

Independent International Fact-Finding Mission  
on the Conflict in Georgia

# Report



Volume I

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Volume III

September 2009

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By its decision of 2 December 2008 the Council of the European Union established an Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG). This is the first time in its history that the European Union has decided to intervene actively in a serious armed conflict. It is also the first time that after having reached a ceasefire agreement the European Union set up a Fact-Finding Mission as a political and diplomatic follow-up to the conflict. In its work, the Mission has been assisted and advised by a Senior Advisory Board (see Acknowledgements). The present Report is the result of the mandated inquiry.

The Mission thanks the European Union for the steadfast support extended to the Mission throughout the whole period of its work.

It should be stressed that the Fact-Finding Mission is strictly limited to establishing facts and is not a tribunal. The Mission believes that there can be no peace in the South Caucasus as long as a common understanding of the facts is not achieved.

## COUNCIL DECISION 2008/901/CFSP

of 2 December 2008

## concerning an independent international fact-finding mission on the conflict in Georgia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 13(3) and Article 23(1) thereof,

Whereas:

- (1) On 1 September 2008, the European Council stated that the European Union is ready to commit itself to support every effort to secure a peaceful and lasting solution to the conflicts in Georgia, and that it is ready to support confidence-building measures.
- (2) On 15 September 2008, the Council supported the idea of an independent international inquiry into the conflict in Georgia.
- (3) Ms Heidi TAGLIAVINI should be appointed as head of this fact-finding mission,

HAS DECIDED AS FOLLOWS:

*Article 1*

**Head of the independent international fact-finding mission and terms of reference**

1. Ms Heidi TAGLIAVINI is hereby appointed head of the independent international fact-finding mission on the conflict in Georgia, hereinafter 'the fact-finding mission', for the period from 2 December 2008 to 31 July 2009.
2. The aim of the fact-finding mission shall be to investigate the origins and the course of the conflict in Georgia, including with regard to international law <sup>(1)</sup>, humanitarian law and human rights, and the accusations made in that context <sup>(2)</sup>. The geographical scope and time span of the investigation will be sufficiently broad to determine all the possible causes of the conflict. The results of the investigation will be presented to the parties to the conflict, and to the Council, the Organisation for Security and Cooperation in Europe (OSCE) and the United Nations (UN), in the form of a report.
3. The head of the fact-finding mission shall be responsible for the implementation of the fact-finding mission. She shall determine, in complete independence, the procedures and working methods of the fact-finding mission, and the content of the report referred to in paragraph 2.

*Article 2*

**Financing**

1. The financial reference amount intended to cover the expenditure related to the implementation of the fact-finding

mission shall be EUR 1 600 000 for the period from 2 December 2008 to 31 July 2009.

2. The expenditure financed by the amount stipulated in paragraph 1 shall be eligible as from 2 December 2008.
3. The expenditure shall be managed in accordance with the rules and procedures applicable to the general budget of the European Communities. The management of the expenditure shall be subject to a contract between the head of the fact-finding mission and the Commission.
4. The head of the fact-finding mission shall be accountable to the Commission for all expenditure.

*Article 3*

**Composition of the fact-finding mission**

The composition of the fact-finding mission shall be decided by the head of mission. It shall comprise recognised experts, in particular lawyers, historians, military staff and human rights experts.

*Article 4*

**Assessment**

The implementation of this Decision shall be reviewed by the Council before 31 July 2009.

*Article 5*

**Entry into effect and expiry**

This Decision shall take effect on the day of its adoption.

It shall expire on 31 July 2009.

*Article 6*

**Publication**

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 2 December 2008.

*For the Council*  
*The President*  
C. LAGARDE

<sup>(1)</sup> Including the Helsinki Final Act.

<sup>(2)</sup> Including allegations of war crimes.





Source: Fischer Weltatmanach, Fischer Taschenbuch Verlag, Frankfurt am Main, 2009

## Introduction

1.) On the night of 7 to 8 August 2008, after an extended period of ever-mounting tensions and incidents, heavy fighting erupted in and around the town of Tskhinvali in South Ossetia. The fighting, which soon extended to other parts of Georgia, lasted for five days. In many places throughout the country it caused serious destruction, reaching levels of utter devastation in a number of towns and villages. Human losses were substantial. At the end, the Georgian side claimed losses of 170 servicemen, 14 policemen and 228 civilians killed and 1 747 persons wounded. The Russian side claimed losses of 67 servicemen killed and 283 wounded. The South Ossetians spoke of 365 persons killed, which probably included both servicemen and civilians. Altogether about 850 persons lost their lives, not to mention those who were wounded, who went missing, or the far more than 100 000 civilians who fled their homes. Around 35 000 still have not been able to return to their homes. The fighting did not end the political conflict nor were any of the issues that lay beneath it resolved. Tensions still continue. The political situation after the end of fighting turned out to be no easier and in some respects even more difficult than before.

2.) In view of the continued uncertainty and lack of stability of the situation, three weeks later, on 1 September 2008, the EU Council pledged its commitment to support every effort to secure a peaceful and lasting solution to the conflict in Georgia. It also declared its readiness to support confidence-building measures. Then on 2 December 2008, the EU Council of Ministers decided to set up an Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG). Its terms of reference would aim to:

*“Investigate the origins and the course of the conflict in Georgia, including with regard to international law (footnote: including the Helsinki Final Act), humanitarian law and human rights, and the accusations made in that context (footnote: including allegations of war crimes).”*

The Council of Ministers also noted that the geographical scope and time span of the investigation should be sufficiently broad for it to determine all the possible causes of the conflict. The full text of the decision taken by the EU Council of Ministers on 2 December 2008 is included in this Report (p. 3).

3.) IIFFMCG is the first fact-finding mission of its kind in the history of the EU. The Fact-Finding Mission started its work right after the EU Council of Ministers decision of 2 December 2008 with a core team of three members led by Swiss Ambassador Heidi Tagliavini who had been appointed Head of IIFFMCG by the EU Ministers, leaving to her all decision-making on the Mission's procedures and working methods as well as decisions on the selection of its staff. The mandate also stated that the Head of the Fact-Finding Mission should determine the content of the Report in complete independence. It should be mentioned here that there were never any attempts by any side to interfere with this independent mandate. The core team set up its main office in Geneva, where the Geneva Centre for Security Policy generously provided office accommodation, while the Belgian Government also kindly provided office space in Brussels. Another Mission office was opened in Tbilisi.

4.) After employing a small support staff, the Mission contracted some 20 experts for specific written contributions on military, legal, humanitarian and historical issues to be considered under the mandate. Additionally a Senior Advisory Board was set up, in order to review the Mission's work and to provide it with counsel and guidance. It was composed of persons of widely-recognised knowledge and expertise in the field of international relations, in particular conflict management. The Mission had the privilege of welcoming four former Ministers of Foreign Affairs or of Defence to this board, plus a former long-time President of the International Committee of the Red Cross and an equally experienced former United Nations Under-Secretary-General and Head of the Department of Peacekeeping Operations. As will be explained in more detail in the attached Acknowledgements, the Mission is deeply grateful for the advice and the support it has received from both senior advisers and experts (please see Acknowledgements for the complete list).

5.) The Mission's mandate stipulates that the results of its investigations will be presented to the EU Council of Ministers, as well as to the parties involved in the conflict of August 2008 and to the OSCE and the UN in the form of a report. For the purposes of this Report, and in order to proceed from what the sides directly concerned had to say, questionnaires related to the military, legal, humanitarian and political aspects of the events were sent to Moscow, Tbilisi, Sukhumi and Tskhinvali. In addition, the sides were asked to give their comprehensive views and an evaluation of the events. Although not all of the questions were answered, it is fair to say that, overall, the

replies from all sides were substantial and in line with the Mission's expectations. All written replies and other contributions such as official documents, maps and overviews made available by the different sides involved in the conflict are attached, complete and unaltered, to this Report. It goes without saying that apart from the information made available by the sides, there was a wealth of information from public sources, including books, articles, studies and other writings, together with videos and photographs, which served as a further basis for the Report. All of this was carefully studied, checked and counter-checked as needed and wherever possible.

6.) In addition, the Mission's core members and experts repeatedly travelled to Tbilisi, Moscow, Tskhinvali and Sukhumi as well as to sites on the ground where fighting had taken place and/or which were of particular interest from a humanitarian and human rights point of view. Furthermore, important sites such as the Roki tunnel, the Akhagori region and the Kodori Valley were visited. There were field visits for direct talks with those who had personally witnessed the tragic events. The Mission's representatives held dozens of talks and interviews with government officials and diplomats, political as well as military leaders, witnesses and victims, academic writers, independent experts and other specialists familiar with the Caucasus region and the events of summer 2008. All EU governments, together with other interested parties such as the United States, Ukraine, neighbouring countries, NATO, OSCE, the Council of Europe and the International Committee of the Red Cross (ICRC) were contacted and invited to provide whatever material in their possession was pertinent to the conflict. The UN Headquarters in New York, UNHCR and OHCHR were all called upon for information. Detailed discussions took place with representatives of the United States in Washington and of Ukraine in Brussels. Additionally NATO, the OSCE, the Council of Europe and the ICRC were visited at their respective headquarters.

7.) The views of the sides involved in the conflict have been widely divergent from the beginning, and appear to be getting more so as time goes by. Thus the truth seems increasingly difficult to ascertain and verify. Nevertheless the events and developments leading up to this conflict are a matter of historical fact, and this Report will try to explain them while focusing on the difficult relationship between Russia and Georgia and its breakaway region of South Ossetia. The conflict in Abkhazia played a more limited yet still substantial role in the events of early August 2008. It is a welcome asset that a number of respected international institutions and organisations have already investigated the roots

and the causes of the August 2008 conflict, among them the Council of Europe, the British House of Lords, the US Congress, the Parliaments of Georgia and of Ukraine, the UNHCR, ICRC, Human Rights Watch (HRW), International Crisis Group (ICG), Amnesty International (ai) and others. The Mission acknowledges these efforts, and has in many ways been able to draw on the knowledge and experience of their authors. In some instances, persons or institutions made important information and material available to the Mission on their own initiative. Summing up, it should be noted that the Mission has met with an almost un hoped-for high and indeed very welcome degree of cooperation from all the sides directly involved in the conflict, and in many instances from outside actors as well.

8.) The Fact-Finding Mission would like to underline that its use of names, terms and expressions, particularly with regard to the conflict regions, should not be construed as implying any form of recognition or non-recognition by the Mission or as having any other political connotation whatsoever. A special note of caution seems necessary, too, as regards allegations of violations of International Humanitarian Law and Human Rights and also as regards allegations of war crimes and genocide. The European Council directed the Mission to investigate these allegations. At the same time, the Mission only started its work at the end of 2008. Consequently it was necessary to base much of the fact-finding on investigations which had been carried out soon after the conflict by international and regional organisations such as the ODIHR (OSCE), the Council of Europe and the UNHCR as well as by well-known and respected international non-governmental organisations such as Amnesty International, Human Rights Watch, International Crisis Group and others. The Mission also had several meetings with representatives of the International Committee of the Red Cross. Additionally the Mission was able to collect first-hand evidence from witnesses and victims and through personal observation and documents on the spot. In summary, it should be noted that the factual basis thus established may be considered as adequate for the purpose of fact-finding, but not for any other purpose. This includes judicial proceedings such as the cases already pending before International Courts as well as any others.

9.) In spite of all the work involved, this Report cannot claim veracity or completeness in an absolute sense. It incorporates what has been available to the Mission at the time of writing. It may well be that additional information will become available at a later date, because it may not now have been correctly assessed as significant, or because it has

accidentally or even deliberately been withheld by sources. This cannot be excluded, yet to the best of the Mission's knowledge there are no indications at this time that this has been the case with regard to specific items or elements. Other elements could, at least theoretically, have been falsified or misread. There were cases of open contradiction among the sides to the conflict in the assessment of important documents. The Mission had no access to intelligence reports or satellite imagery from intelligence sources. The Mission also had to limit its considerations in terms of time and space. While the starting point has been kept flexible, in the sense that the discussions become more detailed the closer they come to 7 August 2008, the end of the period under review has generally been set at 8 September 2008, when the second agreement on the implementation of the ceasefire reached between Presidents Sarkozy, Medvedev and Saakashvili indicated that the main developments were no longer taking place in the military sphere but, once again, in the realm of politics and diplomacy. In terms of its geographical scope, the report considers regional and non-regional actors only if they were involved in the conflict in some political or military way either during or before the events.

10.) What may be said, however, is that every conceivable effort has been made to collect pertinent items of information and to examine and consider them in a responsible manner for the purpose of this Report. This has been done with the utmost care, and although there can never be total assurance that there are no mistakes or omissions, all efforts were made to keep their number down. The Mission also firmly believes in fairness, impartiality, even-handedness and balance as guiding principles for its work, and in particular for this Report. It is thus not the purpose of the Report to re-open old wounds or to stir up emotions. On the contrary, by presenting the sequence of events on the basis of the information available at the time of its writing, and by discussing the responsibility for them, the Report will provide a firm basis from which to arrive at a sober assessment of the situation as it really is. This is the starting point for all serious and responsible politics, and in that sense the Report will make a contribution to the stable and peaceful environment the South Caucasus needs as a prerequisite for the development of all the countries and nations sharing the region. It is the Mission's hope that all sides in the conflict will understand and accept these principles, even if some of their actions may be reviewed in a critical manner. Only then will the Report be able to improve the prospects for securing a lasting, peaceful solution to the conflict in Georgia, in line with the European Council's commitment of 1 September 2008.

## **The Conflict in Georgia in August 2008**

1.) The result of armed confrontation is always human tragedy. After fighting has ended there is a sad record of killings and other losses, of intense suffering, of dreams and hopes that were shattered, in many cases forever. We do not know of any better way to understand the root causes of the 2008 conflict in Georgia than through the minds of those who took part and those who had suffered. We will come to know that all sides involved in the conflict had their grievances, that their actions had origins in their experience and memory, and that most of those taking part thought that what they did had to be done. In a close look at the peoples' motives we shall understand their aspirations, even when we are not able to accept the means. Understanding the people will lead us to the facts. This Report will try to give a fair and even-handed view of the actions taken by the sides to the conflict, and their reasons as well as their consequences. Many of these will be critically reviewed. Nothing, however, will touch upon our respect for either individual fates or the aspirations of the peoples of the region, large or small. These aspirations were not the decisive causes of the hostilities, as similar problems were peacefully solved elsewhere. It was the way in which these problems were handled and sometimes exploited which paved the way to armed confrontation. On this basis of respect and understanding, it is the purpose of this Report to describe the events that occurred, so that conclusions might be drawn for a safer future of the region and beyond.

2.) On the night of 7 to 8 August 2008, a sustained Georgian artillery attack struck the town of Tskhinvali. Other movements of the Georgian armed forces targeting Tskhinvali and the surrounding areas were under way, and soon the fighting involved Russian, South Ossetian and Abkhaz military units and armed elements. It did not take long, however, before the Georgian advance into South Ossetia was stopped. In a counter-movement, Russian armed forces, covered by air strikes and by elements of its Black Sea fleet, penetrated deep into Georgia, cutting across the country's main east-west road, reaching the port of Poti and stopping short of Georgia's capital city, Tbilisi. The confrontation developed into a combined inter-state and intra-state conflict, opposing Georgian and Russian forces at one level of confrontation as well as South Ossetians together with Abkhaz fighters and the Georgians at another. Such a combination of conflicts going on at different levels is particularly prone to violations of International Humanitarian Law and Human Rights Law. This is indeed what happened, and many of these instances were due to the action of irregular armed groups on the South Ossetian side that would not or could

not be adequately controlled by regular Russian armed forces. Then another theatre of hostility opened on the western flank, where Abkhaz forces supported by Russian forces took the upper Kodori Valley, meeting with little Georgian resistance. After five days of fighting, a ceasefire agreement was negotiated on 12 August 2008 between Russian President Dmitry Medvedev, Georgian President Mikheil Saakashvili and French President Nicolas Sarkozy, the latter acting on behalf of the European Union. An implementation agreement followed on 8 September 2008, again largely due to the persistent efforts of the French President. This successful political action stood in contrast to the failure of the international community, including the UN Security Council, to act swiftly and resolutely enough in order to control the ever-mounting tensions prior the outbreak of armed conflict. Since then, however, with the exception of the establishment of an EU Monitoring Mission (EUMM) and the Geneva talks, almost no progress has been made in the difficult process of establishing peace and stability in the region. The situation remains tense and volatile, and there are many who fear a resumption of hostilities.

3.) The shelling of Tskhinvali by the Georgian armed forces during the night of 7 to 8 August 2008 marked the beginning of the large-scale armed conflict in Georgia, yet it was only the culminating point of a long period of increasing tensions, provocations and incidents. Indeed, the conflict has deep roots in the history of the region, in peoples' national traditions and aspirations as well as in age-old perceptions or rather misperceptions of each other, which were never mended and sometimes exploited. While the region had also known a long tradition of peaceful cohabitation of different nations and creeds, there were among its smaller nations underlying feelings of deprivation and of having been relegated to inferior status. Soviet federalism did not help to overcome latent antagonisms, and the chaotic period that followed the break-up of the Soviet Union further added to a pattern of mutual mistrust and even hostility in the region. The wave of newly-found self-consciousness that followed political changes in Georgia since the end of 2003 clashed with another wave of assertiveness emanating from the Russian Federation, which tried to establish a privileged zone of interest in its "near abroad", where developments and events thought to be detrimental to Russia's interests were not easily accepted. At the same time, the peacekeeping arrangements that were established with the help of the international community were increasingly outrun by new and more threatening developments in the political and military situation. They had been set up in the 1990s after the armed conflicts in Abkhazia and South Ossetia in the wake of Georgian



independence and since then had remained more or less unchanged. Without the adjustments and political support that the international organisations present in the region would have needed, they finally lost their grip and could no longer fulfil their intended functions.

4.) Beyond the human dimension there is, of course, a historical and political background to the armed conflict of August 2008. Georgia is a very old Christian nation, and sees itself as being much older than Russia. Georgian national identity claims historical origins dating as far back as the establishment of an autocephalous Georgian church in the 4th century and the creation of a Georgian alphabet in the 5th century. The decisive historical encounter between the two nations came during the reign of Russian Empress Catherine II, when in 1783 in the town of Georgievsk a treaty was signed between Russia and King Erekle II, who was in control of what is now the eastern part of Georgia, providing for Russian protection against Persian attacks. This paved the way for further steps of Russian domination, both in terms of depth and space, finally leading to the complete integration of Georgia into the Russian Empire from 1881 until 1917. This period by and large coincided with a Georgian national awakening promoted by a patriotically-oriented Georgian intelligentsia which was frequently critical of Russian domination and russification. In Russian views, however, Georgia had been given much-needed protection against ravaging neighbours. The installation of a system of modern administration ranging from road building to an efficient education system was another achievement brought to Georgia by Russia. While Russia was treated by parts of the Georgian historical narrative almost as a threat to the existence of the Georgian nation, and while there were indeed attempts to subdue Georgian cultural heritage, Georgians were to some extent even a privileged nation within the Russian Empire. Finally, there were many in Georgia with an aversion to Russian imperial power and its heavy-handed and backward ways, but at the same time they were attracted by modern civilisation and a European outlook as offered by and through Russia.

5.) Present-day Georgia considers the three year existence of the Democratic Republic of Georgia from 1918 to 1921, then swiftly and ruthlessly suppressed by Bolshevik forces, as important a reference point for national liberation and modern democratic statehood as was its final emergence out of the dissolution of the Soviet Union with the promulgation of Georgia's Declaration of Independence of 9 April 1991. In both instances Georgian independence emerged out of a severe crisis, and even the downfall, of its powerful

northern neighbour. Independence in 1991 was preceded by tragic events such as the killing of Georgian demonstrators by Soviet troops on 9 April 1989. It came to life after a decade-long history of armed fighting, suppression and the mass terror, which had marked the Stalin era. Indeed there was little which might have induced newly-independent Georgia to follow the patterns of Russian and Soviet years and much of the political class as well as public opinion in Georgia took a sharp pro-Western turn. There was one important legacy from the Soviet era, though: the subdivision of Georgia into three political-territorial entities, including the Autonomous Republic of Abkhazia and the Autonomous Oblast' (district) of South Ossetia. Of course there also remained overall Georgia with its capital city Tbilisi, within its internationally recognised borders coinciding with the former "Soviet Socialist Republic of Georgia", as it stood on 21 December 1991. During the period of transition to post-Soviet sovereignty the country's first President, Zviad Gamsakhurdia, then did a lot in terms of nationalism to alienate the two smaller political-territorial entities of Abkhazia and South Ossetia from the Georgian independence project, proclaiming ethno-centrist slogans such as "Georgia for Georgians". Nationalism and even chauvinism from all sides together with questionable political actions added to the tensions. The fighting that finally broke out between Georgian forces and separatist forces, first in South Ossetia in 1991 - 1992 and then in Abkhazia 1992 - 1994 ended with Georgia losing control of large parts of both territories. There was support from Russia for the insurrectionists, yet it seems that the Russian political elite and power structures were divided on the issue and partly involved, and Moscow remained on uneasy terms with Tbilisi at the same time.

6.) In the internal Georgian turmoil after the country's unsuccessful military engagement in the armed conflicts in Abkhazia and South Ossetia, Zviad Gamsakhurdia's successor, President Eduard Shevardnadze, had to ask Moscow for assistance in October 1993 to suppress another insurrection, this time initiated by Gamsakhurdia supporters in the western province of Samegrelo. Russian troops helped as requested. Eventually this led to a pro-Russian re-orientation of Georgia's foreign policy. In October 1993 Eduard Shevardnadze signed Georgia's accession to the Russian-led Commonwealth of Independent States (CIS) and in the following year Tbilisi joined the Russian-led Collective Security Treaty (CST), too. Four Russian military bases extended their presence on Georgian soil and Russian border troops remained deployed along Georgia's border with Turkey and patrolled the sea shores. In addition, Russian forces undertook

peacekeeping responsibilities both in South Ossetia and later in Abkhazia. An agreement concluded in June 1992 in Sochi between the two leaders Eduard Shevardnadze and Boris Yeltsin established the Joint Peacekeeping Forces (JPKF) for South Ossetia, consisting of one battalion of up to 500 servicemen each of the Russian, Georgian and Ossetian sides, to be commanded by a Russian officer. Peacekeeping in Abkhazia was the subject of another ceasefire agreement concluded in Moscow in May 1994, later to be endorsed by the UN Security Council, which led to the establishment of the CIS Peacekeeping Force (CIS PKF) of up to 3 000 servicemen. Among CIS countries, however, only Russia provided troops. The United Nations Observer Mission in Georgia (UNOMIG) was set up in August 1993. Its responsibilities included supervision of the implementation of the ceasefire agreements for Abkhazia. The UN Secretary-General's Special Representative was entrusted with the task of promoting the Georgian-Abkhaz peace process. An OSCE Mission was set up in December 1993 in the context of the South Ossetian conflict, mandated to assist conflicting parties in reaching a peaceful political settlement. These structures were largely under the influence of Russia; if not more directly, then at least by means of a vetoing position.

7.) At the turn of the millennium it became apparent that the unresolved political status of South Ossetia and Abkhazia had become more difficult to manage and that there was no clear-cut solution in sight. At the same time, geopolitical changes became manifest, among them NATO's eastward enlargement and a new international interest in the Caucasus region, linked to extended security considerations and energy supplies. Under its new President Vladimir Putin, Russia became more stable and also more adamant in imposing its influence upon its "near abroad". There were changes taking place in Georgia, too. Already on the eve of taking his oath of office, President Saakashvili had declared the solution of the conflicts in South Ossetia and Abkhazia a priority of his presidency. In his first year in office in 2004, his success in bringing back under Tbilisi's control without too much difficulty the estranged southern Georgian province of Adjara and improving Georgia's economy may have added further to President Saakashvili's resolve. However, developments on the two sides did not meet. After an initial short period which even showed some promising signs, relations between Russian President Vladimir Putin and the newly elected Georgian President Mikheil Saakashvili soon became tense. The political climate deteriorated rapidly. Military spending in Georgia under President Saakashvili's rule increased quickly from below 1 % of GDP to 8 % of GDP, and there were few who

did not see this as a message. Additionally, the strong pro-Western orientation of Georgia's foreign policy and President Saakashvili's energetic drive for Georgia to become a member of NATO added to Moscow's concerns, even though a first admission request had already been tabled by President Shevardnadze. Finally, Georgia's foreign policy under President Saakashvili sought to find like-minded allies such as Kiev after the Orange Revolution, and to support together with them pro-Western orientation elsewhere in the extended string of countries ranging from the Baltic Sea to the Black and Caspian Seas. As might have been expected, however, all this did not go down well with Russia and its new assertiveness in post-Soviet space.

8.) While relations between Georgia and Russia were in a period of continued deterioration, marked by incidents as well as by unfriendly and sometimes even bellicose rhetoric, the United States assumed a clear lead among Tbilisi's foreign policy partners. The US gave their determined political support to Georgia and to President Saakashvili personally, culminating in President Bush's famous "beacon of liberty" speech in Tbilisi on 10 May 2005. The US provided generous economic assistance, too. Georgia became one of the most important recipients of US aid on a per capita basis. Most importantly, the US embarked upon an extensive military aid programme for Georgia, both in terms of training and equipment, also providing financial means. The military aid was at first designed to assist Georgia in regaining full control over the Pankisi Valley in the Caucasus where Chechen fighters had allegedly sought refuge, as Russia had claimed. Further US military aid programmes were said to assist Georgian armed forces in preparing for international assignments abroad, such as in Kosovo, in Iraq and in Afghanistan. In the end, the Georgian armed forces had about doubled their strength in terms of manpower compared to the Shevardnadze years, with much better training and equipment than ever before, and much of this newly-acquired military strength was garrisoned on modernised military bases; the most important of them in Senaki facing Abkhazia and the other one near Gori facing South Ossetia. There were reportedly more than a hundred US military advisers in the Georgian armed forces when the conflict erupted in August 2008, and an even larger number of US specialists and advisors are thought to have been active in different branches of the Georgian power structures and administration. Considerable military support in terms of equipment and to some extent also training was equally provided by a number of other countries led by Ukraine, the Czech Republic and Israel, the latter contributing in terms of technology and quality rather than quantity, all of them

adding to the new military strength of Georgia, which was proudly displayed on suitable occasions such as National Day parades.

9.) On the European side, most EU member countries showed little inclination to add further to the military aid provided to Georgia. There was, however, involvement by the EU, or at least some of its larger member countries, in peace efforts such as the Group of Friends of Georgia, in which the United States, Russia, the United Kingdom, France and Germany were set to cooperate politically on the Abkhaz issue (called Friends of the UN Secretary-General from 1997 onward in order to satisfy Abkhaz objections). A number of eastern and northern EU countries established closer ties with Georgia under the leadership of President Saakashvili, in order to assist the country in developing its Atlantic and European orientation. Georgia received economic aid from the EU Commission amounting to over € 400 million in the years from 1992 to 2004, and additionally some EU countries such as Germany gave substantial bilateral economic support of their own. There also was European engagement as relates to the South Ossetian and Abkhaz issues. Since 1997 there had been some EU Commission projects in South Ossetia, and since 2004 an extensive rehabilitation programme financed by the EU got under way in the Georgian-Ossetian and in the Georgian-Abkhaz conflict zones. In April 2001 the EU Commission became an observer, albeit on economic issues alone, in meetings of the Joint Control Commission (JCC), the multilateral body in charge of supervising the implementation of the Sochi Ceasefire Agreement for South Ossetia. A Partnership and Cooperation Agreement between Georgia and the EU was signed in 1996 and entered into force in 1999.

10.) Before its eastern extension soon after the turn of the millennium, the EU further increased its efforts to foster stability in its neighbouring regions to the east, including the South Caucasus with Georgia. An EU Special Representative for the South Caucasus was appointed in 2003, initially mandated to support reform policies and later on also to assist with the settlement of conflicts. One year later, Georgia together with its two South Caucasian neighbours Armenia and Azerbaijan were included in the European Neighbourhood Policy, providing for closer political and economic links with the EU and increased assistance. In summary, over the years there was a gradual increase in European involvement in Georgia, which may be called forthcoming in terms of economic aid, politically friendly on the bilateral side, cooperative but cautious on contentious political issues and, except for some bilateral support from very few EU members, mostly distanced in terms of military support and sensitive security issues. A good case in point was the

European reluctance to take over the Border Monitoring Mission on the Caucasus range facing Russia, after Russia had vetoed the hitherto OSCE engagement in 2004. It may have been that this cautious approach was reflected, too, in the decision of the Bucharest NATO summit of April 2008 to take a positive line on Georgia's request to become a NATO member, but to abstain from steps leading immediately to its admission.

11.) It is true that a number of contentious legal issues resulting from the break-up of the Soviet Union also played their part in setting the stage for the armed conflict that was to follow in August 2008. The issue of self-determination of South Ossetians and Abkhaz as well as their right to unilateral secession from Georgia are two legal issues related to the conflict. Both South Ossetians and Abkhaz consider their right to self-determination as the legal basis for their quest for sovereignty and independence of the respective territories. However, international law does not recognise a right to unilaterally create a new state based on the principle of self-determination outside the colonial context and apartheid. An extraordinary acceptance to secede under extreme conditions such as genocide has so far not found general acceptance. As will be shown later, in the case of the conflict in August 2008 and the ensuing recognition of South Ossetia and Abkhazia, the Mission has found that genocide did not take place. Furthermore, much of international state practice and the explicit views of major powers such as Russia in the Kosovo case stand against it. This applies also to a process of dismemberment of a state, as might be discussed with regard to Georgia after the dissolution of the Soviet Union. According to the overwhelmingly accepted *uti possidetis* principle, only former constituent republics such as Georgia but not territorial sub-units such as South Ossetia or Abkhazia are granted independence in case of dismemberment of a larger entity such as the former Soviet Union. Hence, South Ossetia did not have a right to secede from Georgia, and the same holds true for Abkhazia for much of the same reasons. Recognition of breakaway entities such as Abkhazia and South Ossetia by a third country is consequently contrary to international law in terms of an unlawful interference in the sovereignty and territorial integrity of the affected country, which is Georgia. It runs against Principle I of the Helsinki Final Act which states "the participating States will respect each other's sovereign equality and individuality as well as all the rights inherent in and encompassed by its sovereignty, including in particular the right of every State to juridical equality, to territorial integrity and to freedom and political independence."

12.) Another legal issue related to the conflict and to relations between Georgia and Russia is the Russian so-called “passportisation” policy, meaning the mass conferral of Russian citizenship and consequently passports to persons living in South Ossetia and Abkhazia, where a vast majority of the population are now carrying such Russian passports. While Russian citizenship had been conferred in individual cases already at an earlier point in time, the new Russian Law on Citizenship which entered into effect in the year 2002 regulated in its articles 13 and 14 admittance to Russian citizenship in a simplified procedure and thus opened broader avenues soon to be exploited by thousands of new applicants from South Ossetia and Abkhazia. One of the essential requirements for other states to be obliged to recognise such conferrals of citizenship under the terms of international law is, however, that there must be an adequate factual connection between the applicant and the receiving country – in this case Russia – and which must not be arbitrary. This could be for example family connections, long-time residence and extended government or military service. In addition, an explicit consent of the home country is required. Georgian law, however, does not recognise dual citizenship. Former Soviet citizenship is not considered sufficient grounds, since this status had already been translated into Georgian citizenship at the time of independence. Given these requirements, only a limited number of such conferrals can be deemed as legally binding under international law. The vast majority of purportedly naturalised persons from South Ossetia and Abkhazia are not Russian nationals in terms of international law. Neither Georgia nor any third country need acknowledge such Russian nationality. Consequently, the persons living in South Ossetia and Abkhazia who had first become Georgian citizens after the dissolution of the Soviet Union continue to remain so irrespective of “passportisation” policies. They were still citizens of Georgia at the time of the armed conflict of August 2008, and in legal terms they remain so to this day unless they had renounced or lost their Georgian nationality in regular ways. The mass conferral of Russian citizenship to Georgian nationals and the provision of passports on a massive scale on Georgian territory, including its breakaway provinces, without the consent of the Georgian Government runs against the principles of good neighbourliness and constitutes an open challenge to Georgian sovereignty and an interference in the internal affairs of Georgia.

13.) The ever-mounting tensions in the conflict zone were approaching the level of open military confrontation. Already in spring 2008, a critical worsening of the situation in the Georgian-Abkhaz conflict zone could be observed. One of the sources of tension was the

intensification of air activities over the zone of conflict, including flights over the ceasefire line both by jet fighters and by unmanned aerial vehicles (UAVs). A number of Georgian UAVs were reportedly shot down by Abkhaz and Russian forces. In April 2008, the Russian-staffed CIS PKF was reinforced by additional troops and in late May 2008, a Russian military railway unit was sent to Abkhazia to rehabilitate the local railway, allegedly for humanitarian purposes, in spite of Georgian protests. The spring events were followed in summer 2008 by bombings of public places on the Abkhaz side of the ceasefire line, as well as roadside explosions on the Georgian side. In the course of summer 2008, the main focus of tension then shifted from the Georgian-Abkhaz to the Georgian-Ossetian conflict zone, triggered by subversive attacks as well as by intensified exchanges of fire between the Georgian and South Ossetian sides, including mortar and heavy artillery fire. In early July the conflict already seemed on the verge of outbreak as diplomatic action intensified at the same time. In mid-July, a yearly US-led military exercise called “Immediate Response” took place at the Vaziani base outside Tbilisi, involving approximately 2 000 troops from Georgia, the United States, Armenia, Azerbaijan and Ukraine. During the period of 15 July – 2 August 2008, Russian troops carried out large-scale training exercises in the North Caucasus Military District, close to the Russian-Georgian border as well as on the Black Sea. In early August, the South Ossetian authorities started to evacuate their civilian population to locations on the territory of the Russian Federation. Indeed, the stage seemed all set for a military conflict.

14.) Open hostilities began with a large-scale Georgian military operation against the town of Tskhinvali and the surrounding areas, launched in the night of 7 to 8 August 2008. Operations started with a massive Georgian artillery attack. At the very outset of the operation the Commander of the Georgian contingent to the Joint Peacekeeping Forces (JPKF), Brigadier General Mamuka Kurashvili, stated that the operation was aimed at restoring the constitutional order in the territory of South Ossetia. Somewhat later the Georgian side refuted Mamuka Kurashvili’s statement as unauthorised and invoked the countering of an alleged Russian invasion as justification of the operation. The official Georgian information provided to the Mission says in this regard that “to protect the sovereignty and territorial integrity of Georgia as well as the security of Georgia’s citizens, at 23.35 on August 7, the President of Georgia issued an order to start a defensive operation with the following objectives:

- Protection of civilians in the Tskhinvali Region/South Ossetia;



- Neutralisation of the firing positions from which fire against civilians, Georgian peacekeeping units and police originated;
- Halting of the movement of regular units of the Russian Federation through the Roki tunnel inside the Tskhinvali Region/South Ossetia”.

15.) The Georgian allegations of a Russian invasion were supported, *inter alia*, by claims of illegal entry into South Ossetia of a large number of Russian troops and armour, prior to the commencement of the Georgian operation. According to Georgian answers to the Mission’s questions, the process of building-up of Russian forces in South Ossetia had started in early July 2008, continued in the course of August and included troops and medical personnel, tents, armoured vehicles, tanks, self-propelled artillery and artillery guns. This process allegedly intensified in the night of 6 to 7 August and in the late evening of 7 August. Georgian allegations of Russian military build-up in South Ossetia prior to 8 August 2008 were denied, however, by the Russian side. According to the Russian information provided to the Mission, the first Russian units entered the territory of South Ossetia, and Russian air force and artillery began their attacks on Georgian targets at 14.30 on 8 August, i.e. immediately after the decision for an intervention was made by the leadership of the Russian Federation.

16.) The Mission is not in a position to consider as sufficiently substantiated the Georgian claim concerning a large-scale Russian military incursion into South Ossetia before 8 August 2008. However, there are a number of reports and publications, including of Russian origin, indicating the provision by the Russian side of training and military equipment to South Ossetian and Abkhaz forces prior to the August 2008 conflict. Additionally there seems to have been an influx of volunteers or mercenaries from the territory of the Russian Federation to South Ossetia through the Roki tunnel and over the Caucasus range in early August, as well as the presence of some Russian forces in South Ossetia, other than the Russian JPKF battalion, prior to 14.30 hours on 8 August 2008. Also it seems that the Russian air force started its operations against Georgian targets, including those outside South Ossetian administrative boundaries, already in the morning of 8 August, i.e. prior to the time given in the Russian official information. The Russian air force reportedly started its attacks in central Georgia (Variani, Gori), gradually extending such activities to other parts of the country, including the Senaki military base, military targets in the port of Poti and the capital of Tbilisi as well as some dual purpose

objects such as the Tbilisi airport radar, railroad tracks and other infrastructure and communication facilities. There are conflicting reports over whether in some instances civilian objects were hit deliberately or in terms of so-called collateral damage. The Mission found no conclusive evidence for either version. In addition to the Russian ground and air forces, the Black Sea fleet also soon engaged in the armed conflict, attacking targets on Georgian territory outside South Ossetia and providing naval cover for land operations.

17.) In the course of the armed conflict, subsequently named a “five-day war”, and its immediate aftermath, the Russian side justified their military intervention by their intention to stop an allegedly ongoing genocide of the Ossetian population by the Georgian forces, and also to protect Russian citizens residing in South Ossetia and the Russian contingent of the Joint Peacekeeping Forces deployed in South Ossetia in accordance with the Sochi Agreement of 1992. Russia claimed that in the morning of 8 August 2008 two Russian peacekeepers were killed and five wounded by the Georgian attacks on the peacekeepers’ premises in Tskhinvali. Georgia denied having conducted deliberate attacks against the Russian peacekeepers, arguing that the Georgian troops entering Tskhinvali were fired at from the Russian peacekeepers’ compounds and that they had to return fire. The Mission does not have independent reports which could substantiate or deny the allegations of either side. Albeit, taking into account the existing dangerous conditions on the ground, casualties among the Russian PKF personnel were likely. As far as Russian and South Ossetian accusations of genocide are concerned, they became less frequent in later months as the alleged Georgian intent for genocide could not be proven. The number of casualties among the Ossetian civilian population turned out to be much lower than claimed at the beginning. Russian officials stated initially that about 2 000 civilians had been killed in South Ossetia by the Georgian forces, but later on the number of overall South Ossetian civilian losses of the August 2008 conflict was reduced to 162. On 10 August, the Georgian Government declared a unilateral ceasefire and its intention to withdraw Georgian forces from South Ossetia. This ceasefire, however, was not followed by the opposite side. Finally, by the night of 10 to 11 August, most of the Georgian forces had withdrawn from the territory of South Ossetia. They were followed by Russian troops who entered deeper into Georgian territory by crossing the administrative boundaries of both South Ossetia and Abkhazia and set up military positions in a number of Georgian towns, including Gori, Zugdidi, Senaki and Poti.

