number of TDIs throughout the country is 41; among them, 30 cells are already refurbished, 3 needs to be refurbished; and 8 cells are newly built. 28 TDIs have been closed since they did not correspond to international standards.⁶ As a result of

⁵ In this regard, the positive development is confirmed by CPT report stating: "The right of access to a doctor during police custody is working generally well;" See: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010*, CPT/Inf (2010) 27, 21 September 2010, ¶28, available at: <http://www.cpt.coe.int/documents/geo/2010-27-inf-eng.htm>.

⁶ In this regard, the positive development is confirmed by Public Defender of Georgia report stating: "It shall be positively evaluated that those temporary detention isolators, concerning which Public Defender had issued a

undertaken reforms, all TDIs operated by MIA meet the requirements in line with international standards.

TDIs provide for proper living conditions. More precisely, adequate space, ventilation, natural light, heating, food, water, sanitation, access to 24-hour medical service, access to education - are ensured. Clean beds and linens are provided to all detainees and possibility to take shower and outdoor exercise is provided. The right to meet family members and talk to them by phone is also foreseen. Furthermore, all detainees have the right to lodge a complaint on any act and decision made by administrative detention facility staff, to an upper-level administrative organ or to the court.

Moreover, *Order № 108 of the Minister of Internal Affairs of Georgia of 1 February 2010 "On Approval of the Typical Regulation of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, Routine of Isolators, and Additional Instruction Regulating the Activity of Isolators"*⁷ has been amended to include additional conditions and terms of administrative detention. The new amendments are in line with the relevant observations and recommendations issued by Public Defender, national and international non-governmental organizations. The Order guarantees substantially improved detention conditions by providing: enhanced hygienic/sanitary standards, diversified nutrition options, unimpeded access to medical assistance, the right to outdoor exercises, etc. The amendments entered into force on January 1, 2012.

As for the Kvareli TDI, it should be emphasized that Kvareli TDI was fully renovated in 2011 and meets all the international standards. Annual report of Public Defender's Office of 2011 does not provide with any notice or recommendation regarding conditions and functioning of Kvareli TDI.

The undertaken reforms have been positively assessed by Public Defender of Georgia, who is undertaking the functions of National Preventive Mechanism under the UN OPCAT, as well as other international human rights monitoring mechanisms. The following represent the citation of recent reports evaluating system of TDIs in Georgia

recommendation on liquidation, have been abolished. These are Temporary Detention Isolators of Gori, Khashuri and Cageri..." See: Public Defender of Georgia, National Preventive Mechanism, *Special Report on the Monitoring of the Penitentiary Establishments and Temporary Detention Isolators*, (Georgian Version), 2011 First Half, p. 348, available at: <http://ombudsman.ge/files/downloads/ge/pjcleymvnuflpcifq.pdf>.

⁷ In this regard, the positive development is confirmed by Public Defender of Georgia report stating: "It shall also be positively noted, that... the Order No. 108 of the Minister of Internal Affairs was issued on 10 February, 2010. The Order "On the approval of the additional instruction regulating activities of temporary detention isolators of the Ministry of Internal Affairs, and complementing the typical regulation and internal rules of isolators" is the guiding document for the administration of temporary detention isolators. The very fact of explicitly setting up the rules of functioning of isolators shall be welcome." See: Public Defender of Georgia, National Preventive Mechanism, *Special Report on the Monitoring of the Penitentiary Establishments, Temporary Detention Isolators and Military Detention Facilities*, 2010 First Half, p. 47, available at: <http://ombudsman.ge/files/downloads/en/mlhvpcfsowvvoibagsyx.pdf>; see also: Public Defender of Georgia, National Preventive Mechanism, *Special Report on the Monitoring of the Penitentiary Establishments and Temporary Detention Isolators*, (Georgian Version), 2011 First Half, p. 342-343, available at: <http://ombudsman.ge/files/downloads/ge/pjcleymvnuflpcifq.pdf>.

