The Permanent Mission of Georgia to the United Nations Office and other international organizations in Geneva presents its complements to the Office of the High Commissioner for Human Rights and in reference to its Note Verbale (reference: G/SO 218/2), dated 13 February 2015, has the honour to transmit herewith the comments of the Ministry of Justice of Georgia on the draft principles and guidelines on remedies and procedures on the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court, in order that the court may decide without delay on the lawfulness of his or her detention.

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 Office of the High Commissioner for Human Rights the assurances of its highest consideration.

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Geneva, 23 March 2015

Office of the High Commissioner for Human Rights
Geneva
Comments of the Ministry of Justice of Georgia
on the draft principles and guidelines on remedies and procedures on the right of
anyone deprived of his or her liberty by arrest or detention to bring proceedings
before court, in order that the court may decide without delay on the
lawfulness of his or her detention.

1. Paragraph 49 (Principle 16)

Paragraph 49 is, inter alia, aimed at the protection of certain groups from discrimination in case of
derogation from application of the right to bring proceedings before a court without delay to
challenge the arbitrariness and lawfulness of detention and receiving appropriate remedy. In the
paragraph the grounds of discrimination are limited to race, color, sex, language, religion or social
origin. The given list of grounds seems to be exhaustive rather than illustrative. Such approach fails
to fully cover other potential vulnerable groups that can be subjected to discrimination.

2. Paragraphs 74/75 (Guideline 4)

Paragraph 74 refers to specialized tribunals and provides an option for the state to enact legislation
regulating proceedings before a specialized tribunal, which clearly must be established by law. The
statement is followed by the clause that gives the directions for interpretation of the above
mentioned requirement, which stands for affording guarantees for competence, impartiality and the
enjoyment of judicial independence in deciding legal matters. According to section 75, the
establishment of the specialized tribunal can be justified in the matters of children and indigenous
people. The guideline emphasizes the protection of the right to equality before tribunals and the
necessity to guarantee the competent tribunal and due process. Many countries provide for
specialized judges in their court system, instead of setting specialized tribunals. Thus, the question
arises whether the requirements for regulating proceedings before a specialized tribunals are met
when countries have specialized judges and the principles of fair trial are reserved.