During the final phase of military hostilities, Abkhaz units supported by Russian forces attacked the Georgian positions in the upper Kodori Valley and seized this territory, which had been vacated by the Georgian forces and most of the local Georgian population by 12 August 2008.

18.) Russia called its military actions in Georgia a “peace enforcement operation”, while Georgia called it an “aggression”. The international community, including major actors such as the EU, was reluctant to enter into any formal qualifications. There was, however, a general call to stop the fighting. On 12 August, French President Nicolas Sarkozy, in his capacity as Chairman of the European Council, went to Moscow and Tbilisi in a move to stop the military hostilities. A six-point ceasefire plan was agreed upon, providing, *inter alia*, for the immediate cessation of hostilities and withdrawal of forces to the positions occupied prior to the armed conflict. However, the Russian and South Ossetian forces reportedly continued their advances for some days after the August ceasefire was declared and occupied additional territories, including the Akhagori district which had been under Georgian administration until the August 2008 conflict, even if it is located within the administrative boundaries of South Ossetia as they had been drawn during the Soviet period. Most of the Russian troops withdrew from their positions beyond the administrative boundaries of South Ossetia and Abkhazia after 22 August, some of them only after an implementation agreement was reached on 8 September 2008 in Moscow or even as late as early October 2008. The full compliance by all parties with the above two agreements remains a matter of dispute. It should be noted, however, that with the implementation agreement concluded on 8 September 2008, the theatre of events ceased to be in the military sphere of operations and went back to the realm of political and diplomatic action. This included a fierce discussion of the responsibilities for the conflict, which started even before the guns had fallen completely silent.

19.) There is the question of whether the use of force by Georgia in South Ossetia, beginning with the shelling of Tskhinvali during the night of 7/8 August 2008, was justifiable under international law. It was not. Georgia had acknowledged that the prohibition of the use of force was applicable to its conflict in South Ossetia in specific legally binding international documents, such as the Sochi Agreement of 1992 or the 1996 Memorandum on Measures to Provide Security and Strengthen Mutual Trust between the Sides in the Georgian-South Ossetian Conflict. Even if it were assumed that Georgia was repelling an attack, e.g. in response to South Ossetian attacks against Georgian populated

villages in the region, according to international law, its armed response would have to be both necessary and proportional. It is not possible to accept that the shelling of Tskhinvali during much of the night with GRAD multiple rocket launchers (MRLS) and heavy artillery would satisfy the requirements of having been necessary and proportionate in order to defend those villages. It follows from the illegal character of the Georgian military assault that South Ossetian defensive action in response did conform to international law in terms of legitimate self-defence. However, any operations of South Ossetian forces outside of the purpose of repelling the Georgian armed attack, in particular acts perpetrated against ethnic Georgians inside and outside South Ossetia, must be considered as having violated International Humanitarian Law and in many cases also Human Rights Law. Furthermore, all South Ossetian military actions directed against Georgian armed forces after the ceasefire agreement of 12 August 2008 had come into effect were illegal as well.

20.) At least as far as the initial phase of the conflict is concerned, an additional legal question is whether the Georgian use of force against Russian peacekeeping forces on Georgian territory, i.e. in South Ossetia, might have been justified. Again the answer is in the negative. There was no ongoing armed attack by Russia before the start of the Georgian operation. Georgian claims of a large-scale presence of Russian armed forces in South Ossetia prior to the Georgian offensive on 7/8 August could not be substantiated by the Mission. It could also not be verified that Russia was on the verge of such a major attack, in spite of certain elements and equipment having been made readily available. There is also no evidence to support any claims that Russian peacekeeping units in South Ossetia were in flagrant breach of their obligations under relevant international agreements such as the Sochi Agreement and thus may have forfeited their international legal status. Consequently, the use of force by Georgia against Russian peacekeeping forces in Tskhinvali in the night of 7/8 August 2008 was contrary to international law.

21.) When considering the legality of Russian military force against Georgia, the answer needs to be differentiated. The Russian reaction to the Georgian attack can be divided into two phases: first, the immediate reaction in order to defend Russian peacekeepers, and second, the invasion of Georgia by Russian armed forces reaching far beyond the administrative boundary of South Ossetia. In the first instance, there seems to be little doubt that if the Russian peacekeepers were attacked, Russia had the right to defend them using military means proportionate to the attack. Hence the Russian use of force for defensive purposes during the first phase of the conflict would be legal. On the

second item, it must be ascertained whether the subsequent Russian military campaign deeper into Georgia was necessary and proportionate in terms of defensive action against the initial Georgian attack. Although it should be admitted that it is not easy to decide where the line must be drawn, it seems, however, that much of the Russian military action went far beyond the reasonable limits of defence. This holds true for all kinds of massive and extended military action ranging from the bombing of the upper Kodori Valley to the deployment of armoured units to reach extensive parts of Georgia, to the setting up of military positions in and nearby major Georgian towns as well as to control major highways, and to the deployment of navy units on the Black Sea. All this cannot be regarded as even remotely commensurate with the threat to Russian peacekeepers in South Ossetia. Furthermore, continued destruction which came after the ceasefire agreement was not justifiable by any means. It follows from this that insofar as such extended Russian military action reaching out into Georgia was conducted in violation of international law, Georgian military forces were acting in legitimate self-defence under Article 51 of the UN Charter. In a matter of a very few days, the pattern of legitimate and illegitimate military action had thus turned around between the two main actors Georgia and Russia.

22.) Could the use of force by Russia then possibly be justified as a “humanitarian intervention”, in order to protect South Ossetian civilians? To begin with, it is a highly controversial issue among legal experts whether there is any justification or not for humanitarian intervention. It might be assumed, however, that humanitarian intervention to prevent human rights violations abroad is allowed only under very limited circumstances, if at all. Among major powers, Russia in particular has consistently and persistently objected to any justification of the NATO Kosovo intervention as a humanitarian intervention. It can therefore not rely on this putative title to justify its own intervention on Georgian territory. And as a directly neighbouring state, Russia has important political and other interests of its own in South Ossetia and the region. In such a constellation, a humanitarian intervention is not recognised at all.

23.) Finally, the Russian Federation invoked the need to protect its own citizens living in South Ossetia. Under Article 61 (2) of the Russian constitution “the Russian Federation guarantees its citizens defence and patronage beyond its boundaries”. It is also true that since 1945, numerous states have led military actions by pointing to the need to protect their own nationals abroad. In many cases the legality of these actions was disputed. There is no customary law allowing such actions. If at all, such actions should be limited in scope

and duration and exclusively focused on rescuing and evacuating nationals. In the case at hand, the action was not solely and exclusively focused on rescuing and evacuating Russian citizens, but largely surpassed this threshold by embarking upon extended military operations over large parts of Georgia. Consequently, it must be concluded that the Russian military action outside South Ossetia was essentially conducted in violation of international law.

24.) Finally the military action that took place in the upper Kodori Valley must come under scrutiny. The Moscow Agreement on a Ceasefire and Separation of Forces of 1994, which had been signed also by the Abkhaz side, stipulated that “The parties shall scrupulously observe the ceasefire on land, at sea and in the air and shall refrain from all military actions against each other”. As the upper Kodori Valley did not belong to the Abkhaz-controlled territory under the provisions of the Moscow Agreement, the attack against it by Abkhaz units supported by Russian forces constituted an illegal use of force as prohibited by the Ceasefire Agreement and Article 2 (4) of the UN Charter and also an armed attack against Georgia in the sense of Article 51 of the UN Charter. The use of force by Georgia in defence of the attack was at the same time justified in terms of legitimate self-defence. The Abkhaz leadership gave, however, four different explanations in an attempt to justify its military operation. Abkhazia claimed that the military operation was launched “to liberate the Kodori Valley” and also that it had to be carried out to abort terrorist attacks against the civilian population. It further claimed the Abkhaz operation was necessary to pre-empt an imminent military operation by Georgia against Abkhazia, and finally Abkhazia deemed itself obliged to open a “second front” in accordance with its Treaty on Friendship and Cooperation with South Ossetia of 19 September 2005. However, none of these explanations can be considered as substantiated in fact or as legally valid. Hence the use of force by Abkhazia was not justified under international law. The same applies for the Russian support of these actions. Concluding the discussion on the use of force in the August 2008 conflict, a final look should be given to the repeated instances of threat of force by one side or the other before the beginning of the August 2008 conflict. It should be noted that Article 2 (4) of the UN Charter as well as the relevant ceasefire agreements require that states and parties to the conflict not only refrain from the use of force but explicitly also from the threat of force. Threats of this nature are equally not in conformity with Article 2 (3) of the Charter, which stipulates the obligation to settle

conflicts peacefully. The threats of force by all sides were consequently illegal and as such, violated international law.

25.) While it is true that political and military events and developments, together with their legal implications under international law, attract the attention of policy-makers, it is also true that most people directly involved in the conflict remember human fates and human suffering first and foremost. The August 2008 armed conflict unfortunately saw many crimes committed in violation of International Humanitarian Law and Human Rights Law. Beyond those acts committed during the five days of hostilities from 7/8 to 12 August, additional acts were perpetrated after the ceasefire came into effect, raising serious concerns about the co-responsibility of those forces in control of the situation, whose duty it was to protect the civilian population. Most of the violations committed during the August 2008 conflict and weeks after the ceasefire were committed in South Ossetia and in the adjacent so-called buffer zone. By contrast, few violations were reported in the upper Kodori Valley and Abkhazia. This exception does not relate, however, to the situation of ethnic Georgians in the Gali district of Abkhazia and the upper Kodori Valley, where their rights as a minority seem to be endangered.

26.) As for the conflict in South Ossetia and adjacent parts of the territory of Georgia, the Mission established that all sides to the conflict - Georgian forces, Russian forces and South Ossetian forces - committed violations of International Humanitarian Law and Human Rights Law. Numerous violations were committed by South Ossetian irregular armed groups, by volunteers or mercenaries or by armed individuals. It is, however, difficult to identify the responsibilities for and the perpetrators of these crimes. The fact that both Georgian and Russian forces in many cases used similar armament further complicates the attribution of certain acts. If it were not for the difficulties of identification and attribution, many of these acts have features which might be described as war crimes.

27.) The Russian and South Ossetian charge of genocide against Georgia was one of the most serious allegations made. There was an urgent need to examine this allegation, due to the grave connotations conjured by the term genocide in public opinion and conscience, and also to its very specific legal definition and to the ensuing serious consequences under international law. After having carefully reviewed the facts in the light of the relevant law, the Mission concludes that to the best of its knowledge allegations of genocide committed by the Georgian side in the context of the August 2008 conflict and its aftermath are

neither founded in law nor substantiated by factual evidence. This finding is mainly based on the fact that international law requires proof of specific intent for the crime of genocide to be constituted. It follows from this, that measures such as educational and public information initiatives should be taken to ensure that unfounded allegations of genocide do not further fuel tensions or encourage acts of revenge. With regard to allegations of ethnic cleansing committed by South Ossetian forces or irregular armed groups, however, the Mission found patterns of forced displacements of ethnic Georgians who had remained in their homes after the onset of hostilities. In addition, there was evidence of systematic looting and destruction of ethnic Georgian villages in South Ossetia. Consequently, several elements suggest the conclusion that ethnic cleansing was indeed practised against ethnic Georgians in South Ossetia both during and after the August 2008 conflict. Even at the time of the writing of this Report, the situation in the Akhagori district at the southeast end of South Ossetia continues to be a matter of concern, as ethnic Georgians are still leaving the region.

28.) As regards the provisions of International Humanitarian Law on the conduct of hostilities and the protection of non-combatants, the violations in question mainly concern the ill-treatment of persons, the destruction of property and forced displacement. More specifically the violations include indiscriminate attacks in terms of the type of weaponry used and their targeting, the lack of adequate protection by Russia and Georgia, widespread campaigns of looting and destruction of ethnic Georgian settlements by South Ossetians, as well as ill-treatment, gender-related crime including rape, assault, hostage-taking and arbitrary arrests, together with the failure by Russian forces to prevent and stop violations by South Ossetian forces, armed irregular groups and armed individuals before and after the ceasefire in South Ossetia and the adjacent territories. Adding to the severity of the situation, there was a considerable flow of internally displaced persons (IDPs) and refugees. Reportedly about 135 000 persons fled their homes, most of them from regions in and near South Ossetia. While most persons fled to other parts of Georgia, a significant number also sought refuge in Russia. The majority fled because of the dangers and the insecurity connected to the conflict situation. But also numerous cases of forced displacements in violation of International Humanitarian and Human Rights Law were noted. More than 35 000 IDPs/refugees are not expected to return to their homes in the foreseeable future, owing to the continued insecurity of the situation or to the destruction of their homes and property. It needs to be stressed that both South Ossetia and Abkhazia,



together with Russia, must take appropriate measures to ensure that IDPs/refugees, including those from the conflicts of the early 1990s, are able to return to their homes with no conditions imposed other than those laid down in relevant international standards, and that Georgia must respect the principle of return based on free individual decisions by the displaced persons.

29.) GRAD multiple rocket launching systems and cluster munitions are the two types of weaponry considered particularly dangerous for non-combatants because of their indiscriminate deadly effects. As far as the use of cluster munitions is concerned, Georgia has admitted their use only for specific military purposes, whereas Russia claimed that Georgia used them also against civilian targets. Russia has denied the use of cluster munitions, in spite of several independent reports confirming such use, including a commission of inquiry set up by the Dutch Ministry of Foreign Affairs in order to investigate the death of a Dutch journalist in Gori on 12 August 2008. There are similar contradictions relating to the use of GRAD rockets. Georgia claims that GRAD were only used against strictly military targets such as South Ossetian artillery in one of the Tskhinvali city districts, whereas OSCE observers and other independent sources confirm the massive shelling of other parts of Tskhinvali as well during the night of 7/8 August 2008, both from multiple launch rocket systems and artillery pieces. Reports from Amnesty International and Human Rights Watch also confirm this. This would indicate that during the Georgian offensive on Tskhinvali cluster munitions on whatever scale and GRAD MLRS were both used, amounting to indiscriminate attacks by Georgian forces, owing to the uncontrollable effects of such weaponry and its use in a populated area. There are also some indications and consequently concerns regarding Russian use of cluster munitions in military attacks on Gori and possibly elsewhere.

30.) Could there have been ways to avoid the conflict? It is true that peace efforts had been made over the years and there were even situations in which a peaceful settlement appeared to be less remote than before. Even though these efforts had failed, they still provide lessons for all concerned. The point of departure of all such plans had always been that any kind of settlement would have to be achieved, first of all, through Georgian constitutional reform, allowing for a meaningful degree of autonomy of Abkhazia and South Ossetia within a federal Georgia. In the negotiations on the political status of these two entities, the parties had a choice of variants of federalism. The Georgian Government was in favour of a so-called asymmetrical federalism, in which one constituent state would

enjoy more powers than the other. Under this model, Abkhazia would receive a higher level of autonomy than South Ossetia. However, the Abkhaz and South Ossetian sides had a strong preference – if their first choice for independence should prove to be impossible – for a confederation. Under the confederate model, their sovereignty would be recognised internationally and this in principle, would give them the right to secede, as they saw it. This combination of a weak federal government and sovereign powers for the member states was not appealing to the Georgian authorities. The Georgians were also afraid that, even if secession did not materialise immediately, the constituent states and their interests or even their possible grievances could be used as convenient levers by an outside power for constant intervention into Georgia's internal affairs.

31.) For a number of years the peace efforts, including those undertaken by the three parties and the international community, had a positive effect on regional peace and stability. There were also periods of Georgian-Abkhaz and Georgian-Ossetian *rapprochement* and the building of trust and mutual ties. Simultaneously with the process of Georgian-Abkhaz and Georgian-Ossetian détente and normalisation, another process was also going on: that of the gradual tightening of links between these two territories and the Russian Federation. This second process, more visible after 1999 and accelerated in the spring of 2008, appeared stronger than the first. Described by the Georgians on a number of occasions as the “creeping Russian annexation of Abkhazia and South Ossetia,” this tightening of links may have increased the Georgian frustration at the stalled peace processes and protracted failure to arrive at a comprehensive settlement.

32.) Notwithstanding the real or perceived interests of the third parties, one of weaknesses of the peace processes in South Ossetia and Abkhazia in 1992 - 2006 seemed to be the fact that the Georgian, Abkhaz and South Ossetian sides concentrated heavily on external aspects and players without paying sufficient attention to building mutual trust and promoting reconciliation. In 2006 - 2008 the Georgians did put stronger emphasis on bilateral cooperation and talks with Tskhinvali and Sukhumi, but the way in which they chose to do this – by decreasing Moscow's political role in the peace negotiations and that of the Russian peacekeepers on the ground – was not appealing to the Abkhaz and Ossetian sides, who regarded the Russian Federation as their main security guarantor. On the other side, the Abkhaz and Ossetian demands in this period for Georgian guarantees of the non-use of force and other unilateral concessions (the withdrawal of the Georgian security forces from the upper Kodori Valley, etc.), as preconditions for any resumption of the

peace process, could hardly be regarded as constructive either, especially in the context of public calls by some Abkhaz leaders for the forcible seizure (“liberation”) of the Georgian-administered upper Kodori Valley.

33.) As a power with traditionally strong links to the region and understandably enough, important political, economic and security interests there, Russia was given the role of facilitator in the Georgian-Abkhaz and the Georgian-Ossetian negotiation processes, and that of a provider of peacekeeping forces. This formula, while seemingly in line with the rules of Realpolitik, seriously affected the existing political equilibrium in the region. It meant in practice that these two conflicts could be settled not alone, when the sole interests of the Georgians, the Abkhaz and the Ossetians were duly reconciled, but that the interests of Russia had to be satisfied as well. At moments of increased tensions in the area Moscow had made it clear, particularly since 2006, that it would not stand idle in the event of Georgian military action against South Ossetia or Abkhazia. In the view of many Georgians, the Russian policy, especially from 2004 onwards - including the formalising of links with the breakaway territories, the granting of Russian passports to their populations, and declarations about using the Kosovo precedent as a basis for the recognition of South Ossetia and Abkhazia – was more concerned with the protection of its own interests than with the assumption of its responsibility as an honest broker. The Russian peacekeepers were also regarded as being largely a protective ring behind which secessionist entities were developing their institutions. In a situation of worsening Russian-Georgian relations, it became more and more difficult to find an acceptable compromise balancing the above triangle of actors and interests. The vastly superior political and military weight of Russia toppled the balance of what might have been possible otherwise, if at all, in terms of arrangements between Tbilisi and its two breakaway provinces.

34.) On the Georgian side, the establishment by Georgia of alternative South Ossetian and Abkhaz administrations in the breakaway regions in 2006 was regarded by many as the most controversial move by Tbilisi in the conflict resolution process. It may have been motivated by several considerations. One of them may have been related to the ongoing controversies over Kosovo, and Moscow’s warnings that it would recognise Abkhazia and South Ossetia if Kosovo’s independence was recognised by Western powers. For considerable parts of the territories of South Ossetia and Abkhazia to be under the formal control of pro-Georgian administrations may, therefore, have been regarded by the Georgian leadership as a preventive measure, aimed at making Russian recognition of the

two separatist provinces more difficult and therefore less feasible. Another consideration may have been to bring into place attractive examples of alternative administrations receiving generous support from Tbilisi.

35.) The international context in which events were unfolding was further complicated by decisions on Kosovo's independence, and also following the Bucharest NATO summit of April 2008, with its promise of Georgia's future NATO membership, but without any immediate steps for admission. The decision by the Russian Federation to withdraw the 1996 CIS restrictions on Abkhazia (March 2008) and to authorise direct relations with the Abkhaz and South Ossetian sides in a number of fields (April 2008), added another dimension to an already complex situation in the area. The lack of timely and sufficiently determined action by the international community, and to some degree the non-innovative approach to the peace process adopted by international organisations, contributed to the unfolding crisis. Thus a series of mistakes, misperceptions and missed opportunities on all sides accumulated up to a point where the danger of an explosion of violence became real. Unlike events which had taken place in the early 1990s, what was about to happen in August 2008 was no longer a localised conflict in a remote part of the world but a short, bitter armed confrontation between Russia and Georgia, fought on the battlefield but also on live television, and fraught with major international implications.

36.) This Report shows that any explanation of the origins of the conflict cannot focus solely on the artillery attack on Tskhinvali in the night of 7/8 August and on what then developed into the questionable Georgian offensive in South Ossetia and the Russian military action. The evaluation also has to cover the run-up to the war during the years before and the mounting tensions in the months and weeks immediately preceding the outbreak of hostilities. It must also take into account years of provocations, mutual accusations, military and political threats and acts of violence both inside and outside the conflict zone. It has to consider, too, the impact of a great power's coercive politics and diplomacy against a small and insubordinate neighbour, together with the small neighbour's penchant for overplaying its hand and acting in the heat of the moment without careful consideration of the final outcome, not to mention its fear that it might permanently lose important parts of its territory through creeping annexation. We also notice with regret an erosion of the respect of established principles of international law such as territorial integrity, and at the same time an increased willingness on all sides to accept the use of force as a means to reach one's political goals and to act unilaterally

instead of seeking a negotiated solution, as difficult and cumbersome as such a negotiation process might be. And finally, we see the long trail of human suffering and misery in the wake of armed action. Where lies the responsibility for all that has happened? Overall, the conflict is rooted in a profusion of causes comprising different layers in time and actions combined. While it is possible to identify the authorship of some important events and decisions marking its course, there is no way to assign overall responsibility for the conflict to one side alone. They have all failed, and it should be their responsibility to make good for it.

37.) Finally, it must be noted that there are no winners in this conflict. Everyone has lost, if not in terms of life and property alone, at least in the field of hopes and prospects for the future. Apart from the immediate losses on the ground, the political situation is more difficult than before. This is true not only of relations between Tbilisi on one side and Sukhumi as well as Tskhinvali on the other, where the conflict of August 2008 has not settled any of the contentious issues. The situation in the conflict region continues to remain tense. Any incident may spark off grave consequences. Relations between Georgia and Russia have come to an all-time low. In addition to all individual human tragedy and on top of the substantial regional outfall of the conflict, the international community is among the losers, too. The political culture of cooperativeness that had developed in Europe since the 1970s, and which was enshrined by CSCE/OSCE landmark documents from the Helsinki Final Act (1975) to the Istanbul Charter for European Security (1999), as well as the relevant documents adopted in the framework of the Council of Europe, has suffered. The threat and use of force have now returned to European politics. Established principles of international law such as respect for sovereignty and territorial integrity of states were ignored. Violations of International Humanitarian and Human Rights Law such as ethnic cleansing have resurfaced as elements of political reality. Falling back from civilised standards of political interaction in Europe is a consequence. Moreover, relations between Western powers and Russia have suffered. A rift has opened and it now requires cooperation from all to keep it from widening, considering that the conflict in Georgia is marked by even greater direct involvement of major powers than is the case with most other unresolved conflicts. As human suffering and political instability continue, the conflicts in Georgia urgently call for efforts to end them in a negotiated and peaceful manner, finally bringing peace to a region which has seen so much tragedy.

## Observations

1.) The conflict in Georgia continues to be a threat to peace in the Caucasus, causing destabilising effects in the region and beyond. There are three separate but interconnected levels within this conflict:

- The unresolved relationship between Georgian authorities and the minorities living within its borders;
- The strained and ambiguous relationship between Georgia and its powerful northern neighbour, the Russian Federation;
- The geo-strategic interests of major international players, both regional and non-regional, competing for political influence, access to energy supplies and other strategic assets.

None of these layers of conflict has lost any of its impact or importance since the armed conflict of August 2008.

*Efforts towards improved conflict prevention and conflict management therefore need to take into account the complexity of the situation in Georgia with its different layers and dynamics. Any viable solution must address all three layers.*

2.) There has been a series of dangerous events and developments in the conflict regions, escalating after 2003 and again after 2007, and even more so during the weeks preceding the August 2008 conflict. Even though Germany and other countries launched political initiatives shortly before the outbreak of the armed conflict in August 2008, and in spite of visits by important international foreign policy makers such as Javier Solana, Condoleezza Rice and others, there had been no adequate reaction by the international community which would have been both timely and vigorous enough to contain the continuing build-up of tensions and the increasing threat of armed conflict. Regardless of the belated international diplomatic efforts, the crisis had an almost free run.

*There is a need for more timely and more determined efforts to control an emerging crisis situation, and in such situations a more sustained engagement is needed from the international community and especially the UN Security Council, as well as by important regional and non-regional actors.*

3.) It has also emerged that the set of stabilising arrangements and institutions, such as the Joint Peacekeeping Forces (JPKF), the Joint Control Commission (JCC) and the OSCE presence in the case of South Ossetia, as well the Commonwealth of Independent States Peacekeeping Force (CIS PKF) and UNOMIG for the Abkhaz conflict, which had been established with the assistance of the international community following the armed conflicts in Abkhazia and South Ossetia during the early 1990s, were increasingly overtaken by new and more threatening developments both in the political and military fields. Increasing pressure from the parties as well as the changing international environment made the existing peace mechanisms lose their grip on the situation and give way when the events took a critical turn.

*As needs on the ground may change with new developments, the international community must be prepared to reassess, readjust and reinforce the stabilising arrangements and institutions which were put in place during or immediately after a crisis situation.*

4.) It has also become apparent that the effectiveness of monitoring, peacekeeping and other stabilising institutions and arrangements depends to a large extent on the trust and confidence in which they are being held by the parties to the conflict. This is in most cases directly related to the impartiality which the parties attribute to them, and this in turn is immediately linked to their country of origin or to the country thought to be in control. This is the case whether there is in reality bias or not.

*No party to the conflict or party which is considered to be strongly supportive of any of the sides should assume a position of command, or chair, or arbiter nor exercise any other control of an operation which rests on the notion of impartiality and even-handedness in order to be effective.*

5.) In the region, we noticed a period of increasingly aggressive language use and churning of emotions prior to the armed conflict of August 2008. In some instances militaristic features appeared in public and little was done to exert control over an increasingly hostile, if not xenophobic sentiment against individuals linked to the other side of the conflict. In public statements, the threat of force became more pronounced and ever more frequent. While this had been an ongoing process for years, there was a marked exacerbation of unfriendly sentiments and sometimes actions, both by officials and non-officials, in the run-up to and during the violent phase of the conflict.

*All sides to the conflict must be called upon to exert strict control over xenophobic and hostile sentiments and actions against citizens, property and all other reasonable interests of the other sides, and efforts should be made at educational institutions and in the media to provide a fair and balanced view of all sides involved, as well as of their history and actions. The prohibition of the threat of force as laid down in the UN Charter must be strictly observed by all sides.*

6.) As far as the international presence in the conflict areas is concerned, we witnessed the dismantling of important elements such as the presence of the OSCE and of UNOMIG. The phasing out of other arrangements such as the “Friends of the United Nations Secretary General” was another consequence. The CIS Peacekeeping Force as well as JPKF and the JCC ceased to exist. The European Union Monitoring Mission (EUMM) introduced a European presence as such in the region for the first time, but they were not admitted to the South Ossetian and Abkhaz sides.

*There is as yet no adequate replacement for the dismantled international presence and namely its main pillars UNOMIG and OSCE Mission to Georgia, and while EUMM should continue its duties, further efforts should be made to provide for an independent, neutral and effective international presence for the purpose of peacekeeping in the conflict area.*

7.) In the 2008 conflict in Georgia preventive diplomacy and international conflict management did not achieve their aims, partly because of a gradual erosion of previously negotiated and agreed common parameters between the parties and because of a continuous depreciation or even disregard for international commitments. Among the most important of these political commitments are the OSCE and its landmark documents such as the Helsinki Final Act 1975, the Charter of Paris for a new Europe of 1990 and the Charter for European Security adopted in 1999 in Istanbul. Throughout the continuous escalation of tensions that led to the armed conflict of August 2008, those OSCE commitments were repeatedly and even increasingly disregarded both in letter and spirit.

*It should not be accepted that the political culture of cooperativeness in international relations in and for Europe, as it had developed first in the CSCE and later in the OSCE contexts, be eroded. Efforts should be made to renew awareness of its importance for European security and cooperation, together with a return to its strict observance and application.*



8.) The conflict in Georgia in summer 2008 laid open tendencies by some of the political actors to move away from generally-accepted principles of international law such as the respect of territorial integrity. There were also ambiguities, if not infringements as related to the principle of sovereignty. There has also been a tendency to move away from multilateralism and negotiated results and solutions in favour of unilateral action. There was an increased readiness on the part of political actors to accept the use of force as a means to attain political goals, and lesser thought was given to considerations of conflict prevention.

*International law should continue to be respected and observed in its entirety. All tendencies to accept the erosion or a selective application of some of its principles, such as the respect of territorial integrity, must not be tolerated. Particular attention should be paid to upholding the rule of the non-use of force together with the non-use of the threat of force. Multilateral and negotiated solutions must continue to be given preference over unilateral action, and conflict prevention must continue to be a prevailing consideration.*

9.) Destabilising effects may also result from a country's assertive pursuit of foreign policy objectives concerning privileged spheres of interest, in particular with regard to neighbouring countries, for such a policy is set to deprive smaller States of their freedom of choice and to limit their sovereignty.

*Political concepts and notions such as privileged spheres of interest or otherwise laying claim to any special rights of interference into the internal or external affairs of other countries are irreconcilable with international law. They are dangerous to international peace and stability and incompatible with friendly relations among States. They should be rejected.*

10.) The August 2008 conflict in Georgia was a combination of an inter-state conflict between Georgia and Russia and an intra-state conflict. Such a conflict is subject to both military engagements between regular armed forces and armed actions by less firmly-controlled militias and even irregular armed groups. Situations of this kind are particularly prone to violations of International Humanitarian Law and Human Rights Law. Special attention must be given to the responsibility to protect non-combatants by regular forces in effective control of the situation. It needs to be stressed that during the August 2008 conflict regular forces frequently failed, however, to provide adequate protection of civilians against atrocities committed by militias and irregular armed groups.

*In any war that combines elements of an inter-state conflict with that of an intra-state conflict, close attention must be given to the responsibility of regular armed forces to protect non-combatants. Their training and instructions must raise awareness of their responsibility not only to abstain from committing atrocities themselves, but also to protect civilians against all violations of International Humanitarian and Human Rights Law committed by militias and irregular armed groups. The effective protection against rape and other gender-related crime must be given special importance.*

11.) The supply of arms and military equipment as well as the provision of military training to the conflict region were and continue to be a sensitive issue. Even when done within the limits established by international law or by political commitments of a non-binding nature, military support must stay within the boundaries set by common sense and due diligence, keeping in mind both intended and unintended use of the arms and equipment supplied.

*Utmost care should be taken by providers of military aid to refrain from giving their support, even unintentionally or indirectly, to any actions or developments detrimental to the stability of the region.*

12.) Finally we note that since the conflict erupted in August 2008, the situation in the conflict region has hardly improved. The political environment for a settlement of the conflict has in fact become more difficult following the recognition of Abkhazia and South Ossetia as independent States by one of the sides to the conflict. There is continuing tension between the sides to the conflict, in many cases bordering on open hostility; political contacts between the sides are few and limited in substance. Since August 2008 there have been a substantial number of dangerous incidents, and some of them could have ignited a wider confrontation. Even though both sides stress their commitment to a peaceful future, the risk of a new confrontation remains serious.

*The international community as well as all other regional or non-regional actors involved in the conflict should continue to make every conceivable effort to bring the sides to the negotiating table and to assist them in making arrangements in keeping with the Charter of the UN, the Helsinki Final Act of the OSCE and the relevant documents of the Council of Europe, in order to settle their differences and prevent another outbreak of hostilities. The successful outcome of such negotiations could also do much to mend relations between Western powers and Russia. There is little hope, however, for a peaceful future in the conflict region unless the two main contenders, Russia and Georgia, make bilateral efforts themselves to solve their disputes. This needs to be done now.*

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NB: For further remarks relating to International Humanitarian Law and Human Rights see Volume II, Chapter 7 “International Humanitarian Law and Human Rights”.

## **Acknowledgements**

This Report is the result of a nine-month effort by various experts, consultants, members of a Senior Advisory Board and a small core team who worked relentlessly, sifting through a seemingly insurmountable wealth of information, every so often of a contradictory nature, to present as accurate, impartial and even-handed an analysis of the August 2008 conflict in Georgia as was possible.

This work would not have been possible without the assistance provided by many governments, organisations and individuals. I wish to acknowledge their important and indeed indispensable contribution with thanks and appreciation.

Special mention should be made of the useful cooperation which the Mission received throughout its work from all four sides directly related to the conflict: these are Georgia, the Russian Federation, South Ossetia and Abkhazia. We also received particularly active support from some Governments, such as those of France, Germany, the United States and Ukraine, which provided the Mission with important insight and/or material. The Mission also acknowledges the contribution of Switzerland, which assisted us in manifold ways, not least with the conferral of special mission status on the IFFMCG, followed by the granting of a similar status by Russia and Georgia. Additionally, all the other EU Member States and the region's neighbouring countries (Armenia, Azerbaijan and Turkey) were given the opportunity of providing the Mission with relevant information and material relating to the events of August 2008. The Mission acknowledges with gratitude the assistance it was given by the embassies of EU Member States and Switzerland, notably those in New York, Washington and Tbilisi, and by delegations of the EU Commission, in particular those in Moscow and New York. To this must be added the regular exchanges that took place with representatives of the EU Council's secretariat and repeated contacts with officials of the EU Commission.

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Last but not least, the Mission's work depended decisively on the work of its own members and affiliates.

The Mission had the privilege of being able to call on the guidance and advice of a number of widely-respected politicians and senior civil servants with special expertise in the fields of international relations, conflict management and humanitarian as well as human rights issues. At the time of writing in August 2009, the members of this Senior Advisory Board were as follows:

### **Senior Advisory Board Members**

Mr Jean-Marie GUÉHENNO  
Senior Fellow, The Brookings Institution and the Center on International Cooperation,  
UN Under-Secretary-General and Head of the UN Department of Peacekeeping Operations until  
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Dr Ursula PLASSNIK  
Member of Parliament  
Former Minister for Foreign Affairs until 2008 – Austria

Prof. Adam D. ROTFELD  
Former Minister for Foreign Affairs until 2005 – Poland

Mr Samuel SCHMID  
Former Minister for Defence until 2008 – Switzerland

Dr Cornelio SOMMARUGA  
Honorary Chairman of the Geneva International Centre for Humanitarian Demining,  
Former President of the International Committee of the Red Cross until 1999 – Switzerland

Mr Karsten D. VOIGT  
Coordinator of German-American Cooperation,  
Former Member of Parliament – Germany

The Mission's work was also reinforced by a team of some 19 experts, including legal experts, military experts, political analysts and historians, who provided written contributions in their respective fields of professional experience. Their work is acknowledged here with sincere appreciation. Again, at the time of this writing, these experts were:

### **Military Experts**

Gen. (ret.) Gilles GALLET – France  
Lieutenant-General (ret.) Christophe KECKEIS – Switzerland  
Colonel (ret.) Christopher LANGTON – United Kingdom  
Colonel (SG) Wolfgang RICHTER – Germany  
Air Commodore (ret.) Philip J. WILKINSON – United Kingdom

### **Legal Experts**

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Mr Dennis SAMMUT – United Kingdom  
Dr Marian STASZEWSKI - Poland

My sincere appreciation goes also to Dr Barbara Haering, Chairperson of the Geneva Center for Humanitarian Demining and former Chairperson of the Committee on Security Matters of the Swiss Parliament, for her continuous support and considered advice.

I wish to emphasise my sincere gratitude to the core team working full-time to complete the mandated task on time. Indeed, the writing of this Report could only have been possible with such a group of dedicated and imaginative individuals with enormous patience and skill for finding solutions to any difficulties encountered along the way. My warmest thanks go to Office and Events Manager Lina Rodriguez, Diplomatic Adviser Adrienne Schnyder and Finance Manager Chris Burton.

Lastly and most importantly, the innermost team consisting of Ambassador (retired) Uwe Schramm, Interim Head of Mission, and Dr Marian Staszewski, Deputy Head of Mission, deserves my deepest consideration and warmest gratitude. Their experience, extensive knowledge of the region and major contributions in every field have been invaluable to the successful completion of the mandate entrusted to the Mission.

Heidi Tagliavini  
Ambassador  
Head of Mission

## List of the Mission's Main Visits and Meetings

2 December 2008	Decision of the EU Council
8 - 11 December 2008	Meetings in Moscow
16 - 18 December 2008	Meetings in Tbilisi
18/19 December 2008	Meetings in Brussels (EU and NATO representatives)
19 January 2009	1st Senior Advisory Board Meeting in Geneva
29 January 2009	1st Expert Meeting in Geneva
2 - 5 February 2009	Meetings in Moscow
9 - 12 February 2009	Meetings in Tbilisi
12/13 February 2009	Meetings in Vienna (OSCE)
2 - 5 March 2009	Meetings in Tbilisi, Sukhumi and Tskhinvali, field visits
13 March 2009	2 <sup>nd</sup> Expert Meeting in Geneva
30 March 2009	Meetings in Strasbourg (Council of Europe)
24 April 2009	Meetings in Berlin
28 April 2009	2 <sup>nd</sup> Senior Advisory Board Meeting in Geneva
5 - 6 May 2009	Workshop in Brussels (NATO/EU)
11 - 12 May 2009	Meetings in New York (UN)
13 May 2009	Meetings in Washington D.C.
20 May 2009	3 <sup>rd</sup> Expert Meeting in Geneva
21 and 25 May 2009	Meetings in Berlin
27 May 2009	Meetings in Brussels (EU representatives)
27 May and 3 June 2009	Meetings in Tbilisi
28 - 31 May 2009	Meetings in Sukhumi, and field visit to the Kodori Valley
29 May 2009	Meetings in Paris
1 - 5 June 2009	Meetings in Tbilisi and Tskhinvali, field visits
1 July 2009	4 <sup>th</sup> Expert Meeting in Geneva
2/3 July 2009	3 <sup>rd</sup> Senior Advisory Board Meeting in Geneva
11 July 2009	5 <sup>th</sup> Expert Meeting in Berlin
16/17 July 2009	Meetings in Brussels (i.a. Deputy MFA of Ukraine)
22 - 25 July 2009	Meetings in Tbilisi
28 - 29 July 2009	Meetings in Moscow
30 July 2009	Meetings in Brussels (EU representatives)
18 August 2009	Meetings in Vienna (OSCE)
20 August 2009	4 <sup>th</sup> Senior Advisory Board Meeting in Geneva
18/19 September 2009	5 <sup>th</sup> Senior Advisory Board Meeting in Vevey
September 2009	Submission of the Report to the EU Council of Ministers



## Chapter 7

# International Humanitarian Law and Human Rights Law

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## **I. Introduction**

This chapter follows a structure based on thematic issues and notions derived from HRL, IHL and the law on IDPs. While the primary task is to establish facts relating to the origins and course of the conflict, there are two main reasons for the choice of a framework that is not merely narrative and descriptive. First, the mandate of the mission refers to international law, IHL and HRL and accusations made in the context of the conflict, including war crimes. Also, given that the task required is to provide a legal assessment of those facts, the proposed structure prevents repetition between the section on facts and the one on legal analysis.