Reports of Public Defender of Georgia:

- As a positive note, it shall be mentioned that the Monitoring Team had no impediments when entering any of the temporary detention isolators. The administration fully cooperated with the Monitoring Group.⁸
- As regards temporary detention isolators, there have not been facts of ill-treatment identified throughout the last years.⁹
- The monitoring team did not receive any allegations of inflicting physical injuries after the admission to the temporary detention isolators.¹⁰
- It shall be positively noted that infrastructure of all types of closed instructions is noticeably improved, penitentiary establishments were built and renovated, and a number of temporary detention isolators were refurbished.¹¹

Reports of international human rights organizations:

- The CPT welcomes the determined action taken by the Georgian authorities to prevent ill-treatment by the police. Considerable progress has been made in reducing the risk of ill-treatment at the hands of police officers;¹²
- During the 2010 visit, the CPT noted a number of positive developments, in particular as regards the gradual improvement of material conditions of detention in police establishments, the provision of legal aid to persons in police custody, and material conditions in newly constructed prisons. The Committee hopes that the Georgian authorities will continue to build upon them.¹³

⁸ Public Defender of Georgia, National Preventive Mechanism, *Special Report on the Monitoring of the Penitentiary Establishments, Temporary Detention Isolators and Military Detention Facilities*, 2010 First Half, p. 47, available at: <http://ombudsman.ge/files/downloads/en/mlhvpcfsowvvoibaqsyx.pdf>.

⁹ Public Defender of Georgia, *Annual Report of the Public Defender of Georgia. The Situation of Human Rights and Freedoms in Georgia*, 2010, p. 11, available at: <http://www.ombudsman.ge/files/downloads/en/rthhchgdihxwaxvihpx.pdf>; see also: Public Defender of Georgia, National Preventive Mechanism, *Special Report on the Monitoring of the Penitentiary Establishments, Temporary Detention Isolators and Military Detention Facilities*, 2010 First Half, p. 5-6, available at: <http://ombudsman.ge/files/downloads/en/mlhvpcfsowvvoibaqsyx.pdf>.

¹⁰ Public Defender of Georgia, *Report of the Public Defender of Georgia. The Situation of Human Rights and Freedoms in Georgia*, 2009 Second Half, p. 28, available at: <http://ombudsman.ge/files/downloads/en/rcbrpcdmwvvalletoggp.pdf>.

¹¹ Public Defender of Georgia, National Preventive Mechanism, *Special Report on the Monitoring of the Penitentiary Establishments, Temporary Detention Isolators and Military Detention Facilities*, 2010 First Half, p. 5, available at: <http://ombudsman.ge/files/downloads/en/mlhvpcfsowvvoibaqsyx.pdf>.

¹² European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010*, CPT/Inf (2010) 27, 21 September 2010, ¶16, available at: <http://www.cpt.coe.int/documents/geo/2010-27-inf-eng.htm>.

¹³ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010*, CPT/Inf (2010) 27, 21 September 2010, ¶6, available at: <http://www.cpt.coe.int/documents/geo/2010-27-inf-eng.htm>.

- The great majority of the persons interviewed by the delegation, who were or had recently been in police custody, indicated that they had been treated in a correct manner.¹⁴
- The government has made significant efforts to renovate TDIs.¹⁵
- The findings from the 2010 visit confirm the generally positive impression obtained during the previous periodic visit that the situation as regards the treatment of persons detained by the police in Georgia has considerably improved. This was also confirmed by various interlocutors met during the visit (including representatives of the Public Defender's Office and NGOs).
It is clear that the series of measures taken over the last few years by the Georgian authorities to put a stop to the previously widespread phenomenon of ill-treatment by the police are bearing fruit.¹⁶

¹⁴ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010*, CPT/Inf (2010) 27, 21 September 2010, ¶13, available at: <http://www.cpt.coe.int/documents/geo/2010-27-inf-eng.htm>.

¹⁵ Human Rights Watch, *Administrative Error, Georgia's Flawed System for Administrative Detention*, January 2012, p. 27, available at: <http://www.hrw.org/sites/default/files/reports/georgia0112ForUpload.pdf>.

¹⁶ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010*, CPT/Inf (2010) 27, 21 September 2010, ¶14, available at: <http://www.cpt.coe.int/documents/geo/2010-27-inf-eng.htm>.