Taking the above remarks into account, this chapter proceeds first with a brief overview of the applicable international law. Next it seeks to present, thematically, the main facts relating to the armed conflict between Russia and Georgia and its aftermath, examining them from the points of view of IHL and HRL, within the scope as described earlier. For each of the thematic issues the main substantive rules applicable will be recalled, followed by an establishment of the facts and a conclusion discussing whether or not there has been a violation. Where some facts cannot be established – and consequently cannot be legally assessed – in a definite and conclusive fashion, alternatives will be described. For each thematic issue a distinction between the three areas (South Ossetia, Abkhazia and the rest of Georgia) will be made when necessary.

The Fact-Finding Mission would like to underline that its use of names, terms and expressions, particularly with regard to the conflict regions, should not be construed as implying any form of recognition or non-recognition or having any other political connotation whatsoever. A special note of caution seems necessary, too, as regards allegations of violation of International Humanitarian Law and Human Rights and also as regards allegations of war crimes and genocide. The EU Council of Ministers directed the Mission to investigate these allegations. At the same time, the Mission only started its work at the end of 2008. Consequently, it was necessary to base much of its fact-finding on investigations which had been carried out soon after the conflict by a number of regional organisations such as the OSCE and the Council of Europe, as well as respected international non-governmental organisations such as Human Rights Watch, Amnesty International, the International Crisis Group and others. The Mission also had several meetings with representatives of the International Committee of the Red Cross. Additionally, the Mission was able to collect first-hand evidence from witnesses and victims. It should be noted that the factual basis thus established may be considered as adequate for the purpose of fact-finding, but not for any

other purpose. This includes judicial proceedings such as the cases already pending before International Courts as well as any others.

## **II. Applicable international law**

Two main sets of norms constitute the applicable legal framework: IHL and HRL. First, both branches of international law are applicable in times of armed conflict. Second, given that the current report covers a longer period than the duration of the armed conflict *per se*, human rights law is also directly relevant.

The special issue of displaced persons is governed both by specific rules of IHL and HRL and by different sets of guidelines or rules depending on whether they are classified as IDPs or refugees.

Finally, norms of public international law relating to state responsibility and international criminal law also constitute important parts of the applicable legal framework. Individual criminal responsibility is triggered in cases of war crimes, in particular where there have been grave breaches of the Geneva Conventions or Additional Protocol I.

### **A. International Humanitarian Law**

International humanitarian law (IHL) regulates the conduct of hostilities and protects persons who do not or who no longer participate directly in hostilities, in order to limit the effects of warfare. Its primary aim is to ensure the protection of certain persons and objects. While the IHL norms applicable vary depending on the character of an armed conflict (whether it is regarded as an international or a non-international armed conflict), the humanitarian goal remains equally important in both types of conflict. This is exemplified by the increasing convergence between the rules of IHL applicable in an international armed conflict and those applicable in a non-international armed conflict.

IHL comprises both conventional law and customary law. Georgia and the Russian Federation are parties to the main IHL treaties, including the four Geneva Conventions of 1949 and the two additional protocols of 1977, together with the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Russian Federation is also a party to the 1907 Hague Convention (IV) respecting the Laws and Customs of War on Land.

Furthermore, it is well recognised that the rules contained in this latter instrument have become part of customary international humanitarian law.<sup>1</sup>

The IHL treaty law applicable to non-international armed conflict is far less developed than the body of norms applicable to international armed conflict. The former primarily includes Common Article 3 of the Geneva Conventions and Additional Protocol II. It is now well recognised, however, that the customary international humanitarian law applicable to internal armed conflicts goes beyond those provisions<sup>2</sup> and encompasses fundamental principles on the conduct of hostilities.

The question remains whether, when the cease-fire occurred on 12 August 2008, IHL ceased to apply in relation to the August 2008 conflict. While it could be said that it is fairly easy to determine when IHL starts to apply, it seems more difficult to identify the moment when its application ends, mainly owing to the different formulas used in conventional law. Geneva Convention IV, for example, speaks about the “general close of military operations” (Article 6(2)), whereas Additional Protocol II uses the expression “end of the armed conflict” (Article 2(2)). The International Criminal Tribunal for the former Yugoslavia (ICTY), in its decision of 2 October 1995 in the *Tadic* case, tried to clarify this point by indicating that: “International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved.” The ICTY thus rejected the factual criteria that signify the cessation of hostilities. This implies that a cease-fire – whether temporary or definitive – or even an armistice cannot be enough to suspend or to limit the application of IHL. Relevant conventional instruments stipulate that a number of provisions continue to apply until the emergence of a factual situation completely independent of the concluding of a peace treaty. Thus, to quote only some examples, the protection provided for people interned as a result of the conflict (in particular, prisoners of war and

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<sup>1</sup> See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 172, para. 89.

<sup>2</sup> *Prosecutor v. Tadic*, IT-94-I-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 118. See also J-M HENCKAERTS, L. DOSWALD BECK (eds), *Customary International Humanitarian Law*, Volumes I and II, Cambridge, ICRC, Cambridge University Press, 2005. Out of the 161 customary rules identified by the ICRC, 159 are applicable to non-international armed conflicts. HENCKAERTS, J. M., “Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict”, in *International Review of the Red Cross*, No. 857, 2005, p. 189.

civilian prisoners) applies until their final release and repatriation or their establishment in the country of their choice.<sup>3</sup>

**a) IHL of international and non-international armed conflict**

The hostilities between Georgia and the Russian Federation constitute an international armed conflict between two states as defined by Common Article 2 of the 1949 Geneva Conventions: “cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.” This was asserted by both the Russian Federation<sup>4</sup> and Georgia.<sup>5</sup> Consequently, IHL applicable to this category of armed conflict is relevant.

The hostilities between South Ossetia and Abkhazia on the one hand, and Georgia on the other, are governed by the IHL applicable to non-international armed conflict, since both are recognised internationally as being part of Georgia and, at the time of the 2008 conflicts, this was undisputed. The Russian Federation also reached this conclusion.<sup>6</sup> However Georgia seems to classify it overall as an international armed conflict: “in relation to the period from 7 to 12 August 2008, objective evidence shows that there was resort to armed force by the separatists, the Russian Federation and the Republic of Georgia. Therefore, it is beyond doubt that there was an international armed conflict in existence from 7 to 12 August 2008.”<sup>7</sup> This could be the case if one considers that Russia exercises sufficient control over the Abkhaz/South Ossetian forces, as will be discussed later.

Given the organised and responsible command of South Ossetian and Abkhaz armed forces, as well as the territorial control exercised by the authorities, the criteria set out in Additional Protocol II for its application are met.<sup>8</sup> Common Article 3 of the Geneva Conventions and

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<sup>3</sup> This exception is based on Article 5 of Geneva Convention III, Article 6(4) of Geneva Convention IV and Articles 3(b) of Protocol I and 2(2) of Protocol II, it is also mentioned by the ICTY in the *Tadić* decision of 2 October 1995 (para 69)

<sup>4</sup> Russia Responses to Questions Posited by the IFFMCG (Legal Aspects), p 10

<sup>5</sup> Georgia, APPLICATION UNDER ARTICLE 33 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND RULES 46 AND 51 OF THE RULES OF COURT, Application No 38263/08, 6 February 2009, document submitted by Georgia to the IFFMCG, pp 46-47

<sup>6</sup> Russia, Responses to Questions Posited by the IFFMCG (Legal Aspects), *op cit*, p 10

<sup>7</sup> Georgia, APPLICATION UNDER ARTICLE 33 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND RULES 46 AND 51 OF THE RULES OF COURT, Application No 38263/08, 6 February 2009, document submitted by Georgia to the IFFMCG, pp 46-47

<sup>8</sup> Article I of Additional Protocol II defines the applicability with regard to “all armed conflicts ( ) which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol ”

Additional Protocol II both apply in the current situation, in addition to relevant customary law.

**b) IHL of international armed conflict because of Russia's control over Abkhaz/South Ossetian forces**

An armed conflict between a State and an armed group may be qualified as international if this group, under certain conditions, is under the control of another State, i.e., a second State. Georgia and the Russian Federation hold opposing views on whether the latter exercised control over the Abkhaz and Ossetian forces. Given the difficulty of reaching a definite factual conclusion, and in view of the current state of the law, the current legal arguments and positions are outlined.

For the purpose of classifying an armed conflict, in the *Tadić Case* the Appeals Chamber of the ICTY discussed the criteria for control by a State over an individual or a group of individuals. It held that “the requirement of international law for the attribution to States of acts performed by private individuals is that the State exercises control over the individuals” and that “the *degree of control* may, however, vary according to the factual circumstances of each case.”<sup>9</sup> First the ICTY considered that the “test” of “effective control” applied by the International Court of Justice (ICJ) in the *Nicaragua Case*,<sup>10</sup> to determine whether an individual may be held to have acted as a *de facto* organ of a State, was persuasive in only two cases:

*“the case of a private individual who is engaged by a State to perform some specific illegal acts in the territory of another State In such a case, it would be necessary to show that the State issued specific instructions concerning the commission of the breach in order to prove – if only by necessary implication – that the individual acted as a de facto State agent ( )”, or*

*“when an unorganised group of individuals commits acts contrary to international law For these acts to be attributed to the State it would seem necessary to prove not only that the State exercised some measure of authority over those individuals but also that it issued specific instructions to them concerning the performance of the acts at issue ”<sup>11</sup>*

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<sup>9</sup> ICTY, *Prosecutor v Tadić*, IT-94-I-AR72, the Judgement of the Appeals Chamber, 15 July 1999, para. 117

<sup>10</sup> The test was whether the individual had specifically “directed or enforced” the perpetration of particular acts

<sup>11</sup> ICTY, *Prosecutor v Tadić*, IT-94-I-AR72, the Judgement of the Appeals Chamber, 15 July 1999, para. 118 The Appeals Chamber gives “for instance, kidnapping a State official, murdering a dignitary or a high-ranking State official, blowing up a power station or, especially in times of war, carrying out acts of sabotage” as examples of such acts

Georgia and the Russian Federation have two completely opposing views on the question of control. While Georgia claims that the Russian Federation acted through the separatist South Ossetian and Abkhaz forces under its direction and control,<sup>12</sup> the Russian Federation has stated that “the conduct of the South Ossetian and Abkhaz authorities is not conducted by organs of the Russian Federation.”<sup>13</sup> It must be stressed that the terms used before the ICJ seem to frame the discussion within the context of the rules of attribution under international law on state responsibility for wrongful acts. The Russian Federation reaffirmed its stance by stating: “Russia exercises no degree of control (effective or actual) over South Ossetian military personnel, civilians or the territory of this Republic.”<sup>14</sup>

The composition of the Abkhaz and South Ossetian forces remains unclear. Human Rights Watch described the South Ossetian forces as “consisting of several elements – South Ossetian Ministry of Defence and Emergencies, South Ossetian Ministry of Internal Affairs, South Ossetian Committee for State Security, volunteers, and Ossetian peacekeeping forces” – who also participated in the fighting.<sup>15</sup> Various testimonies contain accounts of foreign volunteers such as Chechens operating in the territory of South Ossetia.<sup>16</sup> The presence of 300 volunteers from the Russian Federation was mentioned by the representatives of the Georgian Ministry of Internal Affairs when meeting with the IIFFMCG experts in June 2009. *De facto* authorities from South Ossetia confirmed to the IIFFMCG in June that volunteers had fought with South Ossetian military forces. The regular armed forces of the *de facto* South Ossetian authorities unquestionably constitute “an organised and hierarchically structured group”, while the Abkhaz army is described as being made up of “regular” forces and a “well-trained reservist component” with “a command hierarchy.”<sup>17</sup> On the other hand, the situation may be different for isolated armed groups or individuals who acted on their own during the hostilities. In the former case, “overall control” would need to be established in order to render the armed conflict between Georgia and the Abkhaz and South Ossetian armed forces international.

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<sup>12</sup> Case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Georgia v. Russian Federation*), Request for the indication of provisional measures, International Court of Justice, ICJ, 15 October 2008, p. 2, para. 3.

<sup>13</sup> *Ibid.*, p. 19, para. 75.

<sup>14</sup> Russia, Responses to Questions Posited by the IIFFMCG (Legal Aspects), *op. cit.*, p. 11.

<sup>15</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op. cit.*, p. 5.

<sup>16</sup> This was confirmed through an interview conducted in March 2009 by a Mission’s expert. Some interviewees clearly identified Chechens and Uzbeks among the military forces that looted and set fire to their houses.

<sup>17</sup> *De facto* Abkhaz authorities, Replies to questions on legal issues related to the events of last August, submitted to the IIFFMCG in April 2009, pp. 3-4.



When the Appeals Chamber of the ICTY turned to the *de jure* and factual relationship between the Russian Federation and the Abkhaz and South Ossetian forces, the elements it considered shed some light on the nature and degree of this control. For example the fact that “the controlling State is *not the territorial State* where the armed clashes occur or where at any rate the armed units perform their acts” has to be taken into account, and it calls for “more extensive and compelling evidence.”<sup>18</sup> The Appeals Chamber specified that the control has to go beyond “merely coordinating political and military activities” and “beyond mere coordination or cooperation between allies.”<sup>19</sup> It analysed the forms of assistance provided, and the command structure in place.<sup>20</sup>

The statements made by the Russian Federation and the *de facto* Abkhaz authorities reject any allegation of overall control. The Russian Federation has declared that “prior to the conflict in August one could only speak of cooperation between the Russian peacekeeping contingent and South Ossetian and Abkhaz military units wherever peacekeeping forces may be present within parameters commonly accepted in similar situations in other countries. These relations were governed by the mandate of the peacekeeping force.”<sup>21</sup> While strong economic, cultural and social ties exist between the Russian Federation and the authorities of Abkhazia,<sup>22</sup> those authorities have stated that, in the course of the operation in the Kodori Valley, “the Abkhaz army, while remaining in contact with Russian forces acting from Abkhaz territory, operated independently.”<sup>23</sup> Further aspects of the assistance and the military structure and command linking the Russian Federation and those entities would need to be substantiated in order to establish such control. According to Georgia, “the Abkhaz and South Ossetian military formations did not independently control, direct or implement the military operations during either the armed conflict or the occupation periods. Rather, these military formations acted as

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<sup>18</sup> ICTY, *Prosecutor v Tadic*, IT-94-1-AR72, the Judgement of the Appeals Chamber, 15 July 1999, para 138

<sup>19</sup> *Ibid*, para 152

<sup>20</sup> The ICTY Appeals Chamber ruled as follows: “Over and above the extensive financial, logistical and other assistance and support which were acknowledged to have been provided by the VJ to the VRS, it was also uncontested by the Trial Chamber that as a creation of the FRY/VJ, the structures and ranks of the VJ and VRS were identical, and also that the FRY/VJ directed and supervised the activities and operations of the VRS. As a result, the VRS reflected the strategies and tactics devised by the FRY/JNA/VJ” (para 151). The Trial Chamber found that the various forms of assistance provided to the armed forces of the *Republika Srpska* by the Government of the FRY were “crucial” to the pursuit of their activities and that “those forces were almost completely dependent on the supplies of the VJ for carrying out offensive operations” (para 155). See ICTY, *Prosecutor v Tadic*, IT-94-1-AR72, the Judgement of the Appeals Chamber, 15 July 1999

<sup>21</sup> Russia, Responses to Questions Posited by the IFFMCG (Legal Aspects), *op cit*, p 5

<sup>22</sup> See, for example, Abkhaz authorities, Replies to questions on legal issues related to the events of last August, submitted to the IFFMCG in April 2009, p 2

<sup>23</sup> *Ibid.*, p. 4.

agents or *de facto* organs of the Respondent State and as such constituted a simple continuation of the Russian Federation's armed forces."<sup>24</sup>

In factual terms, one may have to draw a distinction with regard to the nature of the relationship between Russia and South Ossetia on the one hand, and between Russia and Abkhazia on the other. In the former, ties seem to be stronger. During the meeting between the IIFMCG experts and the representatives of the Ministry of Internal Affairs of Georgia, the representatives stressed the political and economic links between Russia and South Ossetia. They also claimed that Russia exercises control over South Ossetia through various channels ranging from financial help to the presence of Russian officials in key military positions in the South Ossetian forces.<sup>25</sup>

At this point it is appropriate to underline that although the classification of an armed conflict as international or non-international is important in terms of the responsibilities of the various parties involved, when it comes to the effective protection by IHL of the persons and objects affected by the conflict it does not make much difference. Indeed, it is generally recognised that the same IHL customary law rules generally apply to all types of armed conflicts.

### **c) IHL of military occupation**

Under IHL, the law of military occupation primarily includes the 1907 Hague Regulations concerning the Laws and Customs of War on Land and Geneva Convention IV relative to the Protection of Civilian Persons in Time of War, as well as some provisions of Additional Protocol I. As Geneva Convention IV does not provide a definition of what constitutes an occupation, it is necessary to rely on the Hague Regulations. A territory is considered "occupied" when it is under the control or authority of the forces of the opposing State, without the consent of the government concerned. More specifically, according to Sassòli and Bouvier, "the rules of IHL on occupied territories apply whenever a territory comes, during an armed conflict, under the control of the enemy of the power previously controlling that territory, as well as in every case of belligerent occupation, even when it does not encounter armed resistance and there is therefore no armed conflict."<sup>26</sup> In the former case, pursuant to Article 42 of these Regulations, a "territory is considered occupied when it is actually placed

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<sup>24</sup> Georgia, APPLICATION UNDER ARTICLE 33 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND RULES 46 AND 51 OF THE RULES OF COURT, *op. cit.*, para. 160.

<sup>25</sup> IIFMCG Meeting with Representatives of the Ministry of Internal Affairs of Georgia, 4 June 2009.

<sup>26</sup> SASSÒLI, M. and BOUVIER, A., *How Does Law Protect In War*, 2<sup>nd</sup> Edition, Vol. I, Geneva, ICRC, 2006, p. 187.

under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”<sup>27</sup> For the second situation, Geneva Convention IV provides that “the Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.”<sup>28</sup>

As stressed by the ICJ in the case of the *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, “to reach a conclusion as to whether a State, the military forces of which are present on the territory of another State as a result of an intervention, is an “occupying Power” in the meaning of the term as understood in the *jus in bello*, the Court must examine whether there is sufficient evidence to demonstrate that the said authority was in fact established and exercised by the intervening State in the areas in question.”<sup>29</sup> Ascertaining the existence of a state of occupation is a determination based on facts.<sup>30</sup> The critical question is the degree and extent of the control or authority required in order to conclude that a territory is occupied.

Two perceptions exist in this regard, which are not mutually exclusive but rather constitute two stages in the application of the law on occupation. These two stages reflect growing control by the occupying power. This means that, for a part of the law of occupation to apply, it is not necessary for the military forces of a given State to administer a territory fully.

The Commentary on the Geneva Conventions states the following with respect to Article 2(2) of Geneva Convention IV: “the word ‘occupation’ has a wider meaning than it has in Article 42 of the Regulations annexed to the Fourth Hague Convention of 1907. So far as individuals are concerned, the application of the Fourth Geneva Convention does not depend upon the existence of a state of occupation within the meaning of the Article 42 referred to above. The relations between the civilian population of a territory and troops advancing into that territory, whether fighting or not, are governed by the present Convention. There is no intermediate period between what might be termed the invasion phase and the inauguration of a stable

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<sup>27</sup> See Article 42 of the Regulations concerning the Laws and Customs of War on Land and Geneva Convention IV relative to the Protection of Civilian Persons in Time of War. See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004*, p. 167, para. 78 and p. 172, para. 89: “a territory is considered to be occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised.”

<sup>28</sup> Art. 2 of 1949 Geneva Convention IV.

<sup>29</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, 19 December 2005, ICJ Report 2005*, para. 173.

<sup>30</sup> ICTY, *Prosecutor v. Mladen Naletilic, aka “Tuta”*, para. 172.

regime of occupation. Even a patrol which penetrates into enemy territory without any intention of staying there must respect the Conventions in its dealings with the civilians it meets.”<sup>31</sup> While this stage does not of course entail a full application of the law of occupation under Geneva Convention IV, the mere fact that some degree of authority is exercised on the civilian population triggers the relevant conventional provisions of the law of occupation on the treatment of persons. In a further stage, the full application of the law on occupation comes into play, when a stronger degree of control is exercised. This is reflected in a number of military manuals which require it to be established that “a party to a conflict is in a position to exercise the level of authority over enemy territory necessary to enable it to discharge *all* the obligations imposed by the law of occupation.”<sup>32</sup> The new United Kingdom military manual calls for a twofold test: “[f]irst, that the former government has been rendered incapable of publicly exercising its authority in that area; and, secondly, that the occupying power is in a position to substitute its own authority for that of the former government.”<sup>33</sup>

The determination must be made on a case-by-case basis. This is particularly relevant when considering the present issue of whether, during the conflict in Georgia, territories were occupied by the Russian Federation and, if so, which territories, taking into account the facts and the period of time. Georgia claims that a number of different areas were occupied by Russia both during and after the conflict. For the purpose of determining the existence of a state of occupation for each of those places, it is worth briefly listing them as presented by Georgia, as the conclusion may differ depending on the territory concerned and the time.

First, in its Request for the indication of provisional measures of protection submitted to the ICJ on 12 August 2008 Georgia asserted that the territories of South Ossetia and Abkhazia, including the upper Kodori Valley, were occupied by Russian forces.<sup>34</sup> On 23 October, the Parliament of Georgia adopted a law declaring Abkhazia and South Ossetia “occupied territories” and the Russian Federation a “military occupier.”<sup>35</sup> This claim was reiterated in

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<sup>31</sup> Commentary on the Geneva Conventions of 12 August 1949, Jean Pictet (ed), Geneva, p 60

<sup>32</sup> Daniel Thurer, ICRC statement, “Current challenges to the law of occupation,” November 2005, available at <http://www.icrc.org/web/eng/siteeng0.nsf/html/occupation-statement-211105>

<sup>33</sup> *The Manual of the Law of Armed Conflict*, United Kingdom Ministry of Defence, Oxford, Oxford University Press, 2004, para 113, p 275.

<sup>34</sup> AMENDED REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES OF PROTECTION SUBMITTED BY THE GOVERNMENT OF GEORGIA, Request to the International Court of Justice, p 5, para 13.

<sup>35</sup> See the “Law on Occupied Territories of Georgia,” adopted on 23 October 2008. Clause 2 of this law reads as follows

“For the purpose of this Law “the occupied territories and territorial waters” (hereinafter “The Occupied Territories”) shall mean:

Georgia's application to the ECHR against Russia on 6 February 2009.<sup>36</sup> In describing the "current occupation" Georgia also stated: "the western part of the former 'buffer zone' (the village of Perevi in the Sachkhere District) remains under Russian occupation."<sup>37</sup> In addition to those territories that are still occupied by Russian forces at the time of writing this report, according to Georgia the following territories were occupied in the aftermath of the conflict: "In Eastern Georgia South of the conflict zone Russian forces occupied most parts of the Gori District, including the City of Gori; South-west of the conflict zone Russian forces occupied part of the Kareli District; West of the conflict zone Russian forces occupied part of the Sachkhere District; in Western Georgia they occupied the cities of Zugdidi, Senaki and Poti. Following the Russian withdrawal from the City of Gori on 22 August 2008, Russian forces still occupied the northern part of the Gori District right up to the southern administrative boundary of South Ossetia. This territory constituted part of the 'buffer zone' that was created by Russian Forces around the territory of South Ossetia and absorbed territories that used to be under the control of the Georgian central Government. Russian forces withdrew from this buffer zone, except in upper Kodori Valley, the Akhgori district and the village of Perevi (in the Sachkhere District), on 8 October 2008."<sup>38</sup> More generally, Georgia alleged the

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a) Territory of the Autonomous Republic of Abkhazia.

b) Tskhinvali region (territory of the former Autonomous Republic of South Ossetia),

c) Waters in the Black Sea territorial inland waters and sea waters of Georgia, their floor and resources, located in the aquatic territory of the Black Sea, along the state border with the Russian Federation, to the South of the Psou River, up to the administrative border at the estuary of the Engury River, to which the sovereign right of Georgia is extended, also the sea zones the neighbouring zone, the special economic zone and the continental trail where, in compliance with the legislation of Georgia and international law, namely the UN Convention on Maritime Law (1982), Georgia has fiscal, sanitary, emigration and customs rights in the neighbouring zone and the sovereign right and jurisdiction in the special economic zone and the continental trail,

d) The air space over the territories stipulated in Paragraphs (a) (b) and (c) of this Clause "

The Law is available at [http://www.venice.coe.int/docs/2009/CDL\(2009\)004-e.asp](http://www.venice.coe.int/docs/2009/CDL(2009)004-e.asp)

<sup>36</sup> Georgia, APPLICATION UNDER ARTICLE 33 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND RULES 46 AND 51 OF THE RULES OF COURT, *op cit*, p 8

<sup>37</sup> *Idem* More generally, Georgia asserted "after the ceasefire on 12 August 2008, the situation is properly understood as one of occupation, which, along with the human rights law, is also governed within IHL by the provisions pertaining to international armed conflicts. This is because objective evidence illustrates comprehensively that significant portions of Georgia remain occupied by forces of the Russian Federation and / or separatist forces acting as *de facto* organs of the Russian Federation" (p 47)

<sup>38</sup> *Ibid*, pp 8-9 For Zugdidi as an occupied territory, see also REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES OF PROTECTION SUBMITTED BY THE GOVERNMENT OF THE REPUBLIC OF GEORGIA, para 13, p 7

occupation of the territories adjacent to Abkhazia and South Ossetia.<sup>39</sup> It should be noted that Georgia referred to “occupation” and “effective control” by the Russian forces.<sup>40</sup>

The Russian Federation, on the contrary, holds that it does not at present, nor will it in the future, exercise effective control over South Ossetia or Abkhazia; and that it was not an occupying power.<sup>41</sup> It noted recently that “despite having crossed into the territory of Georgia in the course of the conflict, Russia was not an occupying power in terms of IHL.” It further explained that “the presence of an armed force in the territory of another state is not always construed as occupation,” relying on the ICJ ruling in the case between the Democratic Republic of Congo and Uganda and on the judgment of the ICTY in *Prosecutor v. Naletilic and Martinovic*.<sup>42</sup> According to the Russian Federation, “the determining factor in international law necessary to recognise a military presence as an occupation regime is whether the invading state has established effective control over the territory of the country in question and its population.”<sup>43</sup> In its replies to the questionnaire submitted by the IIFMCG, it presented a threefold argument to reject such control. First, “the Russian Armed Forces never replaced the lawful governments of Georgia or South Ossetia.”<sup>44</sup> Second, “no regulatory acts

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<sup>39</sup> AMENDED REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES OF PROTECTION SUBMITTED BY THE GOVERNMENT OF GEORGIA, Request to the ICJ, *op. cit.*, p. 5, para 13.

<sup>40</sup> Case concerning the Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Georgia v. Russian Federation*), Request for the indication of provisional measures, International Court of Justice, ICJ, 15 October 2008, para 33, p. 10.

<sup>41</sup> *Ibid.*, p. 19, para. 74.

<sup>42</sup> Russia, Responses to Questions Posited by the IIFMCG (Legal Aspects), *op. cit.*, p. 7: “Pursuant to Article 42 IV of the Hague Convention governing the laws and customs of land warfare, the crucial factor in qualifying military presence as occupation is whether the invading state has established effective control over the territory of the country in question and its civilian population. Criteria of such effective control have been determined, for example, in a case tried by the International War Crimes Tribunal in former Yugoslavia, *Prosecutor v. Naletilich and Martinovich* as well as another case tried by the International Court, *Congo v. Uganda*. The International War Crimes Tribunal deduced five main criteria of effective control in the aforementioned case. The two key criteria were as follows: the occupying power must establish temporary administration to govern the territory and issue within the bounds of this territory instructions deemed mandatory for the local population.

“Similarly to the War Crimes Tribunal, the International Court also addressed the issue of occupation in the case dealing with the military action taken by Uganda against Congo.

“If we follow the court’s logic, the fact that the criteria pursuant to which the occupying force must establish a local administration is not met, and no regulatory acts have been issued by the occupying power, may serve as sufficient grounds to maintain that no occupation regime took place. It was exactly the approach taken by the International Court in the case *Congo v. Uganda* – the court recognised that a Ugandan occupation regime existed only in two areas of Congo, basing their opinion on the premise that the military of Uganda began to issue regulatory acts in these areas that were mandatory for the local population, and in so doing replaced the lawful government of Congo. In other areas of Congo the court recognised only Ugandan military presence.”

<sup>43</sup> *Ibid.*, p. 7.

<sup>44</sup> *Idem*, and p. 11. “The Russian Federation is not an occupying power and does not exercise effective control over the territory and/or population of South Ossetia. Maintaining law and order in South Ossetia and Abkhazia is an exclusive right vested with the governments of these countries” (p. 12). See also: *Public sitting held on Monday 8 September 2008, at 3 p.m., at the Peace Palace, Verbatim Record, in the case concerning*

mandatory for the local populations have been adopted by them.”<sup>45</sup> Finally, “the number of Russian troops stationed in South Ossetia and Abkhazia (3,700 and 3,750 servicemen respectively) does not allow Russia in practice to establish effective control over these territories which total 12 500 sq. kilometers in size. To draw a parallel: effective control over a much smaller territory of Northern Cyprus (3 400 sq. kilometers) requires the presence of 30,000 Turkish troops. During the active phase of the military conflict the maximum size of the Russian contingent in South Ossetia and Abkhazia reached 12,000 personnel. However, all of these forces were engaged in a military operation and not in establishing effective control.” It concluded that “based on the foregoing, there are no sufficient grounds for maintaining that the Russian side exercised effective control over the territory of South Ossetia or Georgia during the Georgian-South Ossetian conflict or that an occupation regime was established in the sense contemplated in IHL.”<sup>46</sup>

As highlighted earlier, under IHL, the factual criteria or requirements for determining that control or authority has been established are not spelt out in the Hague Regulation or in Geneva Convention IV. The decisions of international courts have outlined some elements that can be used in clarifying this determination. In the ICTY case *Prosecutor v Naletilic and Martinovic* quoted by Russia, the Trial Chamber refers to five “guidelines [to] provide some assistance,” rather than criteria “to determine whether the authority of the occupying power has been actually established.”<sup>47</sup> The following guidelines were listed by the ICTY based on some military manuals: “the occupying power must be in a position to substitute its own authority for that of the occupied authorities, which must have been rendered incapable of

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*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation)*, CR 2008/23, International Court of Justice, The Hague, 2008, para 14, p 13 “Russian armed forces were present and are now present on the territories of Abkhazia and South Ossetia. However, this presence was not and is not occupation, as Georgia claims. Russian military forces and, therefore, Russia itself, did not and do not control either the territory of Abkhazia and South Ossetia, or the authorities or armed units of Abkhazia and South Ossetia. Russia has not exercised jurisdiction with respect to the territory or population of Abkhazia and South Ossetia. This allegation is absurd. This is no less true now, given that Abkhazia and South Ossetia are independent States, as recognized by Russia.” The Russian Federation also stated “First and foremost, Russia is *not* an occupying power in South Ossetia and Abkhazia. Both regions had an internationally recognized autonomous status and have enjoyed *de facto* independence already for a quite significant time. In particular, Russia has never - to paraphrase the text you applied in the *Congo v Uganda* case (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)*, Judgment, ICJ Reports 2005, para 173) - Russia, let me repeat, Russia has never assumed the role of the existing authorities, that is the Abkhaz and South Ossetian authorities, recognized as such by Georgia itself. Besides, the Russian presence, apart from its participation in limited peace-keeping operations, has been restricted in time and stretches only for a few weeks” (p 44, para 16) “Furthermore, local authorities have always retained their independence and continue to do so” (p 44, para 17)

<sup>45</sup> Russia, Responses to Questions Posited by the IIFMCG (Legal Aspects), *op cit*, p 7

<sup>46</sup> *Idem*.

<sup>47</sup> ICTY, *Prosecutor v Naletilic and Martinovic*, para 217

functioning publicly; the enemy's forces have surrendered, been defeated or withdrawn; the occupying power has a sufficient force present, or the capacity to send troops within a reasonable time, to make the authority of the occupying power felt; a temporary administration has been established over the territory; the occupying power has issued and enforced directions to the civilian population."<sup>48</sup>

However, the reading of this case by the Russian Federation should be nuanced. Indeed after having explained the notion of control, the Trial Chamber quotes the Commentary on Geneva Convention IV "mak[ing] clear that the application of the law of occupation to the civilian population differs from its application under Article 42 of the Hague Regulations."<sup>49</sup> It goes on to state that: "the Chamber accepts this to mean that the application of the law of occupation as it affects 'individuals' as civilians protected under Geneva Convention IV does not require that the occupying power have actual authority. For the purposes of those individuals' rights, a state of occupation exists upon their falling into 'the hands of the occupying power.' Otherwise civilians would be left, during an intermediate period, with less protection than that attached to them once occupation is established"<sup>50</sup>.

When assessing the factual situation in the light of the aforementioned remarks, one aspect must first be clarified. It has been asserted, to reject the argument of an occupation, that the presence of the Russian military forces was limited to certain strategic points and did not cover the whole territory in question.<sup>51</sup> Article 2 of Geneva Convention IV contemplates cases of both partial and total occupation of a territory. As confirmed by the ICTY, under IHL "there is no requirement that an entire territory be occupied, provided that the isolated areas in

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<sup>48</sup> *Idem*.

<sup>49</sup> *Ibid.*, para. 219.

<sup>50</sup> *Ibid.*, paras 221-222. It is also worth noting that in the case *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* the ICJ stressed that "in the present case the Court will need to satisfy itself that the Ugandan armed forces in the DRC were not only stationed in particular locations but also that they had substituted their own authority for that of the Congolese Government" (para. 173). While the establishment of a local administration in certain parts of the territory, and the adoption of regulatory acts, were sufficient for the court to ascertain occupation (para. 175), this does not mean that those two elements become prerequisites for a state of occupation to be ascertained. The lack of such elements was decisive in the case before the court in the absence of any other evidence. Going beyond that interpretation would lead to turning elements of proof of an occupation into conditions for considering a territory to be occupied.

<sup>51</sup> Public sitting held on Monday 8 September 2008, at 3 p.m., at the Peace Palace, Verbatim Record, in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, CR 2008/23. *op cit.*, para 17, p. 44.



which the authority of the occupied power is still functioning 'are effectively cut off from the rest of the occupied territory'.<sup>52</sup>

If, as asserted in the chapter of this report on the use of force, Russia's military intervention cannot be justified under international law, and if neither Abkhazia nor South Ossetia is a recognised independent state, IHL – and in particular the rules concerning the protection of the civilian population (mainly Geneva Convention IV) and occupation – was and may still be applicable. This applies to all the areas where Russian military actions had an impact on protected persons and goods. However, the extent of the control and authority exercised by Russian forces may differ from one geographical area to another. It was possibly looser in the territories of South Ossetia and Abkhazia administered by the *de facto* authorities. In the Kodori Valley, and in districts and villages in South Ossetia such as Akhagori,<sup>53</sup> where before the conflict the Georgian forces and administration had exercised control, the substitution is more evident. In those cases, such as the buffer zones, the argument of an existing administrative authority different from the Georgian one cannot be admissible, nor can the argument according to which "Russia has frequently dissociated itself from, and even condemned, the Ossetian and Abkhaz authorities."<sup>54</sup> Regarding the insufficient number of troops invoked by the Russian Federation,<sup>55</sup> this must be linked to the fact that the determination is not about ascertaining the occupation of the whole territory of Georgia. Moreover, in the *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* case, the arguments used by Uganda of a "small number of its troops in the territory" and their confinement to "designated strategic locations"<sup>56</sup> were not used by the Court to reject the qualification of occupation. Finally, given the fact that a state of occupation may exist without armed resistance, the question of the number of troops cannot in itself be legally relevant.

The main rules of the law applicable in a case of occupation state *inter alia* that the occupying power must take measures to restore and ensure, as far as possible, public order and safety;

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<sup>52</sup> ICTY, *Prosecutor v. Naletilic and Martinovich*, *op cit*, para. 218.

<sup>53</sup> For a list see Georgia, APPLICATION UNDER ARTICLE 33 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND RULES 46 AND 51 OF THE RULES OF COURT, *op cit*, p 7

<sup>54</sup> Public sitting held on Monday 8 September 2008, at 3 p m, at the Peace Palace, Verbatim Record, in the case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Georgia v. Russian Federation*), CR 2008/23, *op cit*, para 17, p 44

<sup>55</sup> Russia, Responses to Questions Posited by the IIFMCG (Legal Aspects), *op cit*, p 8

<sup>56</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *op cit*, para. 170.

the taking of hostages is prohibited; reprisals against protected persons or their property are prohibited and the destruction or seizure of enemy property is prohibited, unless absolutely required by military necessity during the conduct of hostilities.

As outlined by the ICJ, such application does not preclude the applicability of human rights law. If this is explained by the general principle of the continued applicability of human rights in times of war, it is also closely linked to another issue under human rights law: the control or exercise of jurisdiction, which is critical for recognising the extra-territorial application of human rights law. In this regard, a number of cases where human rights law was deemed applicable to forces abroad were cases of occupation.

The significance of ascertaining who is, actually, on the ground, exercising authority is exemplified by one assertion put forward by the Russian Federation. Stressing the difference between “measures taken during the hostilities to protect the civilian population from threats posed by these hostilities and those taken outside the scope of hostilities to protect the civilian population from looting, pillaging, abuse, etc.,” the Russian Federation first dismissed the application of the law of occupation under IHL. Secondly, it noted, however, that while “South Ossetia had and still has its own government and local authorities that exercise effective control in this country, maintain the rule of law and protect human rights, (...) the Russian military contingent called upon to carry out purely military tasks in the territory of South Ossetia, to the best of their abilities tried to maintain law and order and prevent any offences in the areas of their deployment including Georgia proper, where due to the flight of Georgian government authorities an apparent vacuum of police presence ensued.”<sup>57</sup> It is therefore necessary to clarify the application of human rights law in the present context.

## **B. International Human Rights Law**

First, human rights law (HRL) is relevant given the preliminary remarks on the time frame and scope of the report, which go beyond the time of the conflict itself and require an examination of acts committed in peacetime. Secondly, it is now well established that HRL continues to apply in time of armed conflict.<sup>58</sup> In this regard, the current case pending before the ICJ between Georgia and the Russian Federation, concerning the application of the International Convention on the Elimination of All Forms of Racial Discrimination in this

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<sup>57</sup> Russia, Responses to Questions Posited by the IIFMCG (Legal Aspects), *op. cit.*, pp. 7-8.

<sup>58</sup> See for example, *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I C J. Reports 1996*, para. 25; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004*, para. 106

context, has given rise to extensive discussion between the parties on three intertwined issues to do with the applicability of human rights law: in time of war, in cases of occupation and extraterritorially.

The obligations of states under human rights treaties include not only the obligation to refrain from interfering with the exercise and enjoyment of those rights, but also the positive obligation to take measures to protect their enjoyment. As stressed by the Human Rights Committee, the legal obligation under Article 2(1) of the ICCPR “to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant is both negative and positive in nature.”<sup>59</sup>

While it has been argued that only states could be bound by these obligations, it is now recognised that non-state actors too have obligations under human rights law. The joint report on Lebanon and Israel by a group of four UN special rapporteurs stressed that “although a non-State actor cannot become a party to these human rights treaties, it remains subject to the demand of the international community, first expressed in the Universal Declaration of Human Rights, that every organ of society respect and promote human rights.”<sup>60</sup> This is particularly significant in cases where a non-state actor exercises effective control over a territory.<sup>61</sup>

#### **a) Applicable treaty law**

Georgia and the Russian Federation are parties to the main universal human rights treaties, notably the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, the Convention Against Torture, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Prevention and Punishment of the Crime of Genocide.

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<sup>59</sup> General Comment No. 31 [80], Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13 (General Comments), 26 May 2004, paras 6-7

<sup>60</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kalin, and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, UN Doc. A/HRC/2/7, 2 October 2006, para 19, quoted by Andrew Clapham, “Human rights obligations of non-state actors in conflict situations,” *International Review of the Red Cross*, No. 863, 2006. For a review of the practice in this regard, see Clapham, pp. 503

<sup>61</sup> See for example the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kalin, and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, UN Doc. A/HRC/2/7, para 19

In addition to universal human rights treaties, they are both parties to regional instruments that impose obligations on them: notably the European Convention for the Protection of Human Rights and Fundamental Freedoms (EConvHR), the Framework Convention for the Protection of National Minorities, and the human dimension commitments of the Organisation for Security and Co-operation in Europe (OSCE).

### **b) Extraterritorial application**

The territorial scope of the application of human rights treaties is a key question to be answered, given that the Russian Federation operated outside the borders of its territory in the context of the conflict in Georgia. The second question – that of derogation from human rights treaties in times of emergency – should then be addressed.

Under Article 2(1) of ICCPR, “[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction” the rights recognised in that convention. Article 1 of the EConvHR uses more general wording by stating that “the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.” These two provisions have been interpreted as meaning that the application is not limited to the state’s territory *per se* but also extends to places under its effective control. The UN Human Rights Committee noted that “a State Party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party.”<sup>62</sup> The European Court of Human Rights already relied on the criteria of effective control for determining the application of the EConvHR: “Bearing in mind the object and purpose of the Convention, the responsibility of a Contracting Party may also arise when, as a consequence of military action, whether lawful or unlawful, it exercises effective control of an area outside its national territory.”<sup>63</sup> This extraterritorial application of the human rights treaties where a state exercises jurisdiction outside its territory was also confirmed by the ICJ.<sup>64</sup>

The question of what types of situation constitute effective control also arises, as it does for the determination of an occupied territory. They comprise prolonged occupations as well as

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<sup>62</sup> General Comment No 31 [80], Nature of the General Legal Obligation Imposed on States Parties to the Covenant, *op cit*, para. 10

<sup>63</sup> European Court of Human Rights, *Loizidou v Turkey*, Application No 15318/89 (18 December 1996), para 62

<sup>64</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004, paras 111–113.

situations that lasted only a short period of time.<sup>65</sup> In this regard, the European Court of Human Rights, ruling in the case of *Ilascu v. Moldova and the Russian Federation*, provides an interesting guideline for the definition of effective control: “the military and political support” of Russia, “military, economic, financial and political support given by the Russian Federation” and “the participation of its military personnel in the fighting.”<sup>66</sup>

While it appears that in the *Ilascu* case there was not a situation of occupation,<sup>67</sup> this did not prevent the Court from recognising that Russia was exercising effective control over the Moldovan Republic of Transnistria and that consequently persons on this territory came within its jurisdiction<sup>68</sup> Both states – Georgia<sup>69</sup> and Russia<sup>70</sup> – referred to this case but presented a different reading. It should be stressed that the issue of whether the Russian Federation exercises effective control over certain parts of Georgia is currently pending before the European Court of Human Rights. In this regard Georgia argues, in the light of the findings in the *Ilascu* case, and the support given by the Russian Federation to Abkhazia and South Ossetia, that Russia does exercise the control required for the EConvHR to apply.<sup>71</sup> Reaching a definite conclusion on this question would be a delicate matter. By justifying the possible infringement of specific rights as a result of the actions of the Russian forces, the

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<sup>65</sup> See examples in Rule of Law in Armed Conflict project, RULAC. Paper, *Interaction between international humanitarian law and human rights in armed conflicts*, available at [http://www.adh-geneva.ch/RULAC/interaction\\_between\\_humanitarian\\_law\\_and\\_human\\_rights\\_in\\_armed\\_conflicts.php](http://www.adh-geneva.ch/RULAC/interaction_between_humanitarian_law_and_human_rights_in_armed_conflicts.php)

<sup>66</sup> *Ilascu and Others v Moldova and the Russian Federation*, App No 48787/99, judgment of 8 July 2004, paras 382 and 392

<sup>67</sup> This is asserted by Georgia in its application Georgia, APPLICATION UNDER ARTICLE 33 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND RULES 46 AND 51 OF THE RULES OF COURT, *op cit*, para 149

<sup>68</sup> *Ilascu and Others v Moldova and the Russian Federation*, App No 48787/99 judgment of 8 July 2004, para 392

<sup>69</sup> Public sitting held on Monday 8 September 2008, at 10 p m , at the Peace Palace, Verbatim Record, in the case concerning the Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Georgia v Russian Federation*), CR 2008/22, International Court of Justice, The Hague, 2008, para 35 See also Georgia, APPLICATION UNDER ARTICLE 33 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND RULES 46 AND 51 OF THE RULES OF COURT, *op cit*, paras 149-152, and Public sitting held on Monday 8 September 2008, at 10 p m , at the Peace Palace Verbatim Record, in the case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Georgia v Russian Federation*), CR 2008/25 International Court of Justice, The Hague, 2008, para 40, p 20 The advocate for Georgia stated “If Russian control was found to exist over the region called the “Moldavian Republic of Transnistria” without military occupation, can there be any doubt about Russian control over Abkhazia and South Ossetia with military occupation?”

<sup>70</sup> Public sitting held on Monday 8 September 2008, at 10 p m , at the Peace Palace, Verbatim Record, in the case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Georgia v Russian Federation*), CR 2008/27, International Court of Justice, The Hague, 2008, paras 13 ff

<sup>71</sup> Georgia, APPLICATION UNDER ARTICLE 33 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND RULES 46 AND 51 OF THE RULES OF COURT, *op cit*, paras 155-159

Russian Federation indirectly recognises that such rights were relevant in the context of its operation abroad.<sup>72</sup> This raises the question of derogations from human rights norms.

### c) Derogations

International human rights treaties contain provisions that allow States parties to derogate temporarily from their obligations under those treaties. Article 4(1) of ICCPR lays down the conditions for such a derogation to be lawful.<sup>73</sup> As specified by the UN Human Rights Committee in its General Comment, “measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature” and two fundamental conditions must be met for a State to invoke this derogation: first, there must be a situation that amounts to a public emergency that threatens the life of the nation, and secondly, the state of emergency must be proclaimed officially and in accordance with the constitutional and legal provisions that govern such a proclamation and the exercise of emergency powers.<sup>74</sup> This treaty body further notes that “even during an armed conflict measures derogating from the Covenant are allowed only if and to the extent that the situation constitutes a threat to the life of the nation.”<sup>75</sup> Article 15(1) of EConvHR also envisages derogations under certain conditions and makes an explicit reference to a situation of war.<sup>76</sup>

Article 4 of the ICCPR explicitly lays down the provisions which are non-derogable and which must therefore be respected at all times. These include the right to life; the prohibition of torture and cruel, inhuman or degrading punishment; the prohibition of slavery, the slave trade and servitude; and freedom of thought, conscience and religion. Furthermore, measures derogating from the Covenant must not involve discrimination on the grounds of race, colour, sex, language, religion or social origin. The Human Rights Committee also spelt out the other “elements” of the Covenant that cannot be lawfully derogated from under Article 4, such as

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<sup>72</sup> Russia, Responses to Questions Posited by the IFFMCG (Legal Aspects), *op cit*, p 11

<sup>73</sup> This article prescribes that “in time of a public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin ”

<sup>74</sup> Human Rights Committee, *General Comment No 29 (Art 4)*, Doc ONU CCPR/C/21/Rev 1/Add 11, 31 August 2001, para 2

<sup>75</sup> *Ibid.*, para. 3.

<sup>76</sup> This paragraph reads as follows “In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law ”

the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person; the prohibition against the taking of hostages, abduction and unacknowledged detention; certain elements of the rights of minorities to protection; the prohibition on deportation or the forcible transfer of population groups; and the prohibition against propaganda for war and against the advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence.<sup>77</sup>

The Russian Federation, while not explicitly referring to a case of derogation, has made the following statement: “If in selected cases the actions of Russian military personnel may be deemed as an infringement of specific human rights (for instance, restricting the freedom of movement), these actions were taken to protect the lives and health of the civilian population, maintain public safety, prevent and preclude any unlawful actions and protect citizens regardless of their nationality and/or ethnic background.”<sup>78</sup>

As noted by the Commissioner for Human Rights of the Council of Europe,<sup>79</sup> according to Article 15(3) of the EConvHR, any High Contracting Party availing itself of this right of derogation must keep the Secretary-General of the Council of Europe fully informed of the measures it has taken and the reasons for them. On 10 August 2008, Georgia did inform the Secretary-General of the Council of Europe that, on 9 August 2008, the President of Georgia had invoked his right under Articles 73(1)(f) and 46(1) of the Constitution and declared state of war in the whole territory for fifteen days. The President’s decision had been approved by the Georgian Parliament. In the same *note verbale* informing the Secretary-General of the state of war, it was specifically pointed out that no derogation had been made for any rights under the EConvHR. Subsequently, on 3 September 2008 the Permanent Representative of Georgia to the Council of Europe informed the Committee of Ministers that a state of emergency would replace martial law in the country, beginning on 4 September 2008. In this instance, Georgia made no statement concerning possible derogations.

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<sup>77</sup> *Ibid.*, para. 13.

<sup>78</sup> Russia, Responses to Questions Posited by the IIFFMCG (Legal Aspects), *op. cit.*, p. 11.

<sup>79</sup> Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, HUMAN RIGHTS IN AREAS AFFECTED BY THE SOUTH OSSETIA CONFLICT, *Special Mission to Georgia and the Russian Federation*, 22-29 August 2008, CommDH(2008)22, 8 September 2008, para. 12.

#### d) Relationship with IHL

The main issue is the type of relationship between these two bodies of norms; the question is therefore not whether but rather how human rights law interacts with IHL.<sup>80</sup> Although this question goes far beyond the scope of the work of the IFFMCG, it nevertheless bears important consequences for the applicable legal framework. The ICJ, when discussing the continued application of the right to life in time of war, stressed that the arbitrary character of the deprivation of a life should be assessed against the standards of IHL and not those of human rights. In this case, IHL acts as a *lex specialis* vis-à-vis human rights law.<sup>81</sup>

While this does not resolve practical issues of application, it does shed some light on the various scenarios one may encounter. Bearing in mind this relevance of human rights law in the context of the armed conflict, it is now necessary to outline briefly the relevant standards applicable to the protection of IDPs.

#### C. Legal Framework for IDPs

While the armed conflict between Russia and Georgia resulted in persons who could potentially be qualified as refugees crossing the border into Russia, the main issue concerns IDPs, whether those still displaced following the armed conflict in Abkhazia and South Ossetia in the 1990s or IDPs forced to leave because of the hostilities in 2008 and their aftermath. There appear to be conflicting views regarding the qualification of certain displaced persons in the context of the 2008 conflict in Georgia. Contention arises about the qualification of those who fled, as a result of the conflict, from Abkhazia and South Ossetia to the Georgian controlled territory: the authorities in South Ossetia and Abkhazia used the term “refugees,”<sup>82</sup> which implies the crossing of an international border, whereas the Georgian authorities qualify those persons as IDPs. Given that at the time of the conflict there was no

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<sup>80</sup> LUBELL, N, “Challenges in applying human rights law to armed conflict,” *International Review of the Red Cross*, No. 860, 2005, p. 738

<sup>81</sup> In a more systematic way, the ICJ further elaborated the various types of relationship between these two bodies of law. “As regards the relationship between international humanitarian law and human rights law, [ ] some rights may be exclusively matters of international humanitarian law, others may be exclusively matters of human rights law, yet others may be matters of both these branches of international law. In order to answer the question put to it, the Court will have to take into consideration both these branches of international law, namely human rights law and, as *lex specialis*, international humanitarian law.” *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *op cit*, para. 106. The ICJ confirmed this approach in the *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* case, *op cit*, para. 119.

<sup>82</sup> This term was used for example in the context of meetings with the IFFMCG.



internationally recognised border<sup>83</sup> separating South Ossetia or Abkhazia from the rest of Georgia proper, persons displaced between these two territories should be classified as IDPs in the same way as the ethnic Georgians living in the regions adjacent to the administrative border with South Ossetia who had to leave for Gori and Tbilisi.

Although IDPs are not protected through the legal regime of refugee law, they benefit of course from the legal protection of HRL and, in time of armed conflict, of IHL. In addition to substantive rules protecting them as human beings, these branches of law also contain norms concerning displacement itself and the right to return. In order to address the specific needs of persons forcibly displaced from their homes in their own countries by violent conflicts, gross violations of human rights and natural and human-made disasters, the United Nations Guiding Principles on Internal Displacement have been drafted.<sup>84</sup> While, unlike treaties, these principles are not binding, they are consistent with existing international law, some of them restating or deriving from existing legal obligations,<sup>85</sup> and they set standards in relation to IDPs. They constitute a normative framework for the internally displaced. In this regard, OSCE participating States, including Georgia and Russia, have recognised these principles as a “useful framework for the work of the OSCE and the endeavours of participating States in dealing with internal displacement.”<sup>86</sup>

Having outlined the main elements of the applicable international law, it is now necessary to ascertain the facts, as described by the parties and in the light of the other documentary sources, in order to clarify the allegations of violations.

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<sup>83</sup> On this criterion see *Guiding Principles on Internal Displacement Annotations*, Walter Kalin, The American Society of International Law, The Brookings Institution – University of Bern Project on Internal Displacement, Studies in Transnational Legal Policy, No 38, The American Society of International Law, Washington, DC, 2008, p 2, available at <http://www.asil.org/pdfs/stlp.pdf>

<sup>84</sup> For the purpose of these Guidelines, IDPs are “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border.” See *Guiding Principles on Internal Displacement*, Report of the Representative of the Secretary General, Mr Francis M Deng, submitted pursuant to Commission resolution 1997/39E/CN.4/1998/53/Add.2, Addendum, E/CN.4/1998/53/Add.2, 11 February 1998, COMMISSION ON HUMAN RIGHTS

<sup>85</sup> See *Guiding Principles on Internal Displacement Annotations*, Walter Kalin, The American Society of International Law, The Brookings Institution – University of Bern Project on Internal Displacement, Studies in Transnational Legal Policy No 38, The American Society of International Law, Washington, DC, 2008, available at <http://www.asil.org/pdfs/stlp.pdf>

<sup>86</sup> OSCE, 2 December 2003, Ministerial Council Maastricht, DECISION No 4/03 on Tolerance and Non-discrimination, para 13

### III. Main facts and related legal assessment

Particular attention must be paid to the numbers of casualties. First of all, most of the casualties were reported in the context of the hostilities in South Ossetia and in adjacent areas. Secondly, the discrepancies between the first reports of the number of civilians killed and wounded during the hostilities in South Ossetia, as announced by Russia and South Ossetia, and the latest figures provided by the parties, are striking.<sup>87</sup> This was singled out as an “issue” in the 2009 report by Human Rights Watch.<sup>88</sup> The circumstances in which people were killed do matter. For this reason, some lists of people killed, not specifying whether they were participating in the hostilities,<sup>89</sup> should be considered carefully.

Under IHL, the exact figure of casualties is not relevant in itself and does not entail legal implications. What matters is rather the nature of the victims and the circumstances in which such casualties occurred. Furthermore, the Mission does not have the capacity to make a definitive estimate in this regard. The number of casualties given by different sources varies, mostly depending on who is considered.<sup>90</sup> However, all parties to the conflict have a responsibility to establish reliable figures. This is particularly crucial as, at the time of writing this report, some people have still been left with conflicting reports about the death of their relatives and no information about the location of their bodies.

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<sup>87</sup> AI, *Civilians in the Line of Fire – The Georgia-Russia Conflict*, op cit , p 10

<sup>88</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, op cit , p 74 See also AI, *Civilians in the Line of Fire – The Georgia-Russia Conflict*, op cit , p 10

<sup>89</sup> See for example, *Deceased victims list*, Public Investigation Commission in South Ossetia, available at: [www.osetinfo.ru](http://www.osetinfo.ru)

<sup>90</sup> For example the Russian Federation in its replies to the questionnaire sent by the IIFMCG stated that 162 civilian residents – nationals of South Ossetia – had died and 255 had suffered injuries of various degrees, 48 servicemen from the Russian Federation Armed Forces were killed including 10 who served in the Mixed Peacekeeping Forces Battalion, and 162 servicemen sustained various degrees of injuries [Russia, Responses to Questions Posited by the IIFMCG (Humanitarian Aspects)], p 2) The August 2009 Report by the Government of Georgia entitled “The aggression by the Russian Federation against Georgia” gives the following figures for “[w]ar casualties among civilian, military and media personnel”: 412 persons died “These have included 228 civilians, 170 military, 14 policemen Meanwhile, 10 military and 14 policemen remain missing One foreign and two Georgian journalists have died and four journalists have been wounded in the exercise of their professional functions, 1 747 citizens of Georgia have been wounded, among them 973 military, 547 civilians, and 227 policemen” Report by the Government of Georgia on the aggression by the Russian Federation against Georgia, August 2009, p 40 Following his visit to the region, Luc Van den Brande, the chairperson of the Ad Hoc Committee established by PACE to study the situation in Russia and Georgia, stated on 29 September 2008 that “independent reports put the total number of deaths at between 300 and 400, including the military” See PACE, *Ad Hoc Committee of the Bureau of the Assembly*, “The situation on the ground in Russia and Georgia in the context of the war between those countries,” Memorandum by Luc Van den Brande, chairperson of the Ad Hoc Committee of the Bureau of the Assembly, Doc. 11720, Addendum II, September 29, 2008

As mentioned earlier, the primary task of the IIFFMCG is to establish facts. At the same time, it has also been commissioned to assess allegations of violations. The chronology and sequencing of facts as presented below are not to be construed as establishing any type of causal links between them.

### **A. Conduct of hostilities**

IHL governs the conduct of hostilities by parties to a conflict through a set of general principles and more specific rules. The fundamental tenets of this body of norms consist of the immunity of the civilian population and its corollary, the principle of distinction, and the general principle that the right of the parties to the conflict to choose methods or means of warfare is not unlimited.

While the conventional rules of IHL on the conduct of hostilities were applicable mainly to international armed conflicts, the recent decisions of the international criminal tribunals, as well as the consolidation of the customary nature of IHL rules,<sup>91</sup> demonstrate the exponential development of the applicable customary law in non-international armed conflicts.<sup>92</sup>

IHL requires that the parties to a conflict distinguish at all times between combatants and civilians, as well as between military objectives and civilian objects, and that they direct their operations only against combatants and military objectives.<sup>93</sup> Civilians lose their immunity from attack when and only for such time as they are directly participating in hostilities.<sup>94</sup> In this regard, and as far as objects are concerned, IHL defines military objectives as objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage. Civilian objects are all objects that are not military objectives. Civilian objects, such as homes and schools, are protected against attack, unless and for such time as they are used for military purposes.

In application of this principle of distinction, IHL further prohibits indiscriminate attacks defined in three categories: those (a) which are not directed at a specific military objective; (b)

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<sup>91</sup> In the key study published by the ICRC in 2005 it appears that out of 161 customary rules identified, 159 are also applicable to non-international armed conflicts

<sup>92</sup> On the convergence between the two regimes, see MOIR, L., *The Law of Internal Armed Conflict*, Cambridge, Cambridge University Press, 2002, p. 306

<sup>93</sup> As to who qualifies as a "combatant", see Articles 4(A)(1)-(3) and (6) Geneva Conventions (GC) III and Articles 43-44 of the Additional Protocol I. "Civilians" are all those who do not qualify as combatants thus defined, cf. Article 50 of the Additional Protocol I

<sup>94</sup> See for example Article 52(3) of the Additional Protocol I

which employ a method or means of combat which cannot be directed at a specific military objective; or (c) which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law; and consequently which, in each such case, are of a nature to strike both military objectives and civilians or civilian objects without distinction.

Among the cases of indiscriminate attack are those attacks by bombardment by any method or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects. Such attacks are prohibited.

Even when an attack is directed at a clear military objective, IHL also prohibits such an attack as being indiscriminate if it is expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

In addition to the obligations to direct attacks only against combatants and military objectives, and to respect the principle of proportionality in attack, the parties to the conflict must also take a series of precautions at the time of planning, ordering or leading an attack. These precautions in attack, codified in Article 57 of Protocol I, are grounded in the principle that military operations must be conducted with in constant vigilance in order to spare the civilian population, civilian persons and civilian objects. All possible practical precautions must be taken in order to avoid and, in any event, to reduce to a minimum human casualties in the civilian population, injuries to civilian persons and incidental damage to civilian objects. These precautions include doing everything feasible to verify that the objects of attack are military objectives and not civilians or civilian objects, and giving “effective advance warning” of attacks when circumstances permit.

Finally, IHL on the conduct of hostilities also contains principles and rules on weapons.

Accounts of destruction and casualties do not *per se* constitute sufficient elements to conclude that violations of IHL have occurred: the circumstances of the attacks are to be assessed.

While the hostilities broke out in South Ossetia on the night of 7/8 August 2009, artillery shelling had been reported by various sources during the previous days. As this shelling is one

of the main justifications invoked by Georgia for intervening in South Ossetia,<sup>95</sup> those events have particular significance.<sup>96</sup>

A large number of allegations of violations from all sides relate to the conduct of Georgian, South Ossetian and Russian forces in Tskhinvali and the surrounding villages, as well as in the adjacent zones and in Gori, both during the conflict and after. There are particular issues depending on the party concerned.

As the hostilities took place partly in an urban setting, notably Tskhinvali and Gori and the surrounding villages, an assessment of the facts relating to the conduct of hostilities is complicated. While IHL does not prohibit fighting in urban areas, the presence of many civilians places greater obligations on the warring parties to take steps to minimise the harm to civilians. Forces deployed in populated areas must avoid locating military objectives near densely populated areas, and endeavour to remove civilians from the vicinity of military objectives.<sup>97</sup>

Addressing questions such as the types of objective that have been targeted, the circumstances at the time of the attack and the exact cause of damage has proved to be very delicate. For example, many administrative buildings were attacked, as well as schools and apartment buildings. In the case of these objectives, a key fact to establish would be whether or not Ossetian combatants were present in the buildings at the time they were attacked. According to Human Rights Watch, witnesses and members of South Ossetian militias themselves “made it clear that South Ossetian forces set up defensive positions or headquarters in civilian infrastructure.”<sup>98</sup> There are also cases where the presence of such combatants was not substantiated.

Although it appears very difficult to reach definite factual and legal conclusions on each and every specific attack, a number of facts do seem to emerge from testimonies collected on the ground by NGOs and from the comparison between the military objectives and the types of weapons used.

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<sup>95</sup> Mamuka Kurashvili, commander of Georgian peacekeepers in the region stated that Georgia had “decided to restore constitutional order in the entire region,” quoted by AI, *Civilians in the Line of Fire – The Georgia-Russia Conflict*, *op cit*, p 9

<sup>96</sup> See Chapter 5 “Military Events of 2008”

<sup>97</sup> Art 58 Additional Protocol I

<sup>98</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op cit*, p 50

First, a review of the specific controversial targets attacked in the course of the conflict is necessary. However, as objects may have been damaged, or persons affected, without their having been the actual targets attacked, this section will also address the collateral loss of civilians and damage to civilian objects. Secondly, a more general assessment of the conduct of the parties to the conflict under IHL will then be necessary. While most of the allegations of war crimes concern South Ossetia, a few relate to the Kodori Valley and will also be examined.

#### **a) Targets attacked**

According to Russia, “In the course of the entire military operation units of the Russian Federation Armed Forces, acting exclusively with a view to repelling an armed attack, used tanks, APCs and small arms to fire upon clearly identified targets only, which enabled them to minimise civilian losses.”<sup>99</sup>

Georgia stated that “Georgian forces attacked a) predetermined military targets, including a Russian military convoy moving south and b) targets identified during the hostilities.”<sup>100</sup> It provided details only about the former type of targets.

In the light of these two statements, and given the damage caused to civilian buildings, facts concerning targets need to be carefully established. For example the Human Rights Assessment Mission of the OSCE observed, within Tskhinvali, “... damage to mostly civilian buildings, as well as to the base of the Russian peacekeepers deployed under the 1992 Sochi Agreement,” including “apartment blocks and civilian neighbourhoods, schools, a home for the elderly, and a psychiatric hospital, all of which were visited by the mission, were among the civilian objects badly damaged by military forces.”<sup>101</sup>

A distinction on the conduct of hostilities derived from IHL, the distinction between persons and objects, will be used to structure the analysis of the targets attacked.

#### **(i) Alleged Attacks on Peacekeepers**

Alleged attacks on peacekeepers occurred both prior to the conflict, fuelling the tension between the parties, and during it. Given the status of those persons and the particular

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<sup>99</sup> Russia, Responses to Questions Posited by the IIFFMCG (Humanitarian Aspects), *op. cit.*, pp. 8-9.

<sup>100</sup> Georgia, Responses to Questions Posited by the IIFFMCG (Humanitarian Aspects, question 3), provided to the IIFFMCG on 5 June 2009, p. 1.

<sup>101</sup> *United Nations Inter-agency Humanitarian Assessment Mission to South Ossetia*, *op. cit.*, para. 5.9.

attention paid to those attacks in the allegations by Georgia and the Russian Federation, it is crucial to clarify what the facts are and to assess their potential legal implications.

Under IHL, the protection afforded to peacekeepers is closely linked to the general protection of civilians. As stated in the ICRC Customary Law Study, customary IHL prohibits “directing an attack against personnel and objects involved in a peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians and civilian objects under international humanitarian law.”<sup>102</sup> The use of force for strictly self-defence purposes or for the defence, within their peacekeeping mandate, of civilians or civilian objects would not be qualified as participation in hostilities. In this context they could not be regarded as a lawful target as they are not pursuing any military action. It is important to stress that, in both international and non-international armed conflict, the Rome Statute of the ICC regards it as a war crime intentionally to direct attacks against peacekeepers and related installations “as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict.”<sup>103</sup>

During the conflict, according to Russian peacekeepers, posts manned by Russian and/or Ossetian forces were attacked by Georgian forces.<sup>104</sup> The Russian Federation claims that the peacekeepers were deliberately killed. It argues that Georgia committed “violations of international norms governing the conduct of war, resulting primarily in casualties among the peacekeeping personnel.”<sup>105</sup> When meeting with the IFFMCG’s experts in Moscow in July 2009, the representatives of the Investigative Committee of the General Prosecutor’s Office of Russia indicated that 10 Russian peacekeepers had been killed.<sup>106</sup>

According to Amnesty International, “on 31 July, reports indicate that South Ossetian forces attacked and blew up a Georgian military vehicle carrying Georgian peacekeepers.”<sup>107</sup>

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<sup>102</sup> Rule 33, in I-M HENCKAERTS, L DOSWALD-BECK (eds), *Customary International Humanitarian Law*, Volume I, *op cit*, p 112

<sup>103</sup> See Article 8(2)(b)(iii) and (e)(iii), which read as follows “Intentionally directing attacks against personnel, installations material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict ”

<sup>104</sup> See short chronology provided by the Russian Federation

<sup>105</sup> Russia, Responses to Questions Posited by the IFFMCG (Humanitarian Aspects), *op cit*, p 2

<sup>106</sup> Meeting with the representatives of the Investigative Committee of the General Prosecutor’s Office of Russia, Moscow, 29 July 2009.

<sup>107</sup> AI, *Civilians in the Line of Fire – The Georgia-Russia Conflict*, *op cit*, p 8

Georgia also claimed that Georgian peacekeepers were attacked by South Ossetian irregular armed groups in the evening of the 7 August.<sup>108</sup>

According to HRW, the organisation's researchers "witnessed the extensive damage caused to the peacekeepers' posts by Georgian attacks" in Tskhinvali and near the village of Khetagurovo.<sup>109</sup> Amnesty International refers to information from the Russian authorities reporting that 10 Russian peacekeepers were killed and a further 30 injured in the course of the attack on two bases located in Verkhny Gorodok in Tskhinvali and another attack north of Tskhinvali.<sup>110</sup>

Georgia has claimed that on 7 August "at 22:30, the armed formations of the proxy regime guided by Russian peacekeepers fired at the Georgian-controlled villages of Prisi and Tamarsheni, from Tskhinvali and the mountain of Tliakana."<sup>111</sup> This action, if confirmed, could be seen as direct participation in hostilities. More generally, Georgian forces allege that South Ossetian forces were firing from the peacekeepers' posts that were attacked during the conflict or providing South Ossetia militiamen with the coordinates of Georgian positions, thereby turning the posts into lawful military objectives.<sup>112</sup>

HRW further noted that it was unable to corroborate any of the serious allegations of attacks on or by peacekeepers from Russia and Georgia.<sup>113</sup>

Nor was the IIFFMCG able to corroborate such claims, or the claim that Georgian forces had attacked Russian peacekeepers' bases, with information from sources other than the sides. Even if these claims were to be confirmed, the lack of more precise information would make the establishment of relevant facts and their legal assessment problematic, as the Mission would find itself with two contradictory assertions. When considering direct attacks against peacekeepers, the conclusion depends on whether or not, at the time of the attacks, the peacekeepers and peacekeeping installations had lost their protection. On the other hand,

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<sup>108</sup> See: Georgia, Replies to Question 3 of the Questionnaire on humanitarian issues, provided to the IIFFMCG on 5 June 2009, p. 2.

<sup>109</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op. cit.*, p. 33.

<sup>110</sup> *Ibid.*, p. 26.

<sup>111</sup> See: Georgia, Replies to Question 3 of the Questionnaire on humanitarian issues, provided to the IIFFMCG on 5 June 2009, p. 2.

<sup>112</sup> See Georgia, Replies to the Questionnaire on Military Issues, provided to the IIFFMCG.

<sup>113</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op. cit.*, p. 33.



peacekeepers may have been killed or injured as a result of an indiscriminate attack, not specifically directed against them.<sup>114</sup>

*The Mission was unable to establish whether, at the time of the alleged attacks on Russian peacekeepers' bases, the peacekeepers had lost their protection owing to their participation in the hostilities. The Mission is consequently unable to reach a definite legal conclusion on these facts.*

## (ii) Objects

### 1. Administrative buildings

In March 2009 the IFFMCG was shown by the *de facto* South Ossetian authorities several administrative buildings, such as those of the Parliament and the *de facto* Ministry of Foreign Affairs, which they alleged had been hit by Georgian forces.<sup>115</sup> It witnessed the damage caused by these attacks. The HRAM also observed “first-hand the destruction caused to many civilian public buildings in Tskhinvali, including the university, a library, the ‘parliament building’ and other ‘governmental offices’ in the same complex. A police station and the ‘presidential’ administration were also damaged.”<sup>116</sup> Human Rights Watch also referred to administrative buildings hit by the Georgian artillery, such as the Ossetian parliament building.<sup>117</sup>

The IFFMCG would like to stress that, as for other types of targets, while it is extremely important to establish the amount of the damage and destruction, ascertaining the circumstances and purpose of a given attack also remains crucial. In this regard, as outlined by Human Rights Watch, the Georgian authorities later claimed that their military had targeted mostly administrative buildings in these areas because these buildings were harbouring Ossetian militias.<sup>118</sup> Similarly, in his testimony to the parliamentary commission

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<sup>114</sup> See Chapter 5 “Military Events of 2008”.

<sup>115</sup> Under IHL, only those objects may be lawfully targeted which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage. In this regard, attacks on administrative buildings during the August 2008 conflict raise some questions as to whether such buildings can be lawfully targeted.

<sup>116</sup> OSCE, *Human Rights in the War-Affected Areas following the Conflict in Georgia*, *op. cit.*, p. 41.

<sup>117</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op. cit.*, p. 50.

<sup>118</sup> *Ibid.*, p. 41, quoting Zaza Gogava, Chief of the Staff of the Georgian Armed Forces, Stenographic Record of the Session of the Parliamentary ad hoc Commission on Military Aggression and Acts of Russia against the Territorial Integrity of Georgia, Session of October 28, 2008, [http://www.parliament.ge/index.php?lang\\_id=ENG&sec\\_id=1329&info\\_id=21212](http://www.parliament.ge/index.php?lang_id=ENG&sec_id=1329&info_id=21212)

studying the August war, Zaza Gogava, Chief of Staff of the Georgian Armed Forces, said that “Georgian forces used precision targeting ground weapons only against several administrative buildings, where headquarters of militias were located; these strikes did not cause any destruction of civilian houses.”<sup>119</sup> Although this has yet to be clearly established, such an argument would necessarily have legal implications under IHL.

Under certain conditions, the military use of a particular civilian object may turn this object into a military objective that can be lawfully targeted. On the other hand the attacker still needs to ensure the protection of the civilian population, for example by assessing whether the attack will not be disproportionate and by taking appropriate precautions. These elements will be discussed later from a broader perspective.

*The Mission was unable to assess each specific attack on administrative and public buildings in Tskhinvali but notes that, although not in themselves lawful military objectives, such buildings may be turned into a legitimate target if used by combatants. This would, however, not relieve the attacker of certain obligations under IHL (e.g. precautions, proportionality).*

## 2. Schools

Under IHL, schools are by nature civilian objects that are immune from attack. Several cases of damage caused to schools in the course of the hostilities call for specific attention.

Referring to the shelling of Tskhinvali by Georgian forces, Human Rights Watch noted that “the shells hit and often caused significant damage to multiple civilian objects, including the university, several schools and nursery schools, stores, and numerous apartment buildings and private houses, (...) some of these buildings were used as defence positions or other posts by South Ossetian forces (including volunteer militias), which rendered them legitimate military targets.”<sup>120</sup> For example, witnesses told Human Rights Watch that militias had taken up positions in School No. 12 in the southern part of Tskhinvali, which was seriously damaged by Georgian fire.<sup>121</sup>

The attack on School No. 7 in Gori on 9 August also exemplifies the need to pay particular attention to the circumstances of an attack. According to Human Rights Watch, relying on one

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<sup>119</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op. cit.*, p. 50.

<sup>120</sup> *Ibid.*, p. 41.

<sup>121</sup> *Ibid.*, p. 50.

eyewitness: “Russian aircraft made several strikes on and near School No. 7 in Gori city. (...) [A]bout one hundred Georgian military reservists were in the yard of the school when it was attacked. (..) None of the reservists was injured. The reservists as combatants were a legitimate target, and it is possible that the school was deemed as being used for military purposes. In such circumstances, it would lose its status as a protected civilian object. In the attack, one strike hit an apartment building next to the school, killing at least five civilians and wounding at least 18, and another hit a second building adjacent to the school causing damage, but no civilian casualties. There were civilians also taking shelter in the school.”<sup>122</sup> In this regard, following the overview of specific objects that were attacked or hit, in this section an assessment will later be undertaken to determine whether the principle of proportionality was respected and whether precautions had been taken to minimise the death of civilians and damage to civilian buildings.

*The Mission has no information indicating that schools not used for military purposes were deliberately attacked.*

### 3. Hospitals

Under IHL hospitals, apart from the protection they benefit from as civilian objects, enjoy special protective status.<sup>123</sup>

Damage caused to hospitals in the course of a conflict does not in itself amount to a direct attack against such an object. While it may be so if the hospitals have lost their protection because they have been “used to commit, outside their humanitarian duties, acts harmful to the enemy,” damage can also be collateral, caused by an attack on a legitimate military target.

According to Human Rights Watch, one of the civilian objects hit by GRAD rockets in Tskhinvali when the Georgian forces attacked was the South Ossetian Central Republican Hospital (Tskhinvali hospital), the only medical facility in the city that was assisting the

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<sup>122</sup> *Ibid*, p 94

<sup>123</sup> Article 19 of Geneva Convention IV holds that: “The protection to which civilian hospitals are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming, in all appropriate cases, a reasonable time limit, and after such warning has remained unheeded. The fact that sick or wounded members of the armed forces are nursed in these hospitals, or the presence of small arms and ammunition taken from such combatants and not yet handed to the proper service, shall not be considered to be acts harmful to the enemy,” Articles 12 and 13 of Protocol I and Article 11 of Protocol II are also relevant

wounded, both civilians and combatants, in the first days of the fighting.<sup>124</sup> According to this organisation, the rocket severely damaged treatment rooms on the second and third floors.<sup>125</sup>

Testimonies gathered by Human Rights Watch refer to heavy bombing and shelling of Kekhvi, an ethnic Georgian village north of Kurta in South Ossetia, between 7 and 9 August.<sup>126</sup> One of the residents stated that “on 9 August massive bombing started and the village administration and hospital buildings were destroyed.”<sup>127</sup>

Human Rights Watch also documented the attack at around 2 a.m. on 13 August by a Russian military helicopter, which fired a rocket towards a group of hospital staff members who were on a break in the hospital yard. The rocket killed Giorgi Abramishvili, an emergency-room physician. Human Rights Watch reported that its researchers saw that the roof of the hospital building was clearly marked with a red cross.<sup>128</sup> This attack contradicts the claim by the Russian Federation that its forces fired “upon clearly identified targets only” during the conflict and that “all kill fire was monitored.”<sup>129</sup>

***While the damage caused to hospitals by GRAD rockets or artillery shelling resulted from the use of inaccurate means of warfare, the helicopter fire at the hospital in Gori seems to indicate a deliberate targeting of this protected object. This may amount to a war crime.***

#### 4. Vehicles

Under IHL, civilian vehicles are immune from attack owing to their civilian character. In the context of the August 2008 conflict, two circumstances may explain the damage caused to civilian vehicles and may have legal implications for whether such damage could amount to a violation of IHL: either a legitimate military target was in the vicinity of the vehicle when it was damaged, or armed militia fighters were in the vehicle when it was attacked. In this latter case, a militia fighter is a legitimate military target if he or she participates directly in hostilities. This is significant as in the course of the conflict many persons reported that South Ossetian militia fighters stole cars and used them for different purposes.<sup>130</sup> For example, in

<sup>124</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op. cit.*, p. 42.

<sup>125</sup> *Idem.*

<sup>126</sup> *Ibid.*, p. 91.

<sup>127</sup> *Idem.*

<sup>128</sup> *Ibid.*, p. 95.

<sup>129</sup> Russia, Responses to Questions Posited by the IIFMCG (Humanitarian Aspects), *op. cit.*, p. 8.

<sup>130</sup> See, inter alia, customary Rules 7-10, in J-M. HENCKAERTS, L. DOSWALD-BECK (eds), *Customary International Humanitarian Law*, Volume I, *op. cit.*, pp. 25-36.

June 2009 the IFFMCG expert interviewed two inhabitants of Koshka who had witnessed South Ossetian military men stealing cars. A total of 14 vehicles were taken.

Testimonies collected by Human Rights Watch refer to attacks by Georgian forces on civilians fleeing the conflict zone, mainly on the Dzara road. The Georgian authorities stated in a letter to this organisation that their forces “fired on armor and other military equipment travelling from the Roki Tunnel along the Dzara Road, not at civilian vehicles.”<sup>131</sup> A witness told Human Rights Watch that Ossetian forces had an artillery storage facility and firing position on a hill about one kilometre from the Dzara road. While both Russian forces and Ossetian military equipment constitute legitimate targets, accounts of vehicles being hit by Georgian weaponry raise questions about either the civilian nature of those vehicles or inaccurate targeting or collateral damage or deliberate attacks. According to the Georgian government, the movement of civilian transport vehicles was stopped during the combat. From information it collected, however, Human Rights Watch has suggested that “many cars were driven by South Ossetian militiamen who were trying to get their families, neighbours and friends out of the conflict zone.”<sup>132</sup>

In its 2009 Report, Human Rights Watch stressed that it was not able to verify independently the claim that cluster bombs were used by Georgian forces in their attacks on the Dzara road, as recounted by one witness. It concluded that such allegations needed to be further investigated.<sup>133</sup>

There are also cases of aerial attacks on civilian convoys fleeing South Ossetia near Eredvi, more than likely carried out by Russian forces according to Human Rights Watch which interviewed residents who had fled. As stressed by this organisation, there appeared to be no Ossetian or Russian military positions in that area that would have been targeted by the Georgian army.<sup>134</sup>

An attack reported in interviews to Human Rights Watch took place on a taxi on 12 August in Tedotsminda, with two persons killed when Russian forces fired on the vehicle.<sup>135</sup> Another

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<sup>131</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op. cit.*, p. 56.

<sup>132</sup> *Idem.*

<sup>133</sup> *Idem.*

<sup>134</sup> *Ibid.*, pp. 115-116.

<sup>135</sup> *Ibid.*, p. 117.

testimony gathered by an NGO recounts another similar incident on the main road heading north from this town to the crossroads near Sakasheti.<sup>136</sup>

*The Mission was unable to reach a definite conclusion as to whether the attacks on vehicles by Georgian forces were contrary to IHL. Only deliberate Georgian attacks on civilian vehicles would amount to a war crime. Similarly, circumstances surrounding the attacks on civilian convoys fleeing the area of conflict, possibly by Russian planes, are difficult to ascertain. If confirmed, such attacks would amount to a war crime.*

## 5. Houses and residential buildings

By their nature, houses and residential buildings are civilian objects that, under IHL, cannot be attacked unless they are used for military purposes.

It is necessary to stress that although hostilities occurred in the Kodori Valley, few houses were damaged. The extent of the destruction gave rise to conflicting accounts.

During an interview with an elderly woman from Ajara conducted by one of the Mission's experts on 7 March 2009,<sup>137</sup> the respondent indicated that she had stayed on with her husband and sister after her family had left the village, and was evacuated by the ICRC in October 2008. She stressed that she had seen lots of houses being bombed in Ajara. The HRAM also reported information that a number of residents of the Kodori Valley lost homes and property as a result of the conflict: a villager from Chkhalt'a told the HRAM that his house and some of his neighbours' houses were damaged in the bombing. A woman from Sakheni reported that her house was damaged by bombs, as did a man from Gentsvishi. Another man's house was damaged when a bomb dropped in his yard, 20 metres from his house. In Ajara a woman

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<sup>136</sup> A woman from Pkhvenisi was trying to go back to her village with her husband and a neighbour. She told the NGO staff:

"So we left from Igoeti after midnight on 12<sup>th</sup>, my husband, our neighbour and I, in order to go back. We went first to Gori, and then through Variansi, heading home. No cars on the road in the dark.

"Then we came to the turn of the road by Sakasheti. We made a stop there. Something fell down in the front of the car by my husband. There was an explosion. I remember my husband saying, I can't feel my legs.

"When I woke up, I was outside the car, in the shade of a tree. I saw my husband a few meters away from me, moaning. I tried to reach him but couldn't, as I could not use my legs. I later learned I had a bullet wound in my right leg, above the ankle which went through without touching the bone. A Georgian hostage with the Russian soldiers afterwards told me that our car had been fired upon first, and forced to stop.

"After 40 days my family told me that my husband was dead. I later learned that his body stayed behind the tree for four days before the representatives of the Georgian patriarchy took the body and buried it in Tbilisi.

"There were similar incidents in Khviti and Shindisi. Two women were killed in an attack on the car they were sitting in in Shindisi."

Interview by the NGO on 23 October 2008. The incident referred to in Shindisi has been identified as the one HRW documented with regard to the taxi.

<sup>137</sup> Interview conducted on 7 March 2009, with a Georgian interpreter, in Tbilisi.

reported that four or five houses were destroyed by bombs. On 9 August, “the Abkhaz *de facto* Deputy Ministry of Defence declared that aerial strikes were carried out on the military infrastructure in the upper Kodori Valley”<sup>138</sup> During a meeting with the IFFMCG in March 2009, the *de facto* Deputy Minister for Defence stressed that only one civilian house had been destroyed and that there had been no major fighting in the valley, with only four soldiers wounded. According to the Georgian authorities, “in addition to South Ossetia, Russian forces have opened a second front in Abkhazia, attacking and destroying Georgian villages in the Kodori Gorge ( . ).”<sup>139</sup> The Abkhaz government in exile, however, indicated to the IFFMCG that to their knowledge only three houses had been destroyed.<sup>140</sup> The IFFMCG experts who travelled to the Kodori Valley on 30 May 2009 did not witness damage to houses.

Most of the damage to houses and residential buildings occurred in the context of the conflict in South Ossetia and along the Tskhinvali/Gori axis. The August 2008 conflict involved hostilities in cities and villages. Besides villages in the “buffer zones” and those located in South Ossetia, the two main cities affected by the hostilities were Tskhinvali and Gori.<sup>141</sup>

The Georgian authorities stated that “the Georgian military command minimised the list of targets for artillery and ground troops in the city of Tskhinvali and in the vicinity of populated villages. The list of predetermined targets included only places of heavy concentration of the

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<sup>138</sup> Report of the Secretary-General on the situation in Abkhazia, Georgia, 3 October 2008, S/2008/631, p. 8, para. 45. See also Meeting with the Abkhaz *de facto* Minister for Defence, 4 March 2009, Sukhumi.

<sup>139</sup> REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES OF PROTECTION SUBMITTED BY THE GOVERNMENT OF THE REPUBLIC OF GEORGIA, 13 August 2008, p. 6 para. 12. See also Public sitting held on Monday 8 September 2008, at 10 a.m., at the Peace Palace, Verbatim Record, in the case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), CR 2008/22, International Court of Justice, The Hague, 2008, p. 41, para. 9. Georgia also stated that “Beginning on August 8 at 09:45, Russian aviation bombed a series of civilian and military targets across Georgia, outside the zone of conflict in South Ossetia, damaging infrastructure and causing significant civilian casualties. These targets include but are not limited to Kodori Gorge, Abkhazia region.” See “Timeline of Russian Aggression in Georgia, Ethnic Cleansing of Georgians Resulting from Russian Invasion and Occupation since August 8, 2008, and Violations of IHL and IHRL in course of an International Armed Conflict: torture, inhuman and degrading treatment, hostage taking,” document submitted by the Government of Georgia in 2009, pp. 10-11.

<sup>140</sup> Meeting on 4 June 2009.

<sup>141</sup> According to Human Rights Watch.

“In Tskhinvali, the most affected areas were the city’s south, southeast, southwest, and central parts. Georgian authorities later claimed that their military was targeting mostly administrative buildings in these areas. The shells hit and often caused significant damage to multiple civilian objects, including the university, several schools and nursery schools, stores, and numerous apartment buildings and private houses. Such objects are presumed to be civilian objects and as such are protected from targeting under international law, but as described below, at least some of these buildings were used as defense positions or other posts by South Ossetian forces (including volunteer militias), which rendered them legitimate military targets.” HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op cit*, p. 41.

enemy's manpower and assets."<sup>142</sup> While this may be true with regard to the "list of predetermined targets" mentioned earlier, it does not rule out the possibility that the "targets identified during the hostilities" may have included houses and homes used by the South Ossetian forces.

The HRAM "confirmed first-hand that seven houses in the village of Nogkau were totally or partially destroyed by bombs and tank fire and that homes in the mostly ethnic Ossetian village of Khetagurovo were damaged by small-arms and artillery fire."<sup>143</sup> As stressed above, this damage is in itself not sufficient to constitute a violation of IHL.

It is worth noting that, in the case of Khetagurovo, Human Rights Watch "was able to establish that the positions of Ossetian militias were in close proximity to the civilian homes hit by the Georgian artillery," as claimed by the Georgian forces that said they came under heavy fire from Khetagurovo.<sup>144</sup>

Similarly, "another witness, a 50-year-old kindergarten teacher who showed Human Rights Watch the fragments of GRAD rockets that hit her kindergarten building on Isak Kharebov Street, also said that volunteer militias had been 'hiding' in the building". Several members of the Ossetian militia interviewed by Human Rights Watch confirmed that many school and nursery-school buildings were used as gathering points and defence positions by the militias.<sup>145</sup>

During the ground offensive, extensive damage was caused by Georgian tanks and infantry-fighting vehicles firing into the basements of buildings.<sup>146</sup>

In no way, however, does this mean that the presence of South Ossetian combatants in houses or residential buildings would release the attacker from his obligations under the principle of proportionality, or from the obligation to take precautionary measures as required by IHL.

The attacks by Russian forces in South Ossetia and deeper on the territory of Georgia proper involved aerial, artillery and tank strikes and caused civilian casualties and damage to houses and apartments. According to Human Rights Watch, "villagers from Tamarasheni (in South

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<sup>142</sup> Georgia, Responses to Questions Posited by the IIFMCG (Humanitarian Aspects, Question 3), provided to the IIFMCG on 5 June 2009, p. 1

<sup>143</sup> OSCE, *Human Rights in the War-Affected Areas following the Conflict in Georgia*, *op. cit.*, p. 41.

<sup>144</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op. cit.*, p. 51.

<sup>145</sup> *Idem.*

<sup>146</sup> *Ibid.*, p. 58.



Ossetia) described how Russian tanks fired on villagers' homes" and "witnesses told Human Rights Watch that there were no Georgian military personnel in their houses at the time that the tank fire took place."<sup>147</sup> This will be analysed in detail as part of our general assessment of allegations of indiscriminate attacks and failure to take precautionary measures.

*While damage to civilian houses and buildings caused by Georgian and Russian forces does not in itself constitute a violation of IHL, the damage caused by artillery, aerial and tank attacks raises serious concern, especially with regard to the principle of proportionality and the obligation to take precautions as required by IHL.*

## 6. Cultural objects, monuments, museums and churches

The basic principle is to be found in Article 4 of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, applicable in both international and non-international armed conflict. It states that, as long as cultural property is civilian, under IHL it may not be the object of attack. Customary law provides that "Each party to the conflict must respect cultural property: a) Special care must be taken in military operations to avoid damage to buildings dedicated to religion, art, science, education or charitable purposes and historic monuments unless they are military objectives; b) Property of great importance to the cultural heritage of every people must not be the object of attack unless imperatively required by military necessity."<sup>148</sup>

Reports on the conflict in Georgia contain very few allegations of damage caused to cultural monuments, museums or churches. While not systematically put forward, such claims as have been made come from both Georgia and the Russian Federation. According to the latter, "a random examination of historic and cultural monuments conducted on 15-18 August 2008 showed that a number of unique objects had been lost as a result of large-scale heavy-artillery shelling of South Ossetian communities by the Georgian forces. Furthermore, instances of vandalism and the deliberate destruction of cultural monuments and ethnic Ossetian burial sites were attributed to the Georgian military as well."<sup>149</sup> Noting that the information provided is subject to verification, Georgia gives the following description of damage to cultural monuments, churches and museums "based on reports from the local population and museum staff, and data compiled by the Ministry of Culture, Monument Protection and Sport of Georgia." Georgia asserts that "a number of monuments have been damaged by bombings,

<sup>147</sup> *Ibid*, p 114

<sup>148</sup> Rule 38, in I-M HENCKAERTS, L DOSWALD-BECK (eds), *Customary International Humanitarian Law*, Volume I, *op cit*, p 127

<sup>149</sup> Russia, Responses to Questions Posited by the IIFMCG (Humanitarian Aspects), *op cit*, p 3

shelling, looting and arson carried out by Russian forces and Ossetian militias operating in their wake.” It stressed that “a precise survey of the damage is not yet available [as] the expert group mandated by the government cannot gain access to the zones controlled by Russian forces.” It also indicates that the list<sup>150</sup> is provisional and that the high density of monuments in the Shida Kartli region makes it likely that many more churches or monuments have been damaged as well.<sup>151</sup>

There seems to be uncertainty as to the exact damage to cultural monuments caused as a result of the conflict. According to the Human Rights Assessment Mission of the OSCE, an NGO reported that the destruction in Disevi included cultural monuments dating from the 14th century and earlier.<sup>152</sup> During an interview conducted by an NGO and made available to the IFFMCG, a villager from Dvani, a village on the administrative border, declared that “the church was hit, and some houses were destroyed (...). It was artillery fire. The Russians should have known there were no military targets there.”<sup>153</sup> There are no further details about the circumstances of the attack.

The most significant damage confirmed concerns the Bishop’s Palace in Nikozi (10th/11th centuries). This is included in the list provided by Georgia of monuments that were allegedly damaged. It is described by the Georgian authorities as “one of the most important examples from the late medieval period, [and it] was heavily damaged following aerial bombardment on

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<sup>150</sup> Georgia gave the following list

“Archangel church (19th century) The newly restored church in the village of Kheri was damaged following shelling on 12th of August

“Ikorta church (12th century) One of the most interesting examples of Georgian Christian architecture and home to three Georgian heroes’ graves. The church was damaged following shelling on the 9th and 10th of August

“Ivane Machabeli museum. The museum in the village of Tamarasheni just north of Tskhinvali was heavily bombed and destroyed

“Giorgi Machabeli Palace (18th century) The Palace in the village of Kurta, situated between Tskhinvali and Djava, was leveled by bulldozer following its looting on 13-14th of August

“Bishop’s Palace in Nikozi (10th/11th centuries) This recently restored palace, one of the most important examples from the late medieval period, was heavily damaged following aerial bombardment on 9th August and a subsequent fire

“Wooden Church of St George in Sveri (19th century) The church, one of the few surviving examples of sacred wooden architecture, was burned to the ground

“Kemertu St George Church (9th-10th centuries) The church was bombed on 10th of August.

“Ksanu Gorge Museum Reserve (Ernstavi Palace) in Akhgori district. Currently occupied by South Ossetia militias, looting is feared ”

See Document submitted by Georgia, “Russian Invasion of Georgia – Facts & Figures,” 8 September 2008, p. 14

<sup>151</sup> Document submitted by Georgia, “Russian Invasion of Georgia – Facts & Figures,” 8 September 2008, p. 30.

<sup>152</sup> OSCE, *Human Rights in the War-Affected Areas following the Conflict in Georgia*, *op. cit.*, p. 52.

<sup>153</sup> Interviews conducted by an NGO on 11 September 2008, which does not want to be quoted

9th August and a subsequent fire.”<sup>154</sup> This is confirmed by the Council of Europe Assessment Mission on the Situation of the Cultural Heritage in the Conflict Zone in Georgia. This mission visited Georgia in October 2008 and assessed the damage inflicted on the cultural heritage and, by extension, buildings, in the August 2008 conflict zone in Georgia, and more specifically in the former so-called “buffer zone” to the north of Gori. The Technical Assessment Report refers to “the 10<sup>th</sup>-century Bishop’s Palace which, together with a group of domestic buildings to the south, was badly damaged by bomb blast.” It further indicates that “the religious community members were in the buildings at the time of the blast.”<sup>155</sup> There is a need to collect further information on the circumstances of the attack.

*Generally, more information is needed in order to assess both the extent of the damage and the facts relating to the circumstances of the military operations. This is critical as the special protection given to cultural property ceases only in cases of imperative military necessity.*

#### **b) Indiscriminate attacks including disproportionate attacks**

Some of the most serious allegations by all sides in the August 2008 conflict relate to indiscriminate attacks and the deliberate targeting of civilians. The Russian Federation argues that Georgia committed “violations of international norms governing the conduct of war, resulting in dramatic humanitarian consequences and, primarily, casualties, among the civilian population, and the destruction of residential quarters and civilian facilities.”<sup>156</sup> Georgia claims that “Throughout the armed conflict, the Russian Federation, in conjunction with proxy militants under their control, conducted indiscriminate and disproportionate attacks.”<sup>157</sup> Allegations in this regard focus *inter alia* on the use of certain types of weapons having indiscriminate effects. Russia reported the “large-scale and indiscriminate use of heavy weapons and military equipment by the Georgian side against the civilian population of Ossetia on the night of 7 to 8 August”<sup>158</sup> including the “shelling of residential areas and

<sup>154</sup> Document submitted by Georgia, “Russian Invasion of Georgia – Facts & Figures,” 8 September 2008, p 30

<sup>155</sup> Council of Europe, Directorate-General IV education, culture and heritage, youth and sport, *Assessment Mission on the situation of the cultural heritage in the conflict zone in Georgia*, Technical Assessment Report, Report prepared by Mr David Johnson, 20 October 2008, Reference AT(2008)386, p 9 See also *Council of Europe Post-Conflict Immediate Actions for the Social and Economic Revitalisation of Communities and Cultural Environment in the Municipality of Gori (Georgia)*, General Reference Document, Directorate-General IV education, culture and heritage, youth and sport, 18 February 2009, Reference AT(2008)450rev, p 11

<sup>156</sup> Russia, Responses to Questions Posited by the IIFFMCG (Humanitarian Aspects), *op cit*, p 1

<sup>157</sup> See Georgia, Replies to Question 5 of the Questionnaire on Humanitarian Issues, provided to the IIFFMCG on 5 June 2009, p 4 See also p 1

<sup>158</sup> Russia, Responses to Questions Posited by the IIFFMCG (Humanitarian Aspects), *op cit*, p 1 See also p 2

infrastructure facilities”<sup>159</sup> and the use of “multiple launch rocket systems that cause massive civilian casualties when used in populated areas and inflict large-scale damage to vital civilian facilities.”<sup>160</sup> Georgia claims that “the Russian Federation has failed to meet this duty by indiscriminately bombing and shelling areas which were not legitimate military targets, and by utilizing means of warfare, such as landmines and cluster bombs, in a manner which failed to distinguish between civilians and combatants.”<sup>161</sup>

The IIFMCG deems it necessary first to address the issue of the types of weapons used and the ways in which they were used before proceeding with a general assessment of the question of indiscriminate attacks.

**(i) The types of weapons used and the ways in which they were used**

IHL governing the use of weapons is articulated in general principles prohibiting the use of means or methods of warfare that provoke superfluous injury or unnecessary suffering<sup>162</sup> or indiscriminate effects,<sup>163</sup> and specific rules banning or limiting the use of particular weapons. None of the weapons used in the context of this conflict is covered by a specific ban, whether be it conventional or customary. Nevertheless, while none of the weapons used during the August 2008 conflict could be regarded as unlawful *per se* under the general principles of IHL, the way in which these weapons were used raises serious concern in terms of legality. This is significant considering that the weapons in question were used mostly in populated areas. The two types of controversial weapon are the GRAD rockets and cluster bombs.

As rightly stated by Georgia, “at the time of the international armed conflict between Russia and Georgia in August 2008, Georgia was not party to any of the international legal instruments expressly prohibiting the use of GRAD Multiple Rocket Launching systems or cluster munitions in international armed conflict; neither was there any rule of customary

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<sup>159</sup> *Ibid* , p 2

<sup>160</sup> *Ibid* , p 4

<sup>161</sup> Georgia, Responses to Questions Posited by the IIFMCG (Humanitarian Aspects, Question 5), provided to the IIFMCG on 5 June 2009, p 1

<sup>162</sup> Article 35(2) of Additional Protocol I of 1977 states that “It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering ”

<sup>163</sup> Under Article 51(4) of Additional Protocol I of 1977, indiscriminate attacks include “(b) those which employ a method or means of combat which cannot be directed at a specific military objective, or (c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol, and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction ”

international law, applicable to Georgia, prohibiting the above.”<sup>164</sup> This also holds true for Russia.

Where GRAD rockets are concerned, Georgia, as reported by HRW, stated that such rockets were used only on “Verkhny Gorodok district of Tskhinvali, where [separatist] artillery was deployed,” while the city centre was hit with “modern, precision targeting weapons.”<sup>165</sup> Georgia reiterated this position in its replies to the questionnaire sent by the IIFFMCG: “The Armed Forces of Georgia used GRAD rockets only against clear military objectives and not in populated areas.”<sup>166</sup> Georgia stressed that “the types of weapons used, including GRAD Multiple Rocket Launching Systems [MLRS] or cluster munitions, had been used in full compliance with the applicable rules of international humanitarian law, in particular the principles of distinction and proportionality.”<sup>167</sup>

These statements on the use of GRAD rockets, however, contradict the information gathered by the IIFFMCG. According to many reports and accounts from witnesses present in Tskhinvali on the night of 7 August 2008,<sup>168</sup> Georgian artillery started a massive area bombardment of the town. Shortly before midnight the centre of Tskhinvali came under heavy fire and shelling. OSCE observers assessed that this bombardment originated from MLRS GRAD systems and artillery pieces which were observed stationed North of Gori in the Karaleti area just outside the zone of conflict on 7 August at 3 p.m.<sup>169</sup> Narratives of the first hours following the offensive indicate intense shelling with incoming rounds exploded at intervals of 15 to 20 seconds. Within 50 minutes (8 August, 0.35 a.m.) the OSCE observers counted more than 100 explosions of heavy rounds in the town, approximately half of them in the immediate vicinity of the OSCE field office which was located in a residential area. The OSCE compound was hit several times, and damaged.

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<sup>164</sup> Georgia, Response to Questions Posited by the IIFFMCG (Humanitarian Aspects), provided to the IIFFMCG on 5 June 2009, p. 1

<sup>165</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op cit*, p. 50

<sup>166</sup> Georgia, Responses to Questions Posited by the IIFFMCG (Humanitarian Aspects), provided to the IIFFMCG on 5 June 2009, p. 1. See also Meeting of the IIFFMCG with the Ministry of Defence of Georgia on 4 June 2009

<sup>167</sup> *Idem*

<sup>168</sup> See Chapter 5 “Military Events of 2008”

<sup>169</sup> OSCE Mission to Georgia, Spot Report Update No. 1 (11 00 1 bilisi time) dtd 8 August 2008, confirmed by OSCE Military Monitoring Officers and other staff personnel in talks on 16/17 October 2008. See also OSCE Mission to Georgia, Spot Report Update on the situation in the zone of the Georgian-Ossetian conflict, dtd 7 August 2008

Investigations and interviews carried out by HRW and Amnesty International seem to confirm these facts. Human Rights Watch concluded that Georgian forces fired GRAD rockets using, among other weapons, BM-21 “GRAD,” a multiple rocket launcher system capable of firing 40 rockets in 20 seconds, self-propelled artillery, mortars, and Howitzer cannons.<sup>170</sup> According to Amnesty International, “the entry of Georgian ground forces into these villages, and into Tskhinvali itself, was preceded by several hours of shelling and rocket attacks as well as limited aerial bombardment. Much of the destruction in Tskhinvali was caused by GRADLAR MLRS (GRAD) launched rockets, which are known to be difficult to direct with any great precision.”<sup>171</sup> Shelling, including with Howitzer cannons and self-propelled artillery, caused damage, death and injury, in particular in Tskhinvali, even though some of the population had been evacuated.<sup>172</sup> Amnesty International representatives observed extensive damage to civilian property within a radius of 100-150 m from these points, particularly in the south and south-west of the town, highlighting the inappropriateness of the use of GRAD missiles for targeting these locations.<sup>173</sup>

The Fact-Finding Mission concludes that during the offensive on Tskhinvali the shelling in general, and the use of GRAD MLRS as an area weapon in particular, amount to indiscriminate attacks by Georgian forces, owing to the characteristics of the weaponry and its use in a populated area. Furthermore, the Georgian forces failed to comply with the obligation to take all feasible precautions in the choice of means and methods of warfare with a view to avoiding, and in any event to minimising, incidental loss of civilian life, injury to civilians and damage to civilian objects.

The other highly debated weapons used in the course of the conflict are the cluster munitions. While the use of cluster bombs in order to stop the advance of the Russian forces was acknowledged by the Georgian authorities, Moscow did not officially authorise such use by its own forces.

According to Amnesty International, the Georgian authorities stressed that cluster munitions were deployed only against Russian armaments and military equipment in the vicinity of the Roki tunnel in the early hours of 8 August and only by Georgian ground forces. The Georgian

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<sup>170</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op. cit.*, p. 50.

<sup>171</sup> AI, *Civilians in the Line of Fire – The Georgia-Russia Conflict*, *op. cit.*, p. 24.

<sup>172</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op. cit.*, pp. 41

<sup>173</sup> AI, *Civilians in the Line of Fire – The Georgia-Russia Conflict*, *op. cit.*, p. 26.

authorities informed Amnesty International that such cluster munitions were also used on 8 August to attack Russian and Ossetian forces on the Dzara bypass road.<sup>174</sup> Amnesty International noted that “the Georgian authorities maintain that there were no civilians on the Dzara road at the time of the Georgian cluster bombing as the movement of all kinds of civilian transport vehicles was stopped during combat operations in the area, and this was confirmed by Georgian forward observers.” Amnesty International stressed that it was not “able to establish whether there were definitely civilians in the areas targeted by Georgian cluster bombs along the Dzara road at the precise time of their deployment.” However, it noted that “it is clear that several thousand civilians were fleeing their homes both towards central Georgia and to North Ossetia during the course of 8 August and that the Dzara road was an obvious avenue of flight for South Ossetians heading north.”<sup>175</sup>

Georgia explained the military necessity for using cluster bombs in the following terms:

*“Cluster munitions, specifically the GRADLAR160 missile system and the MK4 LAR160 type missiles with M-85 cluster bombs, have been used exclusively against heavily armored vehicles and equipment moving into the territory of Georgia. The use of the aforementioned was based on a thorough analysis of the military necessity and the military advantage it could give to the Georgian army in the given situation. The pressing military necessity was to halt the advance of Russian military personnel and equipment into Georgian territory. The attack was directed specifically at military personnel and objects and the use of the GRADLAR160 missile system and the MK4 LAR160 type missiles with M-85 cluster bombs impeded the advance of the Russian Army into Georgian territory for several hours, thus giving the Georgian Army, which in numbers was several times less than the advancing Russian troops, a military advantage which created the opportunity to facilitate the safe evacuation of civilians from the theatre of war.”<sup>176</sup>*

As for the presence of clusters that hit nine villages in the Gori District, HRW noted that “several factors suggest that Georgian forces did not target these villages, but rather that the submunitions landed on these villages owing to a massive failure of the weapons system.”<sup>177</sup>

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<sup>174</sup> AI, *Civilians in the Line of Fire – The Georgia-Russia Conflict*, *op. cit.*, p. 33.

<sup>175</sup> *Idem.*

<sup>176</sup> Georgia, Responses to the Questions Posited by the IFFMCG (Humanitarian Aspects, Question 4), provided to the IFFMCG on 5 June 2009, p. 1.

<sup>177</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op. cit.*, p. 66.

HRW documented a number of civilian casualties as a consequence of these incidents, either when cluster munitions landed, or from unexploded duds.<sup>178</sup>

Russia informed the IIFFMCG that “the Chief Military Prosecutor’s Office jointly with the Prosecutor-General’s Office of the South Ossetian Republic (SOR) identified instances where in the course of the military operation Georgian armed forces used cluster munitions and 500-kg air-delivered bombs against the civilian population.” The Russian Federation stated that “this is prohibited by the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects dated 10 October 1980.”<sup>179</sup>

There are two separate questions arising from the above claim. The first concerns whether Georgia deliberately targeted the civilian population, which is prohibited whatever type of weapon is used; the second question is whether the use of these two weapons (mainly cluster munitions), either *per se* or because of how they have been used by Georgia, contravenes the 1980 Conventional Weapons Convention. There seems to be no evidence of such a direct attack against civilians by Georgian forces. With regard to the question of legality vis-à-vis the 1980 Convention, it is crucial to stress that not only is this treaty merely a framework convention that does not consider specific weapons, but none of its related protocols addresses the legality of the weapons in question here.

Concerning the alleged use of cluster bombs by Russia, this state reiterated its position in its replies to the IIFFMCG questionnaire: “Cluster munitions, though available to the strike units of the Russian Federation Air Force and designed to inflict casualties on the enemy and destroy military equipment in open spaces, have never been used.”<sup>180</sup> This contradicts evidence, collected by Human Rights Watch, which asserted that cluster munitions were used, *inter alia*, in the village of Variani, killing three people; in Ruisi; and in the main square of Gori city, killing six people.<sup>181</sup>

The death of a Dutch journalist in the course of the 12 August cluster munitions strike on Gori’s main square strengthens this claim that Russia did use cluster munitions. This is

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<sup>178</sup> *Ibid* , pp. 66-67

<sup>179</sup> Russia, Responses to Questions Posited by the IIFFMCG (Humanitarian Aspects), *op cit* , p 4

<sup>180</sup> Russia, Responses to Questions Posited by the IIFFMCG (Humanitarian Aspects), *op cit.*, p 10 See also p 9

<sup>181</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op cit* , pp 105-113



significant as not only HRW but also the commission of inquiry set up by the Dutch Ministry of Foreign Affairs concluded that this journalist had been killed as a result of the use of such weapons by the Russian side.<sup>182</sup>

Information also collected by Amnesty International seems to rule out any doubt about the use of cluster munitions by Russia in populated areas.<sup>183</sup> This is confirmed by the recent report by HRW which investigated the use of cluster bombs by Georgia and Russia during the August 2008 conflict.<sup>184</sup>

***The use by Georgia of certain weapons including GRAD MRLS during the offensive against Tskhinvali and other villages in South Ossetia did not comply with the prohibition of indiscriminate attacks and the obligation to take precautions with regard to the choice of means and methods of warfare.***

***The use of artillery and cluster munitions by Russian forces in populated areas also led to indiscriminate attacks and the violation of rules on precautions.***

#### **(ii) Indiscriminate attacks by Russia and Georgia**

While Amnesty International noted that Russian aerial bombardments appear to have been quite localised and that most of the bombing would appear to have targeted Georgian military positions outside built-up areas, it noted, however, that villages and towns were hit, even though the damage would appear to be limited to stretches of streets and isolated houses here

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<sup>182</sup> Human Rights Watch noted “on August 29 the Dutch Ministry of Foreign Affairs dispatched an investigative commission consisting of military and diplomatic experts to Gori to investigate Stormans’ death ( ) Based on visual characteristics, the serial numbers found on the missile pieces and the nature of the strike the commission concluded that Russian forces had hit the square with an Iskander SS-26 missile carrying cluster munitions. The information gathered by Human Rights Watch researchers on the ground supports the Dutch investigation’s conclusions. The Russian Ministry of Defense has denied that it used the missile system Iskander in South Ossetia, though this would not preclude that it had been used against a target in another part of Georgia, such as Gori. Presented with the findings of the Dutch investigative commission, the Russian authorities asserted that there was not enough evidence to conclude that Stormans had been killed as a result of the use of weapons by the Russian side.” See HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op cit*, pp 112-113. See also for the report of the Dutch Commission “Report of the Stormans investigative mission,” October 20, 2008, <http://www.mimbuz.nl/binaries/enpdf/scannen0001.pdf>

<sup>183</sup> “Although Russia continues to deny the use of cluster bombs, Amnesty International delegates heard numerous independent eye-witness accounts suggesting their use in Kvemo Kviti, Trdznisi, Tqviavi, Pkhvenisi, Kekhvi, Ruisi and Akhaldaba, mostly on 8 August, but also in the following days. Material evidence of the use of both AO 2.5 RTM cluster munitions (dropped from planes in RBK 500 bombs) and Uragan fired M210 bomblets have been found around several villages just north of Gori. These areas were still populated by many civilians, many of whom were on the roads trying to flee the conflict. It has also been alleged that the bomb attack on the central square of Gori on 12 August was conducted using cluster munitions,” AI, *Civilians in the Line of Fire – The Georgia-Russia Conflict*, *op cit*, pp 33-34.

<sup>184</sup> HRW, *A Dying Practice: Use of Cluster Munitions by Russia and Georgia in August 2008*, April 2009, available at <http://www.hrw.org/en/reports/2009/04/14/dying-practice-0>

and there in the villages affected.<sup>185</sup> The IFFMCG witnessed the nature of this damage in Tkviavi in June 2009. Amnesty International also suggested that in this regard the Russian bombing was different from the Georgian assault on Tskhinvali.<sup>186</sup> It nevertheless pointed out that its “delegates also heard a number of accounts in which civilians and civilian objects were struck by aerial and missile attacks in the apparent absence of nearby military targets.” It expressed concern “that civilians and civilian objects may have been directly attacked in violation of Article 51(3) of Protocol I to the Geneva Conventions, or that they were hit in the course of indiscriminate attacks in violation of Article 51(4).”<sup>187</sup>

HRW, which conducted a more in-depth analysis of the bombardment of places and other incidents, reached a firmer conclusion, stating that.

*“Russian forces attacked areas in undisputed Georgian territory and South Ossetia with aerial, artillery, and tank fire strikes, some of which were indiscriminate, killing and injuring civilians. All Russian strikes using cluster munitions were indiscriminate.”*<sup>188</sup>

Many cases investigated by HRW raise serious concerns under IHL. Discussing the circumstances and methods of the attacks, this organisation made the following assessment:

*‘ Russian forces attacked Georgian military targets in Gori city and in ethnic Georgian villages in both South Ossetia and undisputed Georgian territory, often causing civilian casualties and damage to civilian objects such as houses or apartment blocks. The proximity of these targets to civilian objects varied. In several cases, the military targets were within meters of civilians and civilian homes, and the attacks against them resulted in significant civilian casualties. In other cases the apparent military targets were located as far as a kilometer away from civilian objects, and yet civilian casualties also resulted. In attacking any of these targets the Russian forces had an obligation to strictly observe the principle of proportionality, and to do everything feasible to assess whether the expected civilian damage from the attack would likely be excessive in relation to the direct and concrete military advantage to be gained. In many cases the attacks appear to have violated the principle of proportionality.’*

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<sup>185</sup> AI, *Civilians in the Line of Fire – The Georgia-Russia Conflict*, op. cit., p. 29

<sup>186</sup> *Idem*

<sup>187</sup> *Idem*.

<sup>188</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia* op. cit., p. 87

HRW also documented cases in which villagers from Tamarasheni described how Russian tanks had fired on villagers' homes. Witnesses told Human Rights Watch that there were no Georgian military personnel in their houses at the time when the tank fire took place. HRW also referred to "one witness [who] described an incident in which tanks methodically moved through the streets, firing on numerous houses in a row, suggesting that the fire was not directed at specific military targets and that such attacks were indiscriminate."<sup>189</sup>

Georgian attacks, both during the shelling of Tskhinvali and during the ground offensive, raise serious concerns. In the former, according to HRW, "at the very least the Georgian military effectively treated a number of clearly separate and distinct military objectives as a single military objective in an area that contained a concentration of civilians and civilian objects,"<sup>190</sup> amounting under IHL to indiscriminate attacks. In some cases where Georgian forces did target military objectives, HRW pointed out that "evidence suggests that (...) the attacks may have been disproportionate because they could have been expected to cause loss of civilian life or destruction of civilian property that was excessive compared to the anticipated military gain."<sup>191</sup>

As for the ground offensive, according to HRW it is very difficult to reach a definitive conclusion in terms of legality under IHL owing to the presence of Ossetian combatants throughout Tskhinvali and in some villages. The organisation noted that "numerous witnesses confirmed to Human Rights Watch that virtually all able-bodied males joined the volunteer militias, often after moving their families to safety in North Ossetia."<sup>192</sup> HRW however "believes that, particularly during the attempt to take Tskhinvali, on a number of occasions Georgian troops acted with disregard for the protection of civilians by launching attacks where militias were positioned that may have caused predictably excessive civilian loss compared to the anticipated military gain."<sup>193</sup>

***In several cases, Georgia and Russia conducted attacks that were indiscriminate and consequently violated IHL.***

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<sup>189</sup> *Ibid.*, p. 114.

<sup>190</sup> *Ibid.*, p. 89.

<sup>191</sup> *Idem.*

<sup>192</sup> *Ibid.*, p. 57.

<sup>193</sup> *Idem.*

### c) Precautionary measures in attacks

Obligations regarding precautions in attack on the part of the attacker are key to ensuring that other rules of IHL on the conduct of hostilities are respected. Article 57 of Additional Protocol I spells out the general obligation that “in the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects” in this regard, as well as more specific precautionary measures to be taken, such as to:

*“(i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives,*

*(ii) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects,*

*(iii) refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.” as well as*

*“(c) effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit”<sup>194</sup>*

These obligations played a very important role given that hostilities took place in populated areas and, at least with regard to Ossetian militia fighters, involved very mobile forces.

The offensive on Tskhinvali by Georgian forces raises serious concerns in the light of these obligations on warring parties to take all possible steps to minimise harm to civilians and not to attack civilian objects.<sup>195</sup>

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<sup>194</sup> Such obligations are of a customary nature and are applicable in both international and non-international armed conflict. See Rules 15-21, in J-M HENCKAERTS, L DOSWALD BECK (eds), *Customary International Humanitarian Law*, Volume I, *op cit*, pp 51-67

<sup>195</sup> In its replies to the Questionnaire sent by the IFFMCG, Georgia indicated that “Georgian military command minimised list of targets for artillery and ground troops in the city of Tskhinvali and vicinity of populated villages. The list of predetermined targets included only places of heavy concentration of the enemy’s manpower and assets. Georgian military command did not use any MRLS system inside populated areas. Finally, the command was informed both by open sources and intelligence of massive evacuation of civilians from proxy-controlled territories, including from the city of Tskhinvali.” Georgia, Responses to Questions Posited by the IFFMCG (Humanitarian Aspects), Question 3, provided to the IFFMCG on 5 June 2009, p 1

While the identification of legitimate military targets and the efforts made by the Georgian forces to minimise those located in the city or near populated areas seem to meet the requirements of IHL, some issues remain: one concerns the choice of artillery for conducting the attacks; another concerns the list of targets “identified during the hostilities,” for example during the ground offensive. Most important are the issue of the intelligence used to select targets and the question of the presence of the civilian population in Tskhinvali at the time of the offensive. Amnesty International expressed concern “that the Georgian forces may have selected targets in areas with large numbers of civilians on the basis of outdated and imprecise intelligence and failed to take necessary measures to verify that their information was accurate before launching their attacks.”<sup>196</sup> It further noted that “at the time of the initial shelling of Tskhinvali, Georgian forces were positioned several kilometres from Tskhinvali, at a distance from which it would have been difficult to establish the precise location of the Ossetian positions firing on them. Nor, as Ossetian forces were lightly armed and mobile, could there have been any guarantee that positions from which munitions had been fired in preceding days were still occupied on the night of 7 August.”<sup>197</sup> It also expressed concern about whether precautions were actually taken in relation to the choice of means and methods and issuing a warning to the civilians.<sup>198</sup>

This latter point, regarding the giving of effective advance warning, is closely linked to the controversial question of the number of inhabitants remaining at the time of the offensive. Different figures were being given, even among the South Ossetian authorities.<sup>199</sup> During a meeting at the Ministry of Defence of Georgia on 4 June 2009, the IFFMCG was told that, according to the information available to the military command at the time, “most of the population was evacuated by the 5<sup>th</sup> of August.” Anatoly Barankevich, the National Security Council Secretary of South Ossetia, referring to the plan for the evacuation of civilians, declared that “on August 8 we have completely cleared the city.”<sup>200</sup>

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<sup>196</sup> AI, *Civilians in the Line of Fire – The Georgia-Russia Conflict*, *op cit*, p. 27. In the same vein, HRW noted that “It is also not clear to Human Rights Watch to what extent the Georgian command had the necessary intelligence to establish the exact location of the South Ossetian forces at any given moment, in part because the forces were very mobile.” HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op cit*, p. 51.

<sup>197</sup> *Idem*.

<sup>198</sup> *Idem*.

<sup>199</sup> AI, *Civilians in the Line of Fire – The Georgia-Russia Conflict*, *op cit.*, p. 27.

<sup>200</sup> Georgia, Responses to Questions Posited by the IFFMCG (Humanitarian Aspects), Question 3, provided to the IFFMCG on 5 June 2009, p. 2.

These statements contradict the testimony of the Georgian army chief of staff, Zaza Gogava, to a parliamentary commission examining the conduct of the war, namely, that the Georgian military command was clearly aware of the presence of civilians in Tskhinvali and other areas subjected to artillery strikes.<sup>201</sup> A Georgian soldier – interviewed by HRW – who entered Tskhinvali on the morning of 8 August said that they could see civilians in a basement. There is thus no doubt that many people were still in Tskhinvali on the night of 7 August. Consequently, the question is about the type of precautionary measures that were taken by the Georgian military command to minimise the harm to civilians, both during the shelling and afterwards, in the course of the ground operation.

During the meeting between representatives of the Ministry of Defence of Georgia and the IFFMCG in June 2009, the Mission's experts were told that the Georgian forces had used smoke grenades to warn the population before artillery shelling. This seems to fall short of giving effective advance warning under IHL. In its replies to the questionnaire, Georgia indicated that “moreover, at 15:00 on 8 August, the Georgian authorities declared a three-hour unilateral cease-fire to allow the remaining civilians to leave the conflict area in the southern direction from Tskhinvali towards Ergneti.”<sup>202</sup> This appears to be not enough in the light of the IHL obligation to take all feasible measures. When the offensive on Tskhinvali was carried out, at night, no general advance warning was given to the remaining population.

It should be mentioned that the presence of South Ossetian fighters, mostly in buildings in whose basements civilians were sheltering, and the fact that they even shot at Georgian soldiers from these very basements, complicates the conduct of warfare on the part of the attacker. This does not, however, release the Georgian forces from their obligations. In this regard, one of the most worrying examples of the lack of precautionary measures taken by the Georgian forces is their use of tanks and infantry fighting vehicles to fire at those buildings while knowing that there were civilians inside. HRW has documented cases where tanks fired at close range into the basements of buildings.<sup>203</sup>

Russia described as follows the precautions its forces took in the course of the conflict:

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<sup>201</sup> See “Chief of Staff Testifies before War Commission,” Civil Georgia, <http://www.civil.ge/eng/article.php?id=19851>.

<sup>202</sup> See: Georgia, Replies to Question 3 of the Questionnaire on Humanitarian Issues, provided to the IFFMCG on 5 June 2009, p. 2.

<sup>203</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op. cit.*, p. 58.

*“In the course of the entire military operation units of the Russian Federation Armed Forces, acting exclusively with a view to repelling an armed attack, used tanks, APCs and small arms to fire upon clearly identified targets only, which enabled them to minimise civilian losses. These units targeted multiple launch rocket systems as well as artillery and mortar batteries, personnel and firepower of the opposing force in its staging areas. The actual overall effect was as expected. Artillery fire and air strikes inflicted significant damage, undermined morale and brought considerable psychological pressure to bear upon the opposing forces. During the active phase of the operation the Russian command undertook a number of effective measures aimed at minimising the damage for the civilian population and to the property of local citizens. Artillery fire and air strikes were planned and carried out in areas situated at a considerable distance from local communities against clearly identified targets only. Key artillery fire missions were completed against well-observed targets – in the process, commanders of combined arms units adjusted artillery fire through spotters and artillery reconnaissance units. Local communities and civilian facilities were not fired upon. All fire would cease once Georgian units withdrew from their positions. The Russian air component acting in support of the army units on the ground delivered a number of strikes against pockets of Georgian forces, firing emplacements and columns of military equipment en route. The Russian air component did not fly any missions in areas adjacent to or bordering on residential communities. All kill fire was monitored. As a result of these measures civilian casualties were minimised.”<sup>204</sup>*

While the above description shows efforts to minimise civilian casualties and damage to civilian objects, it also presents the Russian forces as having systematically proceeded with the appropriate precautions. The evidenced use in populated areas by Russia of cluster munitions, a weapon which, by virtue of its wide area coverage and its unexploded duds, demonstrates that the obligation to take all feasible precautions in the choice of means of warfare was not systematically respected. Furthermore, as documented by HRW, “with regard to many aerial and artillery attacks, Russian forces failed to observe the obligations to do everything feasible to verify that the objects to be attacked were military objectives (and not civilians or civilian objects) and to take all feasible precautions to minimise harm to civilians.”<sup>205</sup>

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<sup>204</sup> Russia, Responses to Questions Posited by the IIFMCG (Humanitarian Aspects), *op cit*, p 8

<sup>205</sup> HRW *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op cit*, p 87

In the light of the extensive damage and relatively large number of civilian casualties of the conflict in and around South Ossetia, the conduct of the Abkhaz forces during the hostilities looks considerably better, although the Abkhaz forces reportedly also inflicted some damage to civilian property both in the upper Kodori Valley and the Zugdidi district.

*During the offensive on Tskhinvali and other villages in South Ossetia, Georgian forces failed to take the precautions required under IHL. In several cases the Russian forces also failed to comply with their obligations under IHL with regard to precautions before attacks.*

#### **d) Passive precautions and human shields**

Under IHL, the defender too is bound by obligations to minimise civilian casualties and damage to civilian objects such as houses. Article 58 of Additional Protocol I of 1977 sets out the obligations with regard to precautions against the effects of attacks: “the Parties to the conflict shall, to the maximum extent feasible: (a) endeavour to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives; (b) avoid locating military objectives within or near densely populated areas; (c) take the other necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations.” This is a rule of customary law applicable in both types of conflict.<sup>206</sup> IHL also prohibits the use of human shields.<sup>207</sup>

Of very serious concern for the IFFMCG are the numerous testimonies, some by South Ossetian combatants themselves, that they used houses and residential basements in Tskhinvali from which to fire at Georgian ground troops, putting at risk the lives of civilians who were sheltering in the basements of the same buildings. HRW also raised this issue.<sup>208</sup>

This is a clear violation of the obligation to avoid locating military objectives within or near densely populated areas. It probably did not constitute a violation of the prohibition against

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<sup>206</sup> ICRC Study, Rules 22-24, pp 68

<sup>207</sup> *Ibid*, Rule 97, p 337, and article 51(7) Protocol I

<sup>208</sup> For example, witnesses told Human Rights Watch that militias had taken up positions in School No 12 in the southern part of Tskhinvali, which was seriously damaged by the Georgian fire  
“Another witness said South Ossetian fighters were co mingled with civilians in the basement of Tskhinvali School No. 6, which drew Georgian tank fire No civilian casualties resulted  
Yet another witness, a 50-year-old kindergarten teacher who showed Human Rights Watch the fragments of GRAD rockets that hit her kindergarten building on Isak Kharebov Street, also said that volunteer militias had been ‘hiding’ in the building Several members of the Ossetian militia interviewed by Human Rights Watch confirmed that many of the school and nursery school buildings were used as gathering points and defence positions by the militias,” HRW, pp. 50 51



using human shields, however, as this rule requires the specific intent to prevent attacks by deliberately collocating military objectives and civilians.<sup>209</sup>

***South Ossetian forces reportedly violated IHL by firing from houses and residential buildings and using them as defensive positions, putting the civilian population at risk.***

## **B. Treatment of persons and property in areas under changing control**

Given that, although the conflict lasted no more than five days, insecurity continued and serious violations of HRL occurred even weeks after the cease-fire, both IHL and HRL are relevant and offer complementary protection of persons and property. Under IHL, this protection is partly ensured through the recognition of fundamental guarantees.<sup>210</sup>

During the conflict and after the cease-fire, there was a campaign of deliberate violence against civilians: houses were torched and villages looted and pillaged. Most of these acts were carried out in South Ossetia and in the undisputed territory of Georgia, mainly in the areas adjacent to the administrative border with South Ossetia.

These acts occurred even weeks after the cease-fire and the end of the hostilities. Such violations raise the critical question of the general lack of protection in areas under changing control, such as Georgian-administered villages in South Ossetia or the so-called “buffer zone”. As highlighted by interviews conducted by Human Rights Watch, most of the acts of violence against civilians, pillage and looting were committed by Ossetian forces.<sup>211</sup> Information gathered from eyewitnesses also indicates the presence of Russian forces while these violations were taking place, and sometimes the participation of Russian forces in these acts. While most of the violations were committed against ethnic Georgians, ethnic Ossetians were also not immune from looters.<sup>212</sup>

According to Human Rights Watch:

*“South Ossetian forces include South Ossetian Ministry of Defence and Emergencies servicemen, riot police (known by the Russian acronym OMON), and several police companies, working under the South Ossetian Ministry of Internal Affairs, and servicemen of*

<sup>209</sup> See J-M. HENCKAERTS, L. DOSWALD-BECK (eds), *Customary International Humanitarian Law*, Volume 1, *op. cit.*, p. 340.

<sup>210</sup> See Article 75 of the Additional Protocol I of 1977.

<sup>211</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op. cit.*, p. 61.

<sup>212</sup> *Ibid.*, p. 143.

*the South Ossetian State Committee for Security (KGB). Many interviewees told Human Rights Watch that most able-bodied men in South Ossetia took up arms to protect their homes. As South Ossetia has no regular army its residents tend to refer to the members of South Ossetian forces as militias (opolchentsy) unless they can be distinctly identified as policemen or servicemen of the Ministry of Defence and Emergencies. Credible sources also spoke about numerous men from North Ossetia and several other parts of Russia who fought in the conflict in support of South Ossetia and who were involved in the crimes against civilians that followed.”*

*“In some cases, it is difficult to establish the exact identity and status of the Ossetian perpetrators because witnesses’ common description of their clothing (camouflage uniform, often with a white armband) could apply to the South Ossetian Ministry of Defence and Emergencies, South Ossetian Ministry of Internal Affairs, volunteer fighters, or even common criminal looters. Several factors, however, indicate that in many cases the perpetrators belonged to South Ossetian forces operating in close cooperation with Russian forces. The perpetrators often arrived in villages together with or shortly after Russian forces had passed through them; the perpetrators sometimes arrived on military vehicles; and the perpetrators seem to have freely passed through checkpoints manned by Russian or South Ossetian forces.”*

*“Witnesses sometimes also referred to the perpetrators as Chechens and Cossacks; whether this was an accurate identification is not clear, although there were media reports of Chechens and Cossacks participating in the conflict.”<sup>213</sup>*

Two closely linked questions arise at this point: that of identifying the perpetrators of these violations and that of the exact role played by the Russian forces in the violations. Answering these questions will have key legal implications, as it requires us to distinguish between those who committed these acts of violence and those who did not act to prevent them or stop them.

While it appears difficult to conclude that Russian forces systematically participated in or tolerated the conduct of South Ossetian forces, there do seem to be credible and converging reports establishing that in many cases Russian forces did not act to prevent or stop South Ossetian forces. Human Rights Watch refers to three types of situation: passive bystanders, active participation and the transport of militias. Some testimonies also mention the positive involvement of Russian troops in stopping militias from looting or preventing them from

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<sup>213</sup> *Ibid.*, p. 128.

looting and burning houses. HRW refers also to checkpoints and roadblocks set up on 13 August which effectively stopped the looting and torching campaign but which were inexplicably removed after just a week. Interviews conducted in March 2009 by the IIFFMCG's expert also produced different accounts ranging from active intervention to stop violations, to passive observation, and even involvement.

Lastly, it is important to stress from the outset that patterns of violence differed depending on the area concerned. The most extensive destruction and brutal violence seem to have taken place in South Ossetia, with certain characteristics that appear to be different from what happened in the buffer zone. This difference in pattern was explicitly recognised by representatives from the Georgian Ministry of Internal Affairs when meeting with IIFFMCG experts on 4 June 2009. There is, finally, no comparison possible between the situations in these two former areas and the effects of the hostilities in Abkhazia, which were very limited.

#### **a) Summary executions**

The right to life is the most fundamental of human rights. Several rules of IHL<sup>214</sup> and HRL<sup>215</sup> prohibit murder, which is a war crime under IHL.

There are several testimonies of alleged extrajudicial killings or summary executions by Ossetian forces during the torching of villages. To date, however, only a few have come from direct eyewitnesses. Others are from indirect sources: either information reported by elderly people who stayed on in affected villages to persons who left, or general information that people heard. While this does not mean that we question the potential existence of such acts when reported by indirect sources, there is a need to double-check such information carefully. "Human Rights Watch received uncorroborated reports of at least two extrajudicial killings of ethnic Georgians in South Ossetia that took place amidst the pillage."<sup>216</sup> Amnesty International documented "unlawful killings, beatings, threats, arson and looting perpetrated by armed groups associated with the South Ossetian side."<sup>217</sup> The HRAM of the OSCE noted

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<sup>214</sup> Common Article 3 of the Geneva Conventions prohibits "violence to life and person, in particular murder of all kinds with respect to the persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause."

<sup>215</sup> ICCPR Article 6, EConvHR Article 2.1.

<sup>216</sup> *Ibid.*, pp. 142-143.

<sup>217</sup> AI, *Civilians in the Line of Fire – The Georgia-Russia Conflict*, *op. cit.*, p. 39.

that “some of the key conflict-related human rights violations identified by the HRAM in interviews with displaced persons include killings of civilians.”<sup>218</sup>

In interviews conducted by NGOs and provided to the IIFFMCG, a number of IDPs reported that residents who stayed in villages gave accounts of several persons being killed by Russian forces in Pkhvenisi or by Ossetian militias in Disevi. A 56-year-old woman who fled Disevi reported the same information given by Human Rights Watch: she described the burning of Disevi and said that she witnessed Ossetian militias burn the house of 70-year-old Elguja Okhropiridze and shoot him dead.<sup>219</sup>

In Dvani, a person interviewed by an NGO that provided information to the IIFFMCG described the following: “two guys were killed in our village (by Ossetians), Ervandi Bezhanishvili and Vasil Mekarishvili. I think Ervandi was killed (shot) trying to run away, while Vasil was shot when he refused to kiss the Russian flag. People in the village told me this.”

According to the HRAM of the OSCE, “displaced persons witnessed killings of unarmed civilians by incoming military forces in Gori and in the villages of Megvrekisi, Tirdznisi, Ergneti, and Karaleti.” The HRAM gave the following accounts: “In Ergneti, for example, a villager described to the HRAM how he saw a group of ten ‘Ossetians’ in Russian uniforms hit an 80-year-old man in the back and then shoot him. The victim, according to the villager, crawled into a building, said ‘I’ve been shot,’ and then fell down and died. In Karaleti, a villager reported, a car with four ‘Ossetians’ dressed in military uniforms entered the village and shot and killed one of his neighbors with an automatic weapon.”<sup>220</sup>

Another testimony suggests that the general insecurity and sometimes vengeful types of attacks also affected Ossetians. A resident from Disevi who returned to his village in September 2008 told the following to an NGO interviewing him:

*“At my third visit to the village Ossetians were particularly aggressive. Their aggression was caused by murder of Oleg, the Ossetian person whom we saw in white ‘Niva’ at our first visit. Ossetians found him dead at the village public school. Oleg had very good relation with the*

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<sup>218</sup> OSCE, HUMAN RIGHTS IN THE WAR-AFFECTED AREAS FOLLOWING THE CONFLICT IN GEORGIA, *op. cit.*, p. 18

<sup>219</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op. cit.*, p. 143

<sup>220</sup> OSCE, Human Rights in the War-Affected Areas Following the Conflict in Georgia, *op. cit.*, p. 23

*residents of our village and I suppose he had controversy with other Ossetians for that reason. Consequently, certain Ossetian killed him for having protected Georgians.*<sup>221</sup>

According to Human Rights Watch: “during and in the immediate aftermath of the war, at least 14 people were deliberately killed by Ossetian militias in territory controlled by Russian forces. Human Rights Watch documented six deliberate killings in Georgian settlements controlled by Russian forces, and received credible allegations of another six cases. Human Rights Watch also heard allegations of two such killings in South Ossetia.”<sup>222</sup> All these reports coming from different sources should be checked carefully as some may refer to the same cases.

*While the exact number of summary executions has not been established, and some facts remain uncertain, the Mission nevertheless believes that there is credible evidence of cases of summary executions carried out by South Ossetian forces.*

#### **b) Rape and sexual and gender-based violence**

Under IHL, the prohibition against rape and other forms of sexual violence, which is a norm of customary law,<sup>223</sup> derives from numerous provisions of treaty law applicable both in non-international armed conflicts and in international armed conflicts. For example Common Article 3 of the Geneva Conventions prohibits “violence to life and persons” including cruel treatment and torture, and “outrages upon personal dignity”. Article 75 of Additional Protocol I of 1977 prohibits “at any time and in any place whatsoever, whether committed by civilian or by military agents (...) violence to the life, health, or physical or mental well-being of persons” and “outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault.”<sup>224</sup> Article 4 of Additional Protocol II of 1977 specifically adds “rape” to this list. Under the Rome Statute of the ICC, “committing rape (...) or any other form of sexual violence,” in addition to constituting a grave breach of the Geneva Conventions or a serious violation of Common Article 3, constitutes a war crime in both international and non-international armed conflict.<sup>225</sup> Under

<sup>221</sup> Interview conducted on 15 December 2008.

<sup>222</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op cit*, p 154.

<sup>223</sup> See Rule 93, in J-M. HENCKAERTS, L. DOSWALD-BECK (eds), *Customary International Humanitarian Law*, Volume I, *op cit.*, p. 323.

<sup>224</sup> See Article 75 para 2 a) and b) respectively

<sup>225</sup> Article 8(2)(b) xxii and (e)v1

HRL, sexual violence is prohibited through the prohibition of torture and cruel, inhuman or degrading treatment.

In the context of the August 2008 armed conflict and its aftermath, there are a number of accounts of sexual and gender-based violence (SGBV), including rape. However, given the very sensitive nature of such crimes, they are usually under-reported – even more so in Georgia, as highlighted by many NGOs and international organisations. For example, victims of rape during the 1990s conflicts are only now beginning to report what happened then.

Human Rights Watch received numerous reports of the rape of ethnic Georgian women during the August 2008 war. It stressed that “due to the sensitive nature of the crime, rape is frequently under-reported, and it is particularly difficult to document cases during conflict.”<sup>226</sup>

The HRAM also acknowledged that it had not gathered comprehensive information on SGBV. As outlined by that Mission: “Although the issue of SGBV was raised in interviews with individuals, it did not feature prominently, which may well be because the subject is still considered largely taboo in much of Georgia and victims may face a very real threat of ostracism. In addition, many of the interviews were carried out in circumstances – such as the lack of privacy – which were not conducive to discussing this issue.”<sup>227</sup>

The extent of the SGBV in the context of the conflict or in certain areas following the hostilities has still to be fully ascertained. To date, however, SGBV does not seem to have been widespread. An NGO reported to the HRAM that it had not found evidence that rape occurred frequently during the conflict, but that there had been some instances.<sup>228</sup> Similarly, the Office of the Prosecutor-General of Georgia told the HRAM that while there was no evidence of systematic rape during the conflict, there had been at least four or five rapes related to the conflict.<sup>229</sup>

Human Rights Watch “was able to document two cases of rape in undisputed areas of Georgia under Russian control.”<sup>230</sup> Testimonies gathered by NGOs do not give direct information from victims of potential SGBV. One case was reported in Prizi, in the Gori region. Persons detained in SIZO (“Investigative Isolator” or detention facility) in Tskhinvali referred to a

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<sup>226</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op. cit.*, p. 59.

<sup>227</sup> OSCE, *Human Rights in the War-Affected Areas following the Conflict in Georgia*, *op. cit.*, p. 19.

<sup>228</sup> *Ibid.*, p. 25.

<sup>229</sup> *Ibid.*, p. 37.

<sup>230</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op. cit.*, p. 59.

woman approximately 22 years old who was “regularly taken outside the cell for interrogation, away for an hour or two, and when she came back she seemed upset and wouldn’t talk to anyone”. In Meghvreki there is also an account of one 14-year-old girl who was raped. In particular, NGO staff interviewed by the HRAM reported that they had evidence of a case in which a woman who was hiding in a church in Gori was gang-raped; a woman who was held in custody in Tskhinvali was taken out by guards and repeatedly raped; a girl kidnapped in Gori was raped; and the NGO’s doctors had found physical evidence indicative of rape on a Georgian male soldier.<sup>231</sup> According to the Office of the Prosecutor-General of Georgia, cases of rape included a girl who was taken from a minibus near Akhalsopeli (Shida Kartli) and raped several times, and a woman who was kept in detention alone in a house and was reportedly raped by four persons.<sup>232</sup>

A woman interviewed in March 2009 by the IIFFMCG expert in a settlement near Gori, and who is tasked by the UN with collecting information on alleged violations of human rights, confirmed both the reality of rapes during the conflict and the difficulty of documenting such crimes. The *Rapid Needs Assessment of Internally Displaced Women as a Result of the August 2008 Events in Georgia* carried out by the Institute for Policy Studies with financial and technical support from the United Nations Development Fund for Women (UNIFEM) provides an overview of the SGBV in relation to the conflict and its aftermath, following interviews of 1 144 persons and based on a methodology designed to take into account the sensitive nature of this violence by using indirect questions.<sup>233</sup> This study notes that “due to stigma attached to sexual abuse it is likely that in general many women simply do not admit that they have been exposed to any physical or verbal abuse.”<sup>234</sup> The survey revealed that 6.3% of respondents reported having information about sexual violence against women; out of these 70 respondents, 21.4% said they had information about cases of rape, 32.8% – group rape, 14.3% – attempted rape, and 31 % did not specify kind of abuse.<sup>235</sup>

The IIFFMCG concludes that although the SGBV in the context of the conflict and its aftermath does not appear to have been systematic or widespread, it is fundamental to address it both in terms of practical responses and in terms of accountability.

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<sup>231</sup> OSCE, Human Rights in the War-Affected Areas following the Conflict in Georgia, *op cit*, p 25

<sup>232</sup> *Ibid*, p 37.

<sup>233</sup> Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights, OSCE, Human Rights in the War-Affected Areas following the Conflict in Georgia, 27 November 2008, p 8

<sup>234</sup> *Ibid*, p 7.

<sup>235</sup> *Ibid*, p. 8

*The Mission believes that although sexual and gender based violence in the context of the conflict and its aftermath does not appear to have been systematic or widespread, it is fundamental to address it both in terms of practical responses and in terms of accountability.*

**c) Ill-treatment and torture**

The prohibition of torture, cruel or inhuman treatment and outrages upon personal dignity, in particular humiliating and degrading treatment, is contained in both IHL and HRL.

Numerous cases of ill-treatment have been reported by various sources in the course of the conflict and its aftermath. While such acts were committed against persons detained, there were also extensive beatings and threats against civilians mainly of Georgian ethnicity who remained in villages either in South Ossetia or in the undisputed territory of Georgia. These acts were committed mainly by South Ossetian forces, as reported by the victims interviewed. Though limited in scope and in quantity, the interviews of inhabitants from Achabeti, Tamarasheni, Disevi, Eredvi and Kekvi conducted by the Mission's expert in March confirmed existing information. Additional interviews were conducted by the IIFMCG expert in June 2009, especially in villages close to the administrative border with South Ossetia such as Koshka. Two inhabitants of this village had been severely beaten by South Ossetians when they entered the territory of Georgia proper.

There were numerous cases of civilians having been beaten. In Tirdznisi, for example, in an interview with an NGO a man owning a bakery told how Ossetian militias had entered the village on 12 August and beaten his brother and his neighbour. His brother had had his ribs and arm broken.<sup>236</sup>

Many of the civilians who were ill-treated in South Ossetia were elderly people who could not flee in the early days of the conflict. An 80-year-old woman from Eredvi explained to the IIFMCG expert how Ossetian and Russian military men came into her house in September. While they were surprised to find her in the house, they asked her for money. Then they put a phone wire around her neck and threw her on the ground and dragged her outside.

A Tbilisi-based NGO specialising in assistance to victims of torture told the HRAM that they have identified 50 torture cases related to the conflict for long-term follow-up.<sup>237</sup> While Human Rights Watch documented far fewer cases, they all occurred in the context of detention.

<sup>236</sup> Interviews conducted on 11 December 2008.

<sup>237</sup> OSCE, Human Rights in the War-Affected Areas following the Conflict in Georgia, *op. cit.*, p. 24.



***The Mission believes that there are confirmed cases of ill-treatment and torture committed by South Ossetian forces.***

#### **d) Detention of combatants**

Under IHL, rules regarding detention and related status are different depending on the type of conflict, i.e. whether it is international or non-international in character. In the former case, combatants benefit from the status of prisoner of war under certain conditions.

With respect to persons detained by Georgian forces, according to the Georgian authorities 32 persons were detained because of their participation in hostilities. According to Human Rights Watch the authorities did not display evidence that they were all combatants.<sup>238</sup> A few Ossetian civilians were also detained. One possible case of enforced disappearance is recounted in the 2009 HRW Report,<sup>239</sup> although the Georgian authorities deny that the person who is allegedly missing is in their custody. According to information given by an NGO to the HRAM of the OSCE, “14 Ossetians, including two teenagers, were detained by Georgian police following the Russian withdrawal from the ‘buffer zone’ and were held incommunicado.”<sup>240</sup>

Georgia provided additional information on persons it detained: “Russian military personnel held as POWs: five; – Members of separatist illegal armed formations: thirty-two; – Apparent mercenary: one (Russian citizen).” Georgia indicated that:

*“All Georgian-held prisoners were exchanged for the 159 Georgian civilians and 39 POWs held under Russian authority. The ICRC was afforded unimpeded access to Georgian detention facilities and visited three of the five POWs – the other two were taken prisoner late in the war. The ICRC visited facilities maintained by the Ministries of Defence and Justice on a number of occasions, inspecting the conditions in which not only the POWs were detained, but also those of the detained members of separatist illegal armed formations*

*“Those detained in the context of the conflict were placed separately from other prisoners.”<sup>241</sup>*

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<sup>238</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op cit*, p. 79

<sup>239</sup> *Ibid*, p. 85

<sup>240</sup> OSCE, *Human Rights in the War-Affected Areas following the Conflict in Georgia*, *op. cit.*, p. 25.

<sup>241</sup> Georgia, *Responses to Questions Posited by the IIFMCG (Humanitarian Aspects)*, Question 3, provided to the IIFMCG on 5 June 2009, pp. 2-3

According to the Russian Federation, “during the operation Russian and South Ossetian military units detained 85 Georgian nationals” and “Taking into consideration the fact that some Georgian servicemen deserted from their units, disposed of their weapons and military uniform, destroyed their identity papers, changed into civilian clothing, etc., it proved impossible to ascertain the exact number of military personnel among those detained.”<sup>242</sup> The Russian Ministry of Foreign Affairs added the following in its replies to the questionnaire sent by the IIFFMCG:

*“Throughout the entire period during which Russia’s armed forces took part in the military operation in South Ossetia and Abkhazia between 8 and 12 August 2008, the Russian military forces detained Georgian military personnel only (as of 12 08 2008 no other Georgian military were detained) Since Russia took part in an armed conflict that was international in nature, these detainees were treated as combatants in accordance with IHL Therefore, once detained they received the status of prisoners of war To the best of our knowledge after the conflict ended and the prisoners of war were cleared of any potential military crimes, on 19 August all of them were handed over to the Georgian side in the presence of ICRC delegates with the Council of Europe Commissioner for Human Rights T Hammarberg acting as a mediator The Russian side treated these prisoners of war in accordance with the requirements set out in IHL They were never subjected to torture ”*<sup>243</sup>

In its replies to the IIFFMCG questionnaire Georgia indicated, on the contrary, that “as many as 30 soldiers who were detained during and after the conflict experienced torture and ill-treatment, including being beaten with rifles, burned with cigarettes and cigarette lighters, and subjected to electric shocks”<sup>244</sup>

In the case of the detention of Georgian military servicemen by South Ossetian forces, however, direct eyewitnesses reported that Russian forces were present in the place of detention. Some of those Georgian combatants were captured by South Ossetian militias. Some were transferred first to Ossetian police and then handed over to Russian forces. Human

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<sup>242</sup> Russia, Responses to Questions Posited by the IIFFMCG (Humanitarian Aspects), *op cit* pp 12-13

<sup>243</sup> Russia, Responses to Questions Posited by the IIFFMCG (Legal Aspects), *op cit.*, p 11

<sup>244</sup> Georgia, Responses to Questions Posited by the IIFFMCG (Humanitarian Aspects, Question 6 ), provided to the IIFFMCG on 5 June 2009, p 1

Rights Watch documented cases of ill treatment and torture and three executions of Georgian soldiers in the presence of Russian forces.<sup>245</sup>

*The Mission believes that there are confirmed cases of ill-treatment and torture against combatants detained. Such acts seem to have been committed mainly by South Ossetian forces, in some cases possibly with Russian soldiers present.*

**e) Detention of civilians, arbitrary arrests, abduction and taking of hostages**

There are also many cases where civilians of Georgian ethnicity have been deprived of their liberty. Such cases include the arrest and detention of civilians in inappropriate conditions by Ossetian forces, some being kidnapped and released against payment of a ransom. Many civilians also described their arrest as being taken hostage to be used in exchanges later.

Two elderly women from Achabeti village were brought by South Ossetian forces to Tskhinvali on 11 August and were detained together with more than 40 people, most of them also elderly, in the basement of what they identified as the FSB building in Tskhinvali. They were all kept together for three days in the same small room, where they had to take turns to lie down on a few wooden beds, and with very little bread or water. They were then kept in the yard for five days and had to clean the streets. Many civilians detained had to bury corpses.

Two men from Achabeti and Tskhinvali respectively described how they were beaten while detained in SIZO.<sup>246</sup>

During the meeting the IIFMCG experts had on 5 June 2009 with representatives of the *de facto* Ministry of Defence and Ministry of Interior of South Ossetia, these authorities actually acknowledged that civilians had been present in the Ministry of Interior building, but they indicated that they had been taken there in the context of safety measures to protect them from the effects of the hostilities. Not only is this in complete contradiction with numerous

<sup>245</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op cit*, pp 185

<sup>246</sup> The first said “There were about 80 people there, and every day there came more I stayed there for 18 days, during which time I was beaten, including with rifle butts, kicked and humiliated I had bruises and wounds on my face and hands They beat me in the kidneys [He had visible damage on finger, broken nail, which we photographed] There were only seven cells in the SIZO, very little room and some people slept in the corridor ”

The second declared: “We were taken to the SIZO, where the other hostages were At the most, there were 170 people there – mostly older people, but also women and children – in a space which measured perhaps 10 by 10 meters It was so crowded we could hardly stand, we slept in shifts. We got some bread and cereals, and tea without sugar. A doctor came and looked at my leg. The doctor and his colleague were attentive and gave me good treatment during the 18 days I stayed there.”

testimonies from persons detained there but, even if it were so, it would be impossible to explain why, if such measures were taken for protection purposes, those persons were not released until 27 of August, two weeks after the hostilities had ended, and why they had to clean the streets and bury dead bodies.<sup>247</sup>

The HRAM heard many reports of the kidnapping of villagers who were then held for ransom. For example, a family of four was kidnapped in Gogeti; the wife and two children were released and asked to bring money in exchange for the husband.<sup>248</sup>

*It seems that there have been numerous cases of illegal detention of civilians, arbitrary arrests, abduction and taking of hostages, mostly committed by South Ossetian forces and other South Ossetian armed groups.*

#### **f) Pillage and looting**

IHL prohibits pillage both in time of international armed conflict and in time of armed conflict of a non-international character. In treaty law, for example, pillage is prohibited according to Article 33 of Geneva Convention IV of 1939 and Article 4(2) of Additional Protocol II of 1977. This is also a rule of international customary law.<sup>249</sup> Under the Rome Statute, pillage is a war crime in both types of conflict.<sup>250</sup>

The conflict in Georgia and its aftermath have been characterised by a campaign of large-scale pillage and looting against ethnic Georgian villages in South Ossetia and in the so-called buffer zones. While this was mainly committed by Ossetian military and militias, including Ossetian civilians, there are many eyewitness reports of looting by Russian forces. Most importantly, numerous testimonies refer to Russian soldiers being present while armed

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<sup>247</sup> Human Rights Watch “also received reports of Georgians who were abducted by Ossetians and not handed over to the police. Lia B., 76, tearfully told Human Rights Watch on September 10 how she witnessed two Ossetian men abduct her 17-year-old granddaughter, Natia B., on August 13 in the middle of the day.” A 70-year-old woman from Prisi had to go back to her village from Gori with her 17-year-old granddaughter because there was no available place for them to stay in Gori. She explained what happened mid-August 2008.

“We walked for nine hours. When we were walking through the village of Kidznisi, an old broken Zhiguli car, maybe stolen, stopped in front of us. Two young blond Ossetians in paramilitary uniform (with white stripes at the arm) got out of the car, took my granddaughter and kidnapped her”, *Interview conducted on 9 September 2008*”

<sup>248</sup> OSCE, Human Rights in the War-Affected Areas following the Conflict in Georgia, *op cit*, p. 39

<sup>249</sup> See Rule 52, in J-M HENCKAERTS, L. DOSWALD-BECK (eds), Customary International Humanitarian Law, Volume I, *op cit*, p. 182

<sup>250</sup> In international armed conflict (Article 8, 2, b, xvi) and in non-international armed conflict (Article 8, 2, e, v), “pillaging a town or place, even when taken by assault,” is a war crime

Ossetians were looting. Some pillage started immediately after the withdrawal of the Georgian forces.

HRW documented – and sometimes directly witnessed – systematic looting in Tamarasheni, Zemo Achabeti, Kvemo Achabeti, Kurta, Tkviavi, Tirdznisi, Dvani, Koshka, Megrekisi, Nikozi, Karaleti, Knolevi, Avlevi, Tseronisi, and Kekhvi.<sup>251</sup> The HRAM of the OSCE also reported a number of cases of looting and pillage.<sup>252</sup> By way of example, the HRAM told of a woman in Kekhvi who saw her house being looted by a group of “Ossetians” wearing military uniforms with white arm bands. The men also stole her car and loaded it with furniture from a neighbour’s house before driving away. As she fled the village, she saw “Ossetian” soldiers who were being protected by Russian forces and were pillaging shops and other houses.<sup>253</sup>

It is critical to stress that in the aftermath of the conflict the looting and pillage intensified both in South Ossetia and in the buffer zone in Dvani, Megvrekisi and Tkviavi.<sup>254</sup>

Moreover, Ossetian villagers also participated in looting in September, demonstrating a lack of protection and policing by the Ossetian and Russian forces. Many testimonies refer to Russian forces being present whilst Ossetian militias were looting.

Far from being a few isolated cases, in certain villages the pillage seems to have been organised, with looters first using trucks to take the furniture and then coming to steal the windows and doors of houses.<sup>255</sup>

Human Rights Watch also pointed out that “in some communities where Ossetians lived side-by-side with Georgians, or in mixed marriages, the Ossetians were also targeted for looting, harassment, and accusations of collaboration,” such as in Zonkar, a tiny Tskhinvali-administered hamlet in the Patara Liakhvi valley surrounded by ethnic Georgian villages.<sup>256</sup>

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<sup>251</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, 22 January 2009, pp. 130-142 and 164-169.

<sup>252</sup> Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights, OSCE, *Human Rights in the War-Affected Areas following the Conflict in Georgia*, 27 November 2008, p. 44.

<sup>253</sup> *Idem.*

<sup>254</sup> Amnesty International noted that: “Extensive looting of Georgian-administered villages appears to have taken place over the two weeks following the cessation of hostilities. Eye-witness accounts of some villages dating from the 13-14 August refer only to limited looting, yet when Amnesty International representatives visited these same villages almost two weeks later on the 26 August, they observed first hand that looting and pillaging was still going on”. AI, *Civilians in the Line of Fire – The Georgia-Russia Conflict*, op. cit., p. 41.

<sup>255</sup> Interview of IDPs from South Ossetia by the IFFMCG expert in March 2009.

<sup>256</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, op. cit., pp. 143-144.

Amnesty International expressed particular concern at the “many reports of Russian forces looking on while South Ossetian forces, militia groups and armed individuals looted and destroyed Georgian villages and threatened and abused the residents remaining there.”<sup>257</sup> It described the following situation:

*“In the village of Eredvi on 26 August Amnesty International representatives witnessed ongoing looting and pillaging, including by armed men. As the looting was going on, Russian military equipment continued to pass through Eredvi (due west of Tskhinvali) and Russian checkpoints controlled the entry and exit to the village, Amnesty International observed that only ordinary cars, rather than trucks or other large vehicles, were searched, and not in all cases.”*<sup>258</sup>

There is consequently extensive evidence of a widespread campaign of looting and pillage by Ossetian forces, as well as unidentified armed Ossetians and sometimes civilians, during the conflict but mostly after the cease-fire. While the Russian forces do not seem to have played an important part in this campaign, they did little to stop it.

NGOs present in Georgia reported information from some of the IDPs they interviewed on looting by Abkhaz forces in the Kodori Valley and villages in the former “security zone” as identified under the 1994 Moscow agreement, notably villages near the administrative border, such as Anaklia. For example a villager from Ganmukhuri reported looting and robbing by Abkhaz soldiers.<sup>259</sup> While UN officials in Zugdidi stated that there was no report of human rights violations during the conflict in the Kodori Valley, they noted conflicting accounts of the looting of the Svan property and livestock.<sup>260</sup> An elderly woman from Ajara stated during the interview that Russian Forces<sup>261</sup> took her cattle and her furniture. On the other hand, there are reports through information collected by NGOs that Russian forces appear to have exercised a certain amount of restraint and discipline on the Abkhaz forces to prevent misconduct. The Abkhaz *de facto* Deputy Minister for Defence, when asked about alleged looting, stressed that Abkhaz soldiers had been instructed not to damage property, and he pointed out that although it was not possible to look after every single house and that he could not rule out some acts by reservists motivated by revenge, in his view these were minor,

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<sup>257</sup> AI, *Civilians in the Line of Fire – The Georgia-Russia Conflict*, *op cit*, p 32

<sup>258</sup> *Ibid*, p 43

<sup>259</sup> Interviewed by an NGO on 10 September 2008

<sup>260</sup> Meeting with UNOMIG officials, March 2009, Zugdidi.

<sup>261</sup> This contradicts the version given by the Abkhaz *de facto* Ministry of Defence who claimed that no Russian forces were involved in the fighting

isolated incidents.<sup>262</sup> He indicated that he saw only one house burning when he visited the area on 15 August.

The HRAM however also indicated reports of looting in the Kodori Gorge: “One villager reported that his house had survived without damage, but when he returned he found that his television, radio and curtains had been stolen. A woman from Ptishi said that she returned to find her house looted, as did several of her neighbours. The houses were not burned, however. Even the UNOMIG base in Ajara was emptied of all movable assets and was occupied by Abkhaz personnel. As a result of the conflict, many villagers also lost cattle, which for many is essential for their livelihood. A woman from Ptishi reported that some cattle were killed by bombs. A man from Gentsvishi said that he had not been able to locate his cattle since his return. An international humanitarian organisation also confirmed that villagers’ cattle had disappeared.<sup>263</sup> Thus although some looting may have taken place in the Kodori Valley, it seems to have happened in isolated incidents, unlike the patterns identified in South Ossetia and in the adjacent buffer zone.

*During and, in particular, after the conflict a systematic and widespread campaign of looting took place in South Ossetia and in the buffer zone against mostly ethnic Georgian houses and properties. Ossetian forces, unidentified armed Ossetians, and even Ossetian civilians participated in this campaign, with reports of Russian forces also being involved. The Russian forces failed to prevent these acts and, most importantly, did not stop the looting and pillage after the ceasefire, even in cases where they witnessed it directly. The Abkhaz forces did not embark on such pillage; there are, however, reports of a few instances of looting and destruction.*

#### **g) Destruction of property**

While IHL provides that parties to an international armed conflict may seize military equipment belonging to an adversary as war booty,<sup>264</sup> in both international and non-international armed conflict it prohibits the destruction or seizure of the property of an adversary, unless required by imperative military necessity.<sup>265</sup> Article 33 of Geneva Convention IV states that “Reprisals against protected persons and their property are prohibited.” Under Article 147 of this convention, “extensive destruction and appropriation of

<sup>262</sup> Meeting with the Abkhaz *de facto* Minister for Defence, 4 March 2009, Sukhumi.

<sup>263</sup> Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights, OSCE, *Human Rights in the War-Affected Areas following the Conflict in Georgia*, 27 November 2008, p. 61.

<sup>264</sup> See Rule 49, in J-M. HENCKAERTS, L. DOSWALD-BECK (eds), *Customary International Humanitarian Law*, Volume I, *op. cit.*, p. 173.

<sup>265</sup> *Ibid*, Rule 50, p. 175.

property, not justified by military necessity and carried out unlawfully and wantonly” is a grave breach. The ICC Rome Statute also qualifies these acts as war crimes in non-international armed conflict.<sup>266</sup> This prohibition should also be read in conjunction with the prohibition under IHL against collective punishment.

It is critical to stress that in the context of the August 2008 conflict, as in other armed conflicts, the destruction of property is closely linked to the need for IDPs to leave their houses. In this regard, as underlined above, the UN Guiding Principles on Internal Displacement restates the above prohibitions, reflecting existing IHL and HRL, within the framework of the rights of displaced persons.<sup>267</sup>

When considering the destruction of civilian property in the context of the conflict in South Ossetia and its aftermath, a key distinction must be made between on the one hand destruction as a result of shelling, artillery strikes, aerial bombardment or tanks firing, which might constitute a violation of IHL but does not systematically do so, and destruction as a result of deliberate acts of torching and burning. As noted by the HRAM, some destruction resulted from the hostilities proper, whether during the offensive by Georgian forces against Tskhinvali and other villages in South Ossetia, or during Russian aerial bombardments and artillery shelling.<sup>268</sup> Here it is necessary to refer to the section on indiscriminate attacks, above.

This type of destruction is in no way less serious. But it must be stressed from the outset that the extensive damage caused through burning, with some villages almost completely burned down, raises grave concern as to the motives behind such acts. The practice of burning reached such a level and scale that it is possible to state that it characterised the violence of the conflict in South Ossetia. This large-scale campaign of burning targeted ethnic Georgian villages in South Ossetia and, to a lesser extent, the areas adjacent to the administrative border.

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<sup>266</sup> Article 8, 2, xii, of the Rome Statute.

<sup>267</sup> “1. No one shall be arbitrarily deprived of property and possessions.

“2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts: (a) Pillage; (b) Direct or indiscriminate attacks or other acts of violence; (c) Being used to shield military operations or objectives; (d) Being made the object of reprisal; and (e) Being destroyed or appropriated as a form of collective punishment.

“3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use,” See Principle 21.

<sup>268</sup> Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights, OSCE, Human Rights in the War-Affected Areas following the Conflict in Georgia, 27 November 2008, pp. 41.



In this regard it is also paramount to stress that a number of testimonies seem to suggest a pattern of deliberate destruction and torching in the ethnic Georgian villages in South Ossetia that was different in scale and motives from what happened in the buffer zone.

Regarding the burning and torching of entire villages in South Ossetia, the explanation given by Russia and the *de facto* South Ossetian authorities failed to convince the IIFFMCG.

According to the Russian Federation, “one of the reasons accounting for the fires and destruction in Georgian villages was the deliberate policy of arson perpetrated by the retreating Georgian Armed Forces. As a result a number of ordnances detonated including armour-piercing rocket-launcher rounds that had been placed and stored in advance in residential homes in a number of Georgian villages (Kekhvi, Tamarasheni, Kheita, Kurta, Eredvi, Avnevi, etc.) to arm Georgian paramilitary self-defence units.”<sup>269</sup> Explanations given by South Ossetia also point the finger at Georgians: the representative of one of the two South Ossetian organisations accompanying the IIFFMCG during its visit to South Ossetia in March claimed that the houses were burned by Georgians. These claims, however, are not supported by any information available through interviews of IDPs or of villagers who remained during the hostilities and after. Moreover, according to HRW, the majority of the witnesses it interviewed did not complain about violations against them by the Georgian forces, in the context of the ground offensive.<sup>270</sup>

The South Ossetia *de facto* Prosecutor-General told the HRAM that the Georgian forces had been using these villages as military positions.<sup>271</sup> This latter explanation could in no way account for the extensive and systematic torching of entire villages witnessed by the IIFFMCG. All the information gathered from a variety of sources points to South Ossetian forces and militias as being the perpetrators, with dozens of testimonies in this regard. Interviews of inhabitants from ethnic Georgian villages as direct eyewitnesses, by Georgian NGOs, Human Rights Watch<sup>272</sup> and Amnesty International, as well as information collected by the IIFFMCG itself, substantiate this pattern.

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<sup>269</sup> Russia, Responses to Questions Posited by the IIFFMCG (Humanitarian Aspects), *op cit.*, p 10

<sup>270</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op cit* , p 61

<sup>271</sup> Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights, OSCE, Human Rights in the War-Affected Areas following the Conflict in Georgia, 27 November 2008, p. 42.

<sup>272</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op cit* , pp 130

After the cease-fire this campaign did not stop, but actually intensified. Regarding the extent of the damage caused, it is clear from both eyewitness reports and satellite images that many houses were burned in the last two weeks of August and in September.<sup>273</sup>

This was also confirmed by IDPs interviewed by the IFFMCG expert and other organisations. Furthermore, although to date unverifiable, one person interviewed by the Mission's expert claimed that some burned houses were later destroyed to conceal the fact that they had been torched. This may be related to confirmed reports of burned houses having been "bulldozed" in September.<sup>274</sup>

The IFFMCG also wishes to note that this campaign of burning houses in South Ossetia was accompanied by violent practices such as preventing people from extinguishing fires under threat of being killed<sup>275</sup> or forcing people to watch their own house burning.<sup>276</sup>

The IFFMCG concludes that – as also stated by the HRAM and by HRW – after the bombing, South Ossetians in uniform as well as Ossetian civilians who followed the Russian forces' advance undertook a systematic campaign of arson against homes and other civilian buildings in villages populated predominantly by ethnic Georgians. Interviews by the IFFMCG expert confirmed that with few exceptions Russian forces did not participate directly in the destruction of villages, aside from a brief period in mid-August, but nor did they intervene to stop it.

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<sup>273</sup> For example Amnesty International noted "Satellite imagery obtained for Amnesty International has confirmed extensive destruction in various settlements that occurred after the ceasefire  
"Looting and arson attacks appear to have been concentrated on Georgian majority villages north and east of Tskhinvali, associated prior to the conflict with the Tbilisi-backed alternative administration headed by Dmitri Sanakoev. In particular, the villages of Kekhvi, Kurta, Kvemo Achabeti, Zemo Achabeti, Iamarasheni, Ergneti, Kemerti, Berula and Eredvi sustained heavy damage ( ) The destruction of houses and property in some Georgian-majority settlements in South Ossetia took place in the aftermath of hostilities and not as a direct result of them. Satellite images obtained for Amnesty International by the American Association for the Advancement of Science reveal no damage to the village of Tamarasheni, for example, on 10 August. Satellite photos from the 19 August, however, already reveal extensive destruction, with 152 damaged buildings in Tamarasheni. By the time that Amnesty International delegates were able to visit these villages at the end of August, they were virtually deserted and only a very few buildings were still intact," AI, *Civilians in the Line of Fire – The Georgia-Russia Conflict*, op cit, pp 40-41. See also Human Rights Watch (HRW), *Georgia: Satellite Images Show Destruction, Ethnic Attacks*, available at <http://www.hrw.org/en/news/2008/08/27/georgia-satellite-images-show-destruction-ethnic-attacks>

<sup>274</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, op cit, p 131. See also Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights, OSCE, *Human Rights in the War-Affected Areas following the Conflict in Georgia*, 27 November 2008, p 43.

<sup>275</sup> See for example Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights, OSCE, *Human Rights in the War Affected Areas following the Conflict in Georgia*, 27 November 2008, p 24.

<sup>276</sup> Interview of IDPs by an expert of the IFFMCG.

With regard to the destruction of property in the buffer zone, it is first necessary to state that both types of destruction (as a result of hostilities, and from deliberate torching) were documented in this area. The IIFFMCG expert, travelling in June 2009 on the road from Karaleti to Koshka, saw several houses that had been destroyed by Russian aerial bombardment and artillery shelling. While these forms of destruction do not in themselves amount to a violation of IHL, some instances, discussed earlier, do constitute indiscriminate attacks. As for the burning of houses, the members of the OSCE HRAM counted approximately 140 recently burned homes during their travels in the “buffer zone,” none of which showed traces of combat activity.<sup>277</sup>

Without questioning the reality of the destruction by torching of houses in the buffer zone, the IIFFMCG wishes to observe that, at least for the villages its expert visited in June 2009 and in the light of the interviews it conducted, the patterns of destruction through arson appear to be slightly different than in South Ossetia. First, the scale of the destruction is less vast. In Karaleti, inhabitants indicated that 25 houses had been burned.<sup>278</sup> The motive for torching deserves particular attention. While it is true that revenge and private motives are also relevant in explaining the torching of ethnic Georgian villages in South Ossetia, the destruction of only selected houses in the village indicates a more targeted form of violence in the places the IIFFMCG visited. Information gathered by the IIFFMCG expert appears to suggest that lists of houses to be burned down were pre-established. Some inhabitants felt that the destruction was prompted by the fact that the owner had a relative in the police who had allegedly been involved in acts committed against ethnic Ossetians. An elderly woman living with her family on the outskirts of Karaleti explained that the house in front of hers had been burned down by a group of Ossetians because the owner had bought cattle that had previously been stolen from ethnic Ossetians. Similar accounts of the selective torching of houses were collected by the IIFFMCG expert in Tkviavi.

Another explanation for this more selective violence could be that many mixed families with Ossetian relatives live in the buffer zone. When acknowledging the different pattern of violence in the buffer zone, the representatives of the Ministry of Internal Affairs the IIFFMCG met with offered this as a justification for it.<sup>279</sup>

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<sup>277</sup> Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights, OSCE, Human Rights in the War-Affected Areas following the Conflict in Georgia, 27 November 2008, p. 27.

<sup>278</sup> Interviews conducted on 3 June 2009.

<sup>279</sup> Meeting on 4 June 2009.

While these considerations cannot be generalised, they need to be taken into account when reflecting on the patterns of violence during the conflict, especially with regard to property rights. This aspect of individualised revenge is critical and should not be overshadowed by more general patterns. For a comprehensive post-conflict solution to be meaningful, this aspect should be addressed in order to defuse tension and deal with the different types of violence effectively.

*South Ossetians in uniform, and Ossetian civilians who followed the Russian forces' advance, undertook a systematic campaign of arson against homes and other civilian buildings in villages populated predominantly by ethnic Georgians, including in the so-called buffer zones.*

*With few exceptions, Russian forces did not participate directly in the destruction of villages, aside from a brief period in mid-August, but neither did they intervene to stop it.*

#### **h) Maintenance of law and order**

Under the IHL on military occupation the occupying power, once it has authority over a territory, has an obligation to take all the measures in its power to restore, and ensure, as far as possible, public order and safety.<sup>280</sup> Ensuring safety includes protecting individuals from reprisals and revenge. There is also an obligation to respect private property.<sup>281</sup>

Even where the law on occupation is not applicable, under HRL states have an obligation to protect persons under their jurisdiction and prevent violations against them.

In the context of the conflict in Georgia the issue of the maintenance of law and order, and consequently that of the authorities responsible for such maintenance, is critical for several reasons. First, control over certain areas changed during the period of the conflict and its aftermath: in South Ossetia, in villages or districts that had previously been administered by the Georgian authorities, and also in the buffer zones and in Abkhazia, in the Kodori Valley. But it is also relevant for those parts of South Ossetia and Abkhazia where the *de facto* authorities had been exercising control before the outbreak of the conflict. Secondly, the presence of Russian forces on those territories raises the issue of their responsibilities, whether under the law of occupation or under human rights law. Thirdly, numerous, if not

<sup>280</sup> Article 43 of Convention (IV) respecting the Laws and Customs of War on Land and its annex Regulations concerning the Laws and Customs of War on Land The Hague, 18 October 1907

<sup>281</sup> Article 46 of Convention (IV) respecting the Laws and Customs of War on Land and its annex Regulations concerning the Laws and Customs of War on Land The Hague, 18 October 1907 According to Article 87(1) of Additional Protocol I, "the High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the [1949] Conventions and of this Protocol."

most, violations occurred after the conflict, at a time when the main question was actually one of policing and maintaining order to prevent or stop such violations. Apart from the question of identifying who had responsibility for maintaining public order and ensuring security, there has clearly been, with some exceptions, a vacuum in this regard.

One of the most worrying areas was the buffer zone. The Representative of the Secretary-General on the human rights of internally displaced persons reported that “during his visit to the so-called buffer zone, he witnessed evidence of widespread looting of property and listened to villagers reporting incidents of harassment and violent threats committed by armed elements, in tandem with a failure by Russian forces to respond and carry out their duty to protect, particularly in the northernmost area adjacent to the *de facto* border with the Tskhinvali region/South Ossetia. Villagers explained their permanent fear of attack by what they described as armed bandits coming from the Tskhinvali region/South Ossetia, and their repeated but unsuccessful requests to the Russian forces for protection. Villagers insisted that there were no problems between neighbours within the same villages, irrespective of their ethnic origins, but that the perpetrators were coming from outside the villages, i.e. the Tskhinvali region/South Ossetia.”<sup>282</sup> In September 2008 the Council of Europe Commissioner for Human Rights also noted that “in the northern part – i.e. the area adjacent to the administrative border of South Ossetia – there are still reports of looting, torching and threats, and far fewer people have been able to return.”<sup>283</sup> Following his special mission to Georgia and the Russian Federation on 22-29 August 2008, the Council of Europe Commissioner for Human Rights stressed the “right to protection against lawlessness and inter-community violence.” He noted that he had “received a great number of reports of physical assault, robbery, kidnapping for ransom, looting and torching of houses as well as personal harassment by South Ossetian militia or other armed men in the Georgian villages in South Ossetia and in the ‘buffer zone’.”<sup>284</sup> He further stated that he “was alarmed over the rampant criminality in the ‘buffer zone’.”<sup>285</sup>

While denying the status of occupying power, the Russian Federation acknowledged that it had tried to exercise police powers on the ground. With regard to “measures taken outside the

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<sup>282</sup> Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kalin, A/HRC/10/13/Add.2, 13 February 2009, para. 44.

<sup>283</sup> SPECIAL MISSION TO GEORGIA INCLUDING SOUTH OSSETIA SUMMARY OF FINDINGS, *op. cit.*, p. 3.

<sup>284</sup> HUMAN RIGHTS IN AREAS AFFECTED BY THE SOUTH OSSETIA CONFLICT, Special Mission to Georgia and Russian Federation, *op. cit.*, para. 87, p. 16.

<sup>285</sup> *Ibid.*, para. 88, p. 16.

scope of hostilities to protect the civilian population from looting, pillaging, abuse etc.,” it describes the situation as follows. In terms of “a police function”:<sup>286</sup>

*“South Ossetia had and still has its own government and local authorities which exercise effective control in this country, maintain the rule of law and protect human rights. At the same time, the Russian military contingent called upon to carry out purely military tasks in the territory of South Ossetia, to the best of their abilities tried to maintain law and order and prevent any offences in the areas of their deployment, including Georgia proper, where owing to the flight of Georgian government authorities an apparent vacuum of police presence ensued. The Russian military force could not substitute for the government of South Ossetia. The Russian military have never been granted the jurisdiction to maintain the rule of law, not to mention that their sheer numbers are insufficient for that task. Nevertheless, the Russian troops apprehended more than 250 persons on suspicion of looting and other crimes. All of them have been handed over to the authorities of South Ossetia for further investigation and criminal prosecution.”*<sup>287</sup>

This argument of relying on the South Ossetian *de facto* authorities to maintain public order and prevent violations of human rights is flawed, however. In the first place, these authorities failed to ensure the protection or safety of persons living on the territory they controlled, as demonstrated above. This is additionally proven by the fact that even Ossetians did not enjoy protection. One of the two remaining residents of Zonkar, a tiny Tskhinvali-administered hamlet in the Patara Liakhvi valley surrounded by ethnic Georgian villages, told Human Rights Watch how men dressed in Ossetian peacekeeper uniforms looted her house and tried to set fire to it. She said that although she reported the incident to the police, no officials from the South Ossetia prosecutor’s office came to her house to investigate.<sup>288</sup> Even more worrying, however, is the fact that Ossetian forces were themselves among the main perpetrators of violations of human rights.

Furthermore, the position adopted by the Russian Federation is not admissible in the buffer zone, where the South Ossetian *de facto* authorities were not exercising control.

Another aspect of the Russian argumentation calls for further analysis. Russia claims that although it was not an occupying power, “the Russian military contingent called upon to carry

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<sup>286</sup> Russia, Responses to Questions Posited by the IIF-MCG (Legal Aspects), *op cit*, p 6

<sup>287</sup> *Ibid.*, pp 7 8

<sup>288</sup> HRW, Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia, *op cit*, p 144

out purely military tasks in the territory of South Ossetia, to the best of their abilities tried to maintain law and order and prevent any offences in the areas of their deployment including Georgia proper, where owing to the flight of Georgian government authorities an apparent vacuum of police presence ensued.” First, it recognises the absence of policing by Georgian authorities. Second and most importantly it clearly states that effectively the Russian forces, to a certain extent, were trying to maintain order and safety. Russia elaborated further on the actions it carried out in this regard:

*“From day one of the operation, the Russian military command undertook exhaustive measures to prevent pillaging, looting and acts of lawlessness with respect to the local Georgian population. All personnel serving in units that took part in the operation was familiarised with the Directive issued by the General Staff of the Russian Armed Forces and the order given by the Army Commander-in-Chief ‘to maintain public safety and ensure the security and protection of citizens residing in the territory of the South Ossetian Republic’.*

*“Russian troops, jointly with South Ossetian law-enforcement and military units, provided round-the-clock protection of the homes and land allotments that remained undamaged in Georgian villages, at the same time ensuring the safety and security of South Ossetian residents regardless of their ethnic background.”<sup>289</sup>*

First of all, this contradicts the information according to which “in October an official from the Council of Europe who requested anonymity told Human Rights Watch that a senior member of the Russian military in the region said that the military was given no mandate for the protection of civilians.”<sup>290</sup>

In general, these elements demonstrate that to a certain degree, Russian forces were in a position to ensure public order and safety in the territories they were stationed in, and claim to have undertaken measures in this regard. This contrasts strikingly with what happened on the ground, where there was a serious lack of action by the Russian troops to prevent violations and protect ethnic Georgians.

One of the main measures taken by Russian troops was to set up roadblocks and checkpoints. Regarding South Ossetia, Human Rights Watch noted that “roadblocks set up by Russian

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<sup>289</sup> Russia, Responses to Questions Posited by the IIFMCG (Humanitarian Aspects), *op. cit.*, p. 11.

<sup>290</sup> HRW, Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia, *op. cit.*, p. 124.

forces on August 13 effectively stopped the looting and torching campaign by Ossetian forces, but the roadblocks were inexplicably removed after just a week.”<sup>291</sup>

As reported by HRW, two residents of Tkviavi, a village 12 kilometres south of Tskhinvali that was particularly hard hit by looters from South Ossetia, said that the looting had decreased when the Russian forces maintained a checkpoint in the village, although the marauders kept coming during the night. Furthermore, several Tkviavi villagers told Human Rights Watch that they believed that more frequent patrolling by the Russian forces or Georgian police would have improved security in the area. A witness told Human Rights Watch that looters “seemed to be afraid to encounter the Russians, and were hiding from them,” suggesting, according to HRW, that had Russian forces taken more preventive measures to stop violence against civilians these measures would have been effective.<sup>292</sup>

In this regard, other measures by the Russian troops consisted of patrolling and informing the inhabitants and giving the villagers phone numbers so they could contact the Russian military authorities if they witnessed any kind of violation. Regarding these measures, an inhabitant of Tkviavi, the former mayor of the village, told the IFFMCG expert on 3 June that while having offered to help, the Russian military authorities did not do much concretely to stop the looting.

At this stage it is critical to note that the measures such as checkpoints introduced by the Russian forces were meant to prevent violations by South Ossetian militias, and consequently ensure respect of IHL. Oddly, one result of the checkpoints was actually to prevent the Georgian police from maintaining law and order in those areas,<sup>293</sup> and in some cases to stop villagers attempting to return home from Gori to villages in the “buffer zone,” while Russia continued to invoke the lawlessness.<sup>294</sup>

On the other hand, testimonies gathered by the IFFMCG and by HRW<sup>295</sup> also report Russian ground forces trying to protect the civilian population from Ossetian forces, militia members, or criminal elements.

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<sup>291</sup> *Ibid.*, p. 9.

<sup>292</sup> *Ibid.*, p. 126.

<sup>293</sup> *Ibid.*, p. 126.

<sup>294</sup> UNHCR, “Situation north of Gori is deteriorating,” Emergency Operation in Georgia Update, 27 August 2008, <http://www.unhcr.org/news/NEWS/48b55da74.pdf>.

<sup>295</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op. cit.*, p. 125.



Nevertheless, from all the testimonies collected, it appears that the Russian authorities did not take the necessary measures to prevent or stop the widespread campaign of looting, burning and other serious violations committed after the ceasefire.<sup>296</sup>

Referring to the situation at the end of August, the Council of Europe Commissioner for Human Rights also stressed that “the Russian forces have the duty under international humanitarian law to maintain law and order in the zone they control,” and he “raised his serious concerns about the security of the civilians with all sides.” He noted that the Russian head of the peacekeeping presence in the buffer zone and other high-level Russian officials “acknowledged that policing and maintaining law and order were major challenges. According to them, the area had been infiltrated by marauders, criminal gangs and militia, who were committing serious crimes.”<sup>297</sup>

In September 2008, as a way to address this failure to maintain law and order properly, Human Rights Watch called for the EU to provide the monitoring mission scheduled to move into areas near South Ossetia with a policing mandate to protect the civilians.<sup>298</sup>

***The Russian authorities and the South Ossetian authorities failed overwhelmingly to take measures to maintain law and order and ensure the protection of the civilian population as required under IHL and HRL.***

### C. Missing and dead persons

Article 33(1) of Additional Protocol I sets out the obligation on each party to a conflict to search for persons reported missing. Although Additional Protocol II contains no provisions with regard to missing persons, the general obligation to account for them and to transmit

<sup>296</sup> As underlined by Amnesty International, distinguishing between South Ossetia and the buffer zone: “As the occupying force, the Russian army had a duty to ensure the protection of civilians and civilian property in areas under their control. Whilst this may have been difficult in practice in the early days of the conflict, when Russian forces were still engaging the Georgian army, the looting and destruction of property owned by ethnic Georgians, and the threatening of remaining Georgians in South Ossetia and the surrounding “buffer zone,” continued on a large scale for several weeks after the formal cessation of hostilities. It is clear that the Russian authorities singularly failed in their duty to prevent reprisals and serious human rights abuses being carried out by South Ossetian forces and militia units. In the “buffer zones,” Russia was bound by its obligations as an occupying power as codified in the Fourth Geneva Convention. This means that it was primarily responsible for the security and welfare of Georgian civilians in those areas. In South Ossetia, while it may not formally have been the occupying power, it was nevertheless bound by its obligations under human rights law to respect and protect the rights of all those under its effective control”, AI, *Civilians in the Line of Fire – The Georgia-Russia Conflict*, *op. cit.*, p. 32.

<sup>297</sup> HUMAN RIGHTS IN AREAS AFFECTED BY THE SOUTH OSSETIA CONFLICT, Special Mission to Georgia and Russian Federation, *op. cit.*, para. 89, p. 16

<sup>298</sup> Human Rights Watch, “Georgia: EU Mission Needs to Protect Civilians – In Security Vacuum, Frequent Attacks and Pervasive Fear,” 15 September 2008, <http://www.hrw.org/en/news/2008/09/15/georgia-eu-mission-needs-protect-civilians>

information has been recognised as applicable in both international and non-international armed conflict. The ICRC Customary Law Study identified the rule according to which “Each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate.”<sup>299</sup>

As with missing persons, families are entitled to be informed if their relatives are dead. The two main obligations – to search for the dead and to protect them against pillage and ill-treatment – are restated in Geneva Conventions I, II and IV (1949). Article 8(2) of Additional Protocol II also states the duty to search for the dead and to prevent ill-treatment. Complying with these obligations is a prerequisite for the respect of subsequent obligations requiring the return of remains and decent burial.<sup>300</sup>

The issue of missing persons is an ongoing one which by definition cannot be limited to the August conflict. It also relates therefore to the conflict in Abkhazia and South Ossetia at the beginning of the 1990s. The Abkhaz *de facto* authorities stated, for example:

*“After the war of 1992-1993 a special commission on missing persons was created. A similar commission was set up by the Georgian authorities. Both sides cooperated proactively in trying to identify such instances. Specialists were invited to identify the bodies of those killed. During the initial stages the cooperation was relatively efficient; however, gradually the intensity of the commission's work subsided. As of today both Abkhazia and the Georgian side have identified a significant number of missing persons, however, it seems unlikely that they will ever be found. The Abkhaz side believes that these people are most likely dead.”*<sup>301</sup>

While to date there is no exact figure for the number of persons reported missing as a result of the August conflict, the ICRC stated the following:

*“People seeking missing relatives continue to contact the ICRC in Tskhinvali, Gori, Tbilisi and Moscow. Today, 37 families are still without news of their loved ones. The ICRC follows up each individual case of people who went missing during the conflict and its aftermath with the relevant authorities and on a confidential basis. In addition, an ICRC forensic expert in*

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<sup>299</sup> See Rule 117, in J-M. HENCKAERTS, L. DOSWALD-BECK (eds), Customary International Humanitarian Law, Volume I, *op. cit.*, p. 421.

<sup>300</sup> *Ibid.*, see Rules 111-116, pp. 406-420.

<sup>301</sup> Abkhaz authorities, Responses to Questions Posited by the IFFMCG (Legal aspects), submitted to the IFFMCG in April 2009, p. 9.

*Tbilisi is on hand to help authorities identify mortal remains There are still over 1,900 people missing as a result of previous conflicts in the region* <sup>302</sup>

In June 2009, in its replies to the IFFMCG questionnaire, Georgia, referring to the statistics to hand, gave the following information about Georgians missing: “19 civilians are missing as a result of the armed conflict between Georgia and Russia. The families of these persons have been mediated by the MoIA and brought to the National Bureau of Court Expertise to undertake DNA analysis with the aim of identifying the corpses of their missing relatives. As a result, 2 missing persons were identified.”<sup>303</sup> Georgia also indicated that “3 police officers are still missing” and “10 military persons are still missing.”<sup>304</sup>

The Russian Federation reported that “to clarify the fate of missing persons as well as those who perished in the territory of South Ossetia as a result of terrorist attacks organised by Georgian intelligence services, the Inquiry Committee appointed by the Russian Federation Prosecutor-General’s Office submitted a request for legal assistance to the Office of the Prosecutor-General of the South Ossetian Republic.”<sup>305</sup> While this initiative is commendable, it should be recalled that existing reports mention persons unaccounted for as a result of acts committed by the South Ossetians forces and that such an initiative should concern all persons reported missing.

There are accounts by IDPs to whom the fate of their relatives is still unknown at the time of writing this Report, or who have received unconfirmed reports that they are dead without having been able to have their body returned. Despite having interviewed only some persons affected by the conflict, the IFFMCG expert heard two such testimonies from ethnic Georgians: a woman from Achabeti whose husband’s body was identified by his brother but never given back to her; and another woman from Achabeti who has had no news of her brother.

Another case highlighted by Human Rights Watch gives grounds for particular concern. Researchers from this organisation were told by an Ossetian taxi-driver that his friend, a resident of Kvemo Achabeti, and the friend’s wife were shot dead by unknown persons at

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<sup>302</sup> ICRC, “*Western/Central Georgia and South Ossetia helping the most vulnerable*,” Operational update, 20-03-2009, available at <http://www.icrc.org/Web/eng/siteeng0.nsf/html/georgia-update-200309>

<sup>303</sup> Georgia, Responses to Questions Posited by the IFFMCG (Humanitarian Aspects, Question 8), provided to the IFFMCG on 5 June 2009, p 2

<sup>304</sup> *Idem*

<sup>305</sup> Russia, Responses to Questions Posited by the IFFMCG (Humanitarian Aspects), *op cit.*, pp. 13 and 14.

some point between August 13 and 16, and the researchers went with him to photograph the grave. They found, however, that the grave appeared to have been dug up, and the bodies were missing.”<sup>306</sup>

There were also commendable acts to be noted. According to the HRAM of the OSCE “a villager from Kurta told how she heard that Russian soldiers sometimes helped people to get back to the village to look for missing persons.”<sup>307</sup>

The issue of persons missing as a result of the conflict, together with unsettled allegations of arbitrary detention and the prevention of hostage-taking, are still ongoing at the time of writing this Report and give rise to conflicting views between all sides.<sup>308</sup> These issues thus remain sources of concern for the Fact-Finding Mission.

*Bearing in mind the suffering of families faced with the loss of a relative or uncertainty about his or her fate, it should be stressed that all parties to the conflict must fulfil their obligations under IHL with regard to missing and dead persons. It is worth recalling the importance of cooperation between all the parties, including through the establishment of joint mechanisms to address these questions.*

#### **D. Forced displacement**

The issue of displacement in the context of the 2008 armed conflict and its aftermath is manifold, notably because it is constituted of different patterns. A complicating factor in terms of the protection of displaced persons is that, as outlined by the United Nations Inter-agency Humanitarian Assessment Mission to South Ossetia, “many people have lived as internally displaced persons in South Ossetia, or from South Ossetia elsewhere, since the first conflict of 1991-92.”<sup>309</sup>

As stated earlier, displacement is not limited to the period of the conflict itself, given the continuing violence and insecurity that lasted for weeks after the cease-fire of 12 August. In this regard, the United Nations Inter-agency Humanitarian Assessment Mission to South Ossetia, following its visit in September 2008, noted that “the protection of civilians emerged

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<sup>306</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op. cit.*, p. 143 and Footnote No. 396.

<sup>307</sup> Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights, OSCE, *Human Rights in the War-Affected Areas following the Conflict in Georgia*, 27 November 2008, p. 49.

<sup>308</sup> See Amnesty International, *Civilians in the aftermath of war: The Georgia-Russia Conflict one year on*, August 2009, p. 21.

<sup>309</sup> United Nations Inter-agency Humanitarian Assessment Mission to South Ossetia, 16-20 September 2008, *Mission Report*, para. 5.1.

as the most urgent humanitarian concern.”<sup>310</sup> There are still some displacements of population in the Akhgori district at the time of the writing of this Report.

Displacements were of course not limited to persons fleeing the territory of South Ossetia. But since most of the hostilities and damage occurred in South Ossetia, the displacement of population in and around that territory was more extensive. It should then be determined to what extent this was due to causes other than the hostilities *per se*. Similarly, the question of the return of internally displaced persons from ethnic Georgian villages in South Ossetia seems to be raised in different terms than for those who left the so-called buffer zone. Amnesty International states: “Prospects for return may be seen as sharply distinguished between areas falling within the 1990 boundaries of the South Ossetian autonomous region and areas beyond, falling in the so-called ‘buffer zones’. Return to the former, above all to those areas formerly associated with the Tbilisi-backed Dmitri Sanakoev administration, is extremely unlikely. Villages in those areas were subjected to a high level of destruction and pillaging.”<sup>311</sup>

The UN Guiding Principles on Internal Displacement apply to all phases of displacement – providing protection against arbitrary displacement, offering a basis for protection and assistance during displacement, and setting forth guarantees for safe return, resettlement and reintegration.<sup>312</sup> Consequently, assessing displacement in the context of the conflict in Georgia entails looking at five main issues: first, bearing important legal consequences is the question of the reasons for the displacement and the prohibition on arbitrary displacement; second, as the displacement of persons is closely linked to allegations of ethnic cleansing, this issue will be addressed; third, the treatment of displaced persons; fourth, the right to return; and finally, the issue of property rights and compensation for IDPs, especially as, owing to pillage, destruction and torching, many of these people have no prospect of returning in the near future.

It is necessary, however – as a preliminary question and to have an overview of the situation – to look at the scale of the displacement. At the same time, it is not the aim of IIFMCG to reach definite conclusion or to discuss figures. Walter Kälin, the Representative of the Secretary-General on the human rights of internally displaced persons, noted that “precise

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<sup>310</sup> United Nations Inter-agency Humanitarian Assessment Mission to South Ossetia, 16-20 September 2008, Mission Report, para. 5.1.

<sup>311</sup> AI, *Civilians in the Line of Fire – The Georgia-Russia Conflict*, *op. cit.*, p. 51.

<sup>312</sup> See Guiding Principles on Internal Displacement, *op. cit.*, para 9.

data on current displacement patterns remain difficult to establish.”<sup>313</sup> There are also conflicting versions of the number of IDPs who have already returned.

#### **a) Figures**

According to the February 2009 report on the human rights of internally displaced persons written by the Representative of the Secretary-General following his visit in October 2008, “as a result of the hostilities in northern Georgia that escalated on 7/8 August 2008, some 133 000 persons became displaced within Georgia.”<sup>314</sup> Walter Kälin stressed that “currently, displacement in Georgia can be divided into the three categories described below:

*“(a) Approximately (according to the Civil Registry Agency) 107 026 persons fled the area adjacent to the Tskhinvali region/South Ossetia. IDPs from the Tskhinvali region/South Ossetia are estimated as of November 2008 as 19 111, from the upper Kodori Valley as 1 821, and those displaced from Akhagori as 5 173. According to the Office of the United Nations Resident/Humanitarian Coordinator, an estimated 75 000 persons displaced from Gori and surrounding areas returned soon after the end of hostilities in August and September, while an estimated 24 596 of the persons who fled the so-called buffer zone have been able to return home in the Shida Kartli region following the withdrawal of Russian troops between 7 October and 10 November 2008.”<sup>315</sup> The main needs of the latter category relate to the challenge of recovery after return including safety (including humanitarian demining) and the re-establishment of law and order. The reconstruction and repair of destroyed or looted houses; humanitarian assistance with food and firewood; and the re-establishment of basic services such as education and health, as well as the re-establishment of economic activities, are important concerns;*

*“(b) According to government estimates, some 37 605 IDPs will not return in the foreseeable future. This figure includes the 19 111 IDPs from the Tskhinvali region/South Ossetia and the 1 821 IDPs from the upper Kodori Valley, as well as those IDPs who will spend the winter in displacement, namely 11 500 who cannot return to the area adjacent to the Tskhinvali region/South Ossetia for reasons such as security or the destruction of property, and some 5*

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<sup>313</sup> Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, A/HRC/10/13/Add.2, 13 February 2009, para. 11.

<sup>314</sup> *Idem*, para. 9.

<sup>315</sup> Office of the United Nations Resident/Humanitarian Coordinator, Situation Report No. 35 on the situation in Georgia, 6-13 November 2008.

173 IDPs from Akhgori<sup>316</sup> The Government estimates that some 21 000 displaced persons will be accommodated in durable housing by the end of the year,

“(c) Approximately 220 000 internally displaced persons from the territories of Abkhazia and the Tskhinvali region/South Ossetia have been living in protracted displacement for more than a decade following the conflicts in the aftermath of the independence of the former Soviet Republic of Georgia in 1991, as described in the Representative’s previous report”<sup>317 318</sup>

In his latest report on human rights issues following the August 2008 armed conflict, issued on 15 May 2009, the Commissioner for Human Rights of the Council of Europe indicated that “according to the information available, a total number of approximately 138.000 people were displaced in Georgia.”<sup>319</sup>

According to the information from international organisations gathered by the Human Rights Assessment Mission (HRAM) of the OSCE’s Office for Democratic Institutions and Human Rights, “since the new South Ossetian *de facto* administration has taken over in the Akhgori area, many people have left the region” and “more than 5 100 individuals had left Akhgori by the end of October.”<sup>320</sup> In June 2009 the IFFMCG experts met with the administration in Akhgori which provided the following figures: before the 2008 August conflict there were approximately 9 000 inhabitants, 2 388 of them ethnic Ossetians and the rest Georgian; on 1 December 2008 there were 6 900 persons and on 1 March 2009, 5 074. According to information gathered during the visit, at least two Georgian families left Akhgori while the IFFMCG was there in the afternoon of 5 June. Considering that, according to the South Ossetian authorities, approximately 2 400 Georgians still live there, there is a clear indication that Georgians are continuing to leave the region, contrary to claims by the administration in Akhgori that they are “slowly returning”.

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<sup>316</sup> *Ibid*

<sup>317</sup> E/CN.4/2006/71/Add.7, paras 6-9

<sup>318</sup> Report of the Representative of the Secretary General on the human rights of internally displaced persons, Walter Kalin, A/HRC/10/13/Add.2, *op cit*, para 11, with footnotes included

<sup>319</sup> Commissioner for Human Rights of the Council of Europe, Report on human rights issues following the August 2008 armed conflict, 15 May 2009, CommDH(2009)22, para 9

<sup>320</sup> Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights, OSCE, Human Rights in the War-Affected Areas following the Conflict in Georgia, 27 November 2008, p 50

**b) The prohibition of arbitrary or forcible displacement and the reasons for displacement in the context of the 2008 armed conflict and its aftermath**

**(i) Applicable law**

The international legal norms relevant for addressing the various issues relating to displacement derive from IHL (for displacement in time of armed conflict), HRL (for displacement following the end of hostilities) and the UN Guiding Principles on Internal Displacement, which aim to provide a set of common standards based on the two former branches of international law.

Provisions of IHL<sup>321</sup> and HRL<sup>322</sup> explicitly or implicitly point to a general prohibition against arbitrary or forcible displacement, with only restricted circumstances in which displacement is permissible. For example, Article 17 of Protocol II states that “the displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand.” Under HRL, as recalled by Walter Kälin, the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, “the key norm is Article 12 of ICCPR [which] guarantees not only the right to liberty of movement but also the freedom to choose one’s residence, which includes the right to remain there (paragraph 1).”<sup>323</sup> This provision further stipulates that this right “shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant (paragraph 3).” This prohibition against arbitrary displacement is restated in the UN Guiding Principles under Principle 6(1): “Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.” The quality of arbitrariness refers to displacements that do not meet the requirements of IHL and HRL. Consequently, evacuations of civilians to ensure their security against the effects of hostilities or “a displacement designed to prevent the population from being exposed to grave danger cannot be expressly prohibited.”<sup>324</sup>

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<sup>321</sup> Articles 49 and 147 of Geneva Convention IV, Articles 51(7), 78(1) and 85(4) of Protocol I, Articles 4(3)(e) and 17 of Protocol II

<sup>322</sup> Article 12 of the Universal Declaration of Human Rights, Articles 12(1) and 17 of the ICCPR, and Article 8 of the EConvHR

<sup>323</sup> Guiding Principles on Internal Displacement Annotations, *op. cit.*, p 28.

<sup>324</sup> ICRC Commentary to Article 17 of Additional Protocol II, p 1472.



Unless the security of the civilians involved or imperative military reasons so demand, the deportation of the civilian population from an occupied territory and the forced movement of civilians in internal armed conflicts amount to war crimes, according to Articles 8(2)(b)(viii) and (e)(viii) of the Rome Statute and Article 85(4)(a) of Protocol II.

In the light of this general prohibition and its exceptions, it is necessary to analyse the displacement patterns of the approximately 138,000 persons displaced in the context of the August 2008 armed conflict. It appears critical to determine the main reasons for the displacement of those persons, and the sequencing of and reasons for their displacement should be nuanced.

### **(ii) Patterns of and reasons for the displacements**

First, without prejudging the causes of or motives for this displacement, it is critical to note that, in fact, ethnic considerations were involved. As stressed by Amnesty International, “the direction of flight divided largely, though not exclusively, along ethnic lines, with Ossetians having fled northwards to the Russian Federation and ethnic Georgians having fled southwards into other regions of Georgia.”<sup>325</sup> According to Russia, in its replies to the IFFMCG questionnaire, the massive exodus of the population from Georgia to the territory of the Russian Federation primarily involved groups of Ossetians, Abkhaz, Russians, Armenians, Azeris and other ethnic minorities residing in Georgia.<sup>326</sup>

The Russian Federation insisted that “one of the most dramatic consequences of the Georgian military operation against South Ossetia was the massive exodus of local population to the territory of the Russian Federation in search of refuge.”<sup>327</sup> Georgia claims on the contrary that more than 130,000 civilians have fled as a result of the campaign of expulsion of ethnic Georgians and raids against Georgian villages by Russian forces in conjunction with irregular proxy armed groups.<sup>328</sup> While these statements account for the general consequences of the hostilities, none of them seems to reflect the various factual causes of the displacement of people taking into account the time, i.e. whether prior to the conflict, during the conflict or in its aftermath. In this regard, there is also a need to distinguish between geographical areas.

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<sup>325</sup> AI, *Civilians in the Line of Fire – The Georgia-Russia Conflict*, *op cit*, p 48

<sup>326</sup> Russia, *Responses to Questions Posited by the IFFMCG (Humanitarian Aspects)*, *op cit*, p 5

<sup>327</sup> *Ibid*, p 3

<sup>328</sup> Georgia, *Responses to Questions Posited by the IFFMCG (Humanitarian Issues, Question2)*, provided to the IFFMCG on 5 June 2009, p. 1

In the course of the oral pleadings before the ICJ it was submitted that “before the recent attacks on Georgian villages in the Kodori Valley, there was a community of 3 000 Georgians in that area of Upper Abkhazia, to the north of Gali district.”<sup>329</sup> According to Georgia, its Department of Statistics estimated that there were 1 900 inhabitants in Ajara municipality (upper Kodori Valley) as of 1 January 2008. The Civil Registry Agency had registered 1 218 IDPs from this municipality on 8 September 2008.<sup>330</sup> Georgia argued that these displacements from the upper Kodori Valley were the result of attacks on and the destruction of Georgian villages, which had forcibly displaced their entire population.<sup>331</sup> Similarly, Amnesty International, though referring to a different figure, noted that some 2 500 people had been displaced from that valley, as a result of military hostilities between Georgian and Abkhaz forces in the area.<sup>332</sup> When considering the displacement of inhabitants from the valley, it is necessary to stress that most of the civilians and military personnel left the region before the hostilities began.<sup>333</sup>

In South Ossetia, the pattern of displacement appears to be more complex. The first period to consider is that prior to the outbreak of the conflict. It is worth noting that testimonies recount that many South Ossetians left the Tskhinvali region at the end of July 2008. Evacuations were also carried out by the *de facto* authorities of South Ossetia. According to the Georgian authorities, “the evacuation of civilians from the Tskhinvali region to the Russian Federation began on 2<sup>nd</sup> of August 2008.”<sup>334</sup> They also state: “At 12:23, the proxy regime announced the evacuation of civilian population from Tskhinvali and from the separatist-controlled villages of the region. The evacuation continued through 6 August 2008. This fact is further confirmed by the statement of Anatoly Barankevich, then National Security Council Secretary of the

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<sup>329</sup> Public sitting held on Monday 8 September 2008, at 10 a m , at the Peace Palace, Verbatim Record, in the case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation), CR 2008/22, International Court of Justice, The Hague, 2008, p 41, para 9

<sup>330</sup> See Document submitted by Georgia, “Russian Invasion of Georgia – Facts & Figures,” 8 September 2008, p 14

<sup>331</sup> REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES OF PROTECTION SUBMITTED BY THE GOVERNMENT OF THE REPUBLIC OF GEORGIA, 13 August 2008, p 6 para. 12 See also Public sitting held on Monday 8 September 2008, at 10 a m , at the Peace Palace, Verbatim Record, in the case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation), CR 2008/22, International Court of Justice, The Hague, 2008, para 14, p 57

<sup>332</sup> AI, *Civilians in the Line of Fire – The Georgia-Russia Conflict*, *op. cit* , p 9

<sup>333</sup> Report of the Secretary-General on the situation in Abkhazia, Georgia, 3 October 2008, S/2008/631, p 8, para 45

<sup>334</sup> Georgia, Responses to Questions Posited by the IFFMCG (Humanitarian Aspects, Question 3), provided to the IFFMCG on 5 June 2009, p 2

proxy regime.”<sup>335</sup> This is confirmed by a construction worker from Karaleti who, with three other Georgians, arrived in Java on 23 July 2008 to work. This man indicated that on 6 August Eduard Kokoity ordered women and children out and that he, together with his colleagues, saw them passing on the road while they were working.<sup>336</sup> The Russian Federation also indicated that its “Armed Forces helped to organise the evacuation of civilians from the conflict zone”<sup>337</sup> and that “more than 25 thousand people were evacuated from the conflict area including more than 7 thousand children.”<sup>338</sup> Such evacuations do not constitute violations of HRL or IHL as they were carried out in order to ensure the security of the persons concerned.

According to the Russian Federation, “as for the predominantly ethnic Georgians who fled from South Ossetia towards Georgia, a significant number of such persons left their homes before the military operation. This fact has been recognised in particular in the report presented by the Council of Europe Commissioner for Human Rights T. Hammarberg. Our assumption is that the primary reason that drove ethnic Georgians to flee both prior to 8 August 2008 and in the following days was the initial information pointing to the fact that the Georgian side was gearing up for a military operation and then the military operation that unfolded around their places of residence. This process was not caused by any premeditated actions directed against ethnic Georgians *per se*.”<sup>339</sup> This seems to contradict various testimonies according to which, days prior to the outbreak of the conflict, ethnic Georgians left because of the shelling against ethnic Georgian villages in South Ossetia, such as in Prisi and Tamarasheni. Although less well documented, the intermittent shelling of those villages before the conflict is substantiated by various testimonies.<sup>340</sup> Three persons from Achabeti, a village north of Tskhinvali, interviewed by one of the Mission’s experts in Tbilisi on 7 March, indicated that the village was shelled from ethnic Ossetian villages uphill, but they were not able to see clearly who was firing. Shelling and artillery were heard in Achabeti, on 4, 5 and 6 August. These interviewees, as well as others (interviewed by NGOs) who left their village on

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<sup>335</sup> According to this statement “Since August 1 conditions on border have started to become heated, at the beginning there were simple bombardments, then there appeared the first victims. Then Prime Minister Iury Ionovich Morozov has decided to evacuate people, thanks to him hundreds of lives have been rescued: both children, and women, and old men. Approximately 35 thousand persons were taken out from there ( . ) On August 8 we have completely cleared the city.” See *Idem*

<sup>336</sup> Testimony gathered by an NGO and forwarded to the IIFFMCG, p. 4.

<sup>337</sup> Russia, Responses to Questions Posited by the IIFFMCG (Humanitarian Aspects), *op cit*, p. 9

<sup>338</sup> Russia, Responses to Questions Posited by the IIFFMCG (Legal Aspects), *op cit*, p. 8

<sup>339</sup> Russia, Responses to Questions Posited by the IIFFMCG (Humanitarian Aspects), *op cit*, p. 7

<sup>340</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op cit*, p. 90

7 August,<sup>341</sup> declared that inhabitants started to leave because of the growing insecurity and tension.

When the conflict broke out, displacements increased. The Commissioner for Human Rights of the Council of Europe stated that he “met a great number of displaced persons, who had left their homes due to hostilities (...), they all said they felt that they had been forced to leave.”<sup>342</sup> The United Nations Inter-agency Humanitarian Assessment Mission to South Ossetia noted with concern that there were “multiple and credible accounts by civilian victims of the widespread targeting of civilians, both ethnic Ossetian and ethnic Georgian, during the immediate armed confrontation and its aftermath” and that this had caused the widespread displacement of civilians in the capital, Tskhinvali, and surrounding villages in the Didi Liakhvi and Frone valleys.<sup>343</sup> Following his visit to Georgia from 1 to 4 October 2008, Walter Kälin noted that after he had spoken “to persons displaced in August from areas adjacent to the Tskhinvali region/South Ossetia, most of them fled, primarily in order to avoid the dangers of war and general insecurity.”<sup>344</sup> This was also the general impression the Mission’s expert had after interviewing several people who had left ethnic Georgian villages in South Ossetia.

It is worth noting that Georgians living on the main axis between Gori and Tskhinvali in the buffer zone did not flee before the hostilities reached this zone. Instead, they were taken by surprise when Russian troops and South Ossetian forces crossed the administrative border and advanced southwards in the direction of Gori. Interviews conducted by an IFFMCG expert in June 2009 with inhabitants who had returned to their homes in the villages of Koshka, Tkviavi and Karaleti illustrate this fact.

While it is not always possible to identify the exact reason for displacement in the context of armed conflict, it appears critical here to distinguish the general motive of fleeing the conflict zone to avoid the dangers of war from more specific actions deliberately carried out to force a displacement. In this regard, looting and the burning of houses and property were the reasons for the displacement of ethnic Georgians living in villages around Tskhinvali. This is

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<sup>341</sup> Testimonies from inhabitants of Tamarasheni, Disevi and Kurta.

<sup>342</sup> Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, HUMAN RIGHTS IN AREAS AFFECTED BY THE SOUTH OSSETIA CONFLICT, Special Mission to Georgia and Russian Federation, 22-29 August 2008, CommDH(2008)22. 8 September 2008, para 31.

<sup>343</sup> United Nations Inter-agency Humanitarian Assessment Mission to South Ossetia, *op. cit.*, para. 5.7.

<sup>344</sup> Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, A/HRC/10/13/Add.2, 13 February 2009, para. 10.

particularly significant for people who had decided to stay in those villages despite the hostilities, but who were forced to leave. A villager from Kemerti had to leave after he saw his house being looted and then set on fire.<sup>345</sup> The IFFMCG expert also interviewed inhabitants from Achabeti and Eredvi who told similar stories and who left because their property was either looted or burned or both.<sup>346</sup> According to the HRAM: “A man from Eredvi described to the HRAM how ‘Ossetians’ forced his wife’s elderly parents out of their house and then burned it down before their eyes. Several other displaced persons from the same village provided nearly identical accounts of their own experiences and of the near total destruction of the village. The perpetrators in Eredvi, according to all accounts, were Ossetians wearing white arm bands. Many witnesses described how the fires were often started by putting a flammable red substance on the beds and then setting it ablaze. (...) The HRAM visited Eredvi and confirmed extensive damage to the village.”<sup>347</sup> Other testimonies from people who stayed in their villages, such as in Nuli or Kurta,<sup>348</sup> seem to indicate a pattern of intimidation, beating, threats, looting and the destruction and burning of houses by Ossetian military or paramilitary forces, in order to force the remaining people to leave ethnic Georgian villages.

According to Georgia’s Ministry of Foreign Affairs, the total population in some 21 majority-ethnic-Georgian villages in these areas – i.e., those under the Government of Georgia’s control prior to August 2008 – comprised 14,500 persons, of whom some 13,260 had been registered as IDPs in Georgia by 8 September<sup>349</sup> The United Nations Inter-agency Humanitarian Assessment Mission to South Ossetia visited at least six of these villages in the conflict zone in and around the capital, and noted that they appeared to be empty of all population.<sup>350</sup> Two visits carried out by IFFMCG experts in March and June confirmed that Georgian villages to the north of Tskhinvali, from Tamarasheni to Kekhvi, are still completely empty.

The causes for displacement are more striking when we consider the period after 12 August when, as the EU-brokered peace deal was being discussed, hostilities virtually ceased. Of

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<sup>345</sup> Testimony from NGO interviews

<sup>346</sup> Interviews conducted in March 2009.

<sup>347</sup> Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights, OSCE, Human Rights in the War-Affected Areas following the Conflict in Georgia, 27 November 2008, p. 42

<sup>348</sup> Testimonies from interviews by NGOs, pp. 7 and 13

<sup>349</sup> United Nations Inter-agency Humanitarian Assessment Mission to South Ossetia, *op cit*, para. 57

<sup>350</sup> *Idem*

particular concern is what happened in the so called “buffer zone.” As outlined by the United Nations Inter-agency Humanitarian Assessment Mission to South Ossetia. “according to reports received from UN and NGO colleagues with access to the buffer zone outside the administrative boundaries of South Ossetia, a pattern of intimidation leading to displacement, and of destruction of properties, continues in certain targeted villages in that zone.”<sup>351</sup> The Assessment Mission also referred to “reports from reliable humanitarian partners detailing continued cases of looting, intimidation, and forced displacement.”<sup>352</sup>

It must be underlined that despite the existence, in addition to this pattern, of other reasons for displacement, such as a warning to leave by the Georgian police or by the residents’ relatives or neighbours, we cannot dismiss the fact that there are numerous accounts of acts deliberately committed to force displacements.

The situation in the Akhagori district shows that displacement was not caused merely by general direct hostilities. Indeed there were no hostilities in this district – an area in the east of South Ossetia, populated mostly by ethnic Georgians and under Georgian administration before the war. The Georgian authorities stated that “to date, remaining ethnic Georgians in Akhagori live in constant fear; their rights and freedoms are limited; they are forced to accept Russian or so-called Ossetian passports and to cut links with the rest of Georgia.”<sup>353</sup> According to the HRAM, “Georgians are leaving Akhagori because of the strong presence of Russian and Ossetian forces and [because they] believe that fighting may break out.”<sup>354</sup> As noted by Human Rights Watch, “residents of Akhagori district face threats and harassment by militias and anxiety about a possible closure of the district’s administrative border with the rest of Georgia. Both factors have caused great numbers of people to leave their homes for undisputed Georgian territory.”<sup>355</sup> This climate of insecurity was confirmed through interviews by the IIFMCG expert in March 2009 with several persons from this district who fled and who are currently living in Tserovani settlements.

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<sup>351</sup> United Nations Inter-agency Humanitarian Assessment Mission to South Ossetia, *op cit*, para 5 8

<sup>352</sup> *Ibid*, para 4 2

<sup>353</sup> Georgia, Response to Questions Posited by the IIFMCG (Humanitarian Aspects, Question 2) provide to the IIFMCG on 5 June 2009, p 3

<sup>354</sup> Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights, OSCE, Human Rights in the War-Affected Areas following the Conflict in Georgia, 27 November 2008, p 50

<sup>355</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia op cit*, p 87 See also pp 147

*There were several reasons for the displacement of approximately 135,000 persons in the context of the 2008 August conflict and its aftermath.*

*While the need to avoid the danger of hostilities and the general climate of insecurity account for most of the displacements, numerous documented cases of violations of IHL and HRL committed in order to force the displacement of ethnic Georgians in South Ossetia lead us to conclude that the prohibition against arbitrary or forced displacement has been violated.*

### **c) Allegations of ethnic cleansing against Georgians**

While Georgia did not make allegations of genocide, it claimed that the crime of ethnic cleansing had been committed by South Ossetian and Russian forces. It submitted that “ethnic Georgians were subjected to ethnically motivated crimes committed either directly by Russian armed forces or through their tacit consent by South Ossetian militias (on the territories falling under Russian control).”<sup>356</sup>

More specifically, one of the advocates representing Georgia before the ICJ in the CERD case stated that it is “Georgia’s case that there is in fact, and has long been, ‘discrimination based on ethnicity in the policy of voluntary return of refugees and other displaced persons’, that this policy is associated with ethnic cleansing in relevant areas of Georgia, that the process of ethnic cleansing continues and that to at least a significant degree it is attributable to the Russian Federation.”<sup>357</sup>

Such a claim has to be seen in the context of the importance attributed by both sides to the ethnic dimension of the August conflict, and the link with previous allegations of ethnic cleansing regarding “the conflicts of 1991-1994, 1998 [and] 2004” made by Georgia,<sup>358</sup> which complicate the assessment of the claim. Georgia reiterated, for example, that “Ethnic Georgians and other ethnic minorities have been ethnically cleansed from Abkhazia and the Tskhinvali region/South Ossetia as a result of the war in 1992-1993 in Abkhazia and in 1991-

<sup>356</sup> Georgia, Responses to Questions Posited by the IIFFMCG (Humanitarian Aspects, Question 1), provided to the IIFFMCG on 5 June 2009, p 1

<sup>357</sup> Public sitting held on Monday 8 September 2008, at 4 30 p m at the Peace Palace, Verbatim Record, in the case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation), CR 2008/25, International Court of Justice, The Hague, 2008, para 9, p 12

<sup>358</sup> Case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation), Request for the indication of provisional measures, International Court of Justice, ICJ, 15 October 2008, p 6

1992 in the Tskhinvali region/South Ossetia.”<sup>359</sup> It should also be stressed that such a conclusion, and the use of the expression “ethnic cleansing,” have implications – politically and even emotionally, for all sides – that go far beyond the present legal assessment.

The assessment of this claim is complicated by the fact that ethnic cleansing is not a term defined in international treaty law. Taking stock of the various attempts to define “ethnic cleansing”, Professor William Schabbas noted: “while there is no generally recognized text defining ethnic cleansing, [such attempts] concur that it is aimed at displacing a population in order to change the ethnic composition of a given territory, and generally to render the territory ethnically homogeneous or ‘pure’...”<sup>360</sup> The link to a territory appears critical in these attempts at a definition. The Security Council Commission of Experts on violations of IHL during the war in the former Yugoslavia stated that “‘ethnic cleansing’ means rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area.”<sup>361</sup>

Ethnic cleansing does not equate to genocide. This has been acknowledged by Georgia.<sup>362</sup>

In the 2007 Genocide case the ICJ differentiated between the two. When considering the specific intent of genocide, the Court had to elaborate on the relationship between this crime and what is known as “ethnic cleansing.” After having noted that “the term ‘ethnic cleansing’ has frequently been employed to refer to the events in Bosnia and Herzegovina,” it considered “what legal significance the expression may have.”<sup>363</sup>

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<sup>359</sup> Georgia, Responses to Questions Posited by the IIFFMCG (Humanitarian Aspects, Question 2), provided to the IIFFMCG on 5 June 2009, p.1.

<sup>360</sup> Schabbas, W., *op. cit.*, p. 199.

<sup>361</sup> “Interim Report of the Commission of Experts Established Pursuant to Security Council resolution 780 (1992),”, UN Doc. S/35374 (1993), para 55

<sup>362</sup> In its replies to the IIFFMCG Questionnaire, Georgia stated:  
“Neither the intent, as a matter of policy, to render an area “ethnically homogeneous,” nor the operations that may be carried out to implement such policy, can as such be designated as genocide: the intent that characterizes genocide is ‘to destroy, in whole or in part’ a particular group, and deportation or displacement of the members of a group, even if effected by force, is not necessarily equivalent to destruction of that group, nor is such destruction an automatic consequence of the displacement.”  
It does not mean that ethnic cleansing can not constitute genocide, if it reaches the specific intent of the crime – destruction of the group in comparison with the intent of the removal of the group from a region,” Georgia, Replies to Question 1 of the Questionnaire on humanitarian issues, provided to the IIFFMCG on 5 June 2009, p. 3.

<sup>363</sup> The Court noted:  
“It is in practice used, by reference to a specific region or area, to mean ‘rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area’ (S/35374 (1993), para. 55, Interim Report of the United Nations Commission of Experts). It does not appear in the Genocide Convention (...). It can only be a form of genocide within the meaning of the Convention, if it corresponds to or falls within one of the categories of acts prohibited by Article II of the Convention. Neither



Georgia claims “that the expulsion of ethnic Georgians from certain regions of Georgia, through the acts committed and steps taken by the Russian Federation along with South Ossetian proxy militants, is equal to the act of ethnic cleansing.” It “considers ‘ethnic cleansing’ an extreme form of racial discrimination under Article 1 of the Convention on the Elimination of All Forms of Racial Discrimination.”<sup>364</sup>

This allegation has been echoed by various organisations. In its Resolution 1633 (2008) on “The consequences of the war between Georgia and Russia,” the Parliamentary Assembly of the Council of Europe stated that it was “especially concerned about credible reports of acts of ethnic cleansing committed in ethnic Georgian villages in South Ossetia and the ‘buffer zone’ by irregular militia and gangs which the Russian troops failed to stop.” It further “stresse[d] in this respect that such acts were mostly committed after the signing of the cease-fire agreement on 12 August 2008, and [were] continuing” at the date of the adoption of the resolution.<sup>365</sup> The rapporteurs of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) who visited Georgia and Russia at the end of September detailed the basis for this qualification:

*“The systematic nature of the looting and destruction of property in South Ossetia, together with indications from the de facto leadership in Tskhinvali that ethnic Georgian IDPs are not welcome to return, even if they take on the citizenship of the self-proclaimed state as demanded by the de facto authorities, is a clear indication that ethnic cleansing is taking place in South Ossetia. This is confirmed by reports from international humanitarian and relief organisations, as well as human rights organisations and the diplomatic community in Georgia, who have reported systematic acts of ethnic cleansing of Georgian villages in South Ossetia by South Ossetian irregular troops and gangs. Reports have been received that, in*

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the intent, as a matter of policy, to render an area “ethnically homogeneous,” nor the operations that may be carried out to implement such policy, can as such be designated as genocide. The intent that characterizes genocide is “to destroy, in whole or in part” a particular group, and deportation or displacement of the members of a group, even if effected by force, is not necessarily equivalent to destruction of that group, nor is such destruction an automatic consequence of the displacement ( ) In other words, whether a particular operation described as “ethnic cleansing” amounts to genocide depends on the presence or absence of acts listed in Article II of the Genocide Convention, and of the intent to destroy the group as such. In fact, in the context of the Convention, the term “ethnic cleansing” has no legal significance of its own. That said, it is clear that acts of “ethnic cleansing” may occur in parallel to acts prohibited by Article II of the Convention, and may be significant as indicative of the presence of a specific intent (*dolus specialis*) inspiring those acts,” ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, *op cit*, para 190

<sup>364</sup> Georgia, Replies to Questions Posited by the IFFMCG (Humanitarian aspects, Question 1), provided to the IFFMCG on 5 June 2009, p. 3

<sup>365</sup> Parliamentary Assembly of the Council of Europe, Resolution 1633, adopted on 2 October 2008, para. 13

*some cases, complete villages have been bulldozed and razed. This pattern also seemed to be confirmed by the visit of the PACE delegation to the region, which saw that the Georgian village of Ksuisi in South Ossetia had been completely looted and virtually destroyed.*<sup>366</sup>

Human Rights Watch also concluded that ethnic cleansing took place in Georgia.<sup>367</sup>

Several elements all lead to the conclusion that ethnic cleansing was carried out during and, most importantly, after the August 2008 conflict. When considering the territory at stake and its ethnic composition, it must be stressed that South Ossetia was populated by ethnic Georgians in certain areas and villages. The UN Guiding Principles on Internal Displacement, in Principle 6(2), give examples of situations in which displacement would be arbitrary: “when it is based on (...) ‘ethnic cleansing’ or similar practices aimed at or resulting in alteration of the ethnic, religious or racial composition of the affected population.” As well as through displacement, ethnic cleansing can be achieved through other acts such as the threat of attacks against the civilian population and the wanton destruction of property.<sup>368</sup>

Many ethnic Georgian villages in South Ossetia were and still are completely empty of people. Furthermore, a number of testimonies report destruction and torching done explicitly to force people to leave and prevent them from returning. This is significant when one considers that while most of the population of those villages left at the outbreak of the hostilities, this violence was directed against the few inhabitants who had stayed on. In this regard, during its latest visit to the area north of Tskhinvali, on the road linking Tamarasheni, Achabeti, Kurta and Kekhvi, the IFFMCG experts witnessed that all of these ethnic villages had been burned down and were completely uninhabited.

While no definition of ethnic cleansing exists, and there is consequently no requirement of a particular scale in the material acts, it is critical to note that the extensive damage and the acts committed against the remaining ethnic Georgian inhabitants can in no way be regarded as isolated incidents. At the same time, it is difficult to regard them as systematic. This is closely linked to another issue.

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<sup>366</sup> Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Report, The consequences of the war between Georgia and Russia, Doc 11724, 1 October 2008, Co-rapporteurs Luc van den BRANDE and Mátyás EORSI, para 41, available at <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11724.htm>

<sup>367</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op cit* p 131

<sup>368</sup> See on this issue, ‘Interim Report of the Commission of Experts Established Pursuant to Security Council resolution 780 (1992)’, *op cit*, para 56

Although there is no legal requirement for any particular mental element to be present in ethnic cleansing, this qualification does seem to require an aim of “changing the ethnic composition of a given territory” or “generally rendering the territory ethnically homogeneous.” Acts committed during and after the conflict show clearly that violence is being targeted against one particular ethnic group, i.e., ethnic Georgians.

In this regard it is necessary to acknowledge that the causes of displacement are numerous and that some acts, while apparently committed solely on ethnic grounds, may also be motivated by revenge for acts committed during the 1990s conflicts. During the latest visit by the IFFMCG, in June, one of its experts interviewed a South Ossetian inhabitant of Tskhinvali who explicitly stated that ethnic Georgian villages from Kekhvi to Tamarasheni had been destroyed as revenge for what their inhabitants had done to South Ossetia in 1991-1992 and after. But this person also added that other ethnic Georgian villages had not been destroyed because they had always had good relationships with South Ossetians.<sup>369</sup>

On the other hand, ethnic cleansing does not necessarily mean that a whole territory must be homogeneous – it also relates to the aim of changing the ethnic composition of a territory.

Several elements suggest that there was ethnic cleansing in South Ossetia against Georgians living there.

Given the scale and the type of acts of violence such as forced displacement, pillage and the destruction of homes and property committed in South Ossetia, the question of whether they could amount to a crime against humanity arises. Under the Rome Statute, a crime against humanity is defined as particular acts including the “forcible transfer of population” and “persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds”, “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”<sup>370</sup> While the discriminatory intent is not a common element of the crime against of humanity,

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<sup>369</sup> In this regard, in Georgian-populated villages that were under the control of the *de facto* South Ossetian authorities until the conflict, Amnesty International observed a very different situation from that in ethnic Georgian villages administered by the Georgian authorities:

“On 26 August, representatives of the organisation visited the villages of Nedalti and Akhalsheni in the Znaur district, to the west of Tskhinvali, which saw much less fighting. Akhalsheni has the only Georgian-language school operational in South Ossetian-controlled territory. Amnesty International representatives met representatives of the Georgian community of Akhalsheni, who said that while most of the village’s population had left for Georgia on the eve of the conflict, not one house had been damaged or looted nor had there been any casualties in the village.” AI, p. 44.

<sup>370</sup> See Article 7 of the Rome Statute of the International Criminal Court.

and is required only for the acts of persecution,<sup>371</sup> most of the acts identified were carried out against a particular group – ethnic Georgian inhabitants of South Ossetia. The key criterion for any of those acts to be classified as crime against humanity is that it was demonstrably committed as part of a widespread or systematic attack directed against a civilian population. To the extent that such an element is present, these acts could be classified as crime against humanity.

*Several elements suggest the conclusion that ethnic cleansing was carried out against ethnic Georgians in South Ossetia both during and after the August 2008 conflict.*

#### **d) Treatment of displaced persons**

As civilians, IDPs benefit from the general protection of IHL and, when the law of armed conflict ceases to apply, protection under HRL. Alleged violations in this regard will be addressed later. It is, however, very important to highlight the vulnerability of IDPs in the context of displacement. Numerous testimonies of ill treatment, beating, kidnapping and arbitrary arrest and detention in the course of their displacement during the conflict and its aftermath have been reported. The set of rules protecting IDPs is compiled in the UN Guiding Principles on Internal Displacement.<sup>372</sup>

Responses from the parties to the conflict on the issue of displaced persons and their treatment must be addressed in the light of the fact that before the outbreak of the conflict many people had been living as internally displaced persons in South Ossetia, and people from South Ossetia and Abkhazia had been displaced elsewhere, since the first conflict of 1991-92.<sup>373</sup>

<sup>371</sup> See for example Larry May, *Crimes Against Humanity: A Normative Account*, New York, Cambridge University Press, 2005, p. 125, and Patricia M. Wald, "Genocide and Crimes Against Humanity," *Washington University Global Studies Law Review*, 2007, Vol. 6, p. 629.

<sup>372</sup> Principle 10 re-states that "every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life" and that "attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances." Principle 11 re-states that "every human being has the right to dignity and physical, mental and moral integrity." Principle 12 inter alia restates that "Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement. In no case shall internally displaced persons be taken hostage."

<sup>373</sup> In November 2008, the HRAM of the Office for Democratic Institutions and Human Rights of the OSCE noted that "The Government of Georgia has made efforts under difficult circumstances to meet the needs of a large, new population of displaced persons. Despite these efforts, as well as those of international and national humanitarian organisations, many displaced persons are still living in very difficult conditions and have not yet been provided with adequate assistance or shelter as winter approaches. The de facto authorities in South Ossetia have provided some assistance for war-affected persons in territories under their control, but others continue to face arduous conditions and depend on international assistance." Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights, OSCE, *Human Rights in the War-Affected Areas following the Conflict in Georgia*, 27 November 2008, p. 6.

The Representative of the Secretary-General on the human rights of internally displaced persons noted that “the immediate humanitarian response from the Government to the rapid displacement resulting from the escalation of the conflict on 7/8 August is generally considered to have been speedy and adequate.”<sup>374</sup> He was also nevertheless informed “that in the initial stages of the emergency, the coordination of the Government response was unclear and changed several times, revealing a lack of preparedness at the level of the competent authorities.” The UN Representative noted that “this observation is shared by the Council of Europe Commissioner on Human Rights who considered, following his August visit, that neither the authorities nor the international community had done enough to provide the displaced with adequate living conditions, which had, however, improved in the course of September.”<sup>375</sup> Walter Kälin welcomed “the fact that in contrast to earlier responses to displacement, in the aftermath of the August conflict the Government endorsed a policy of full support to local integration of IDPs from the Tskhinvali region/South Ossetia and Abkhazia and quickly adopted implementation measures, in particular in the area of housing”, such as in Tserovani.<sup>376</sup>

#### **e) The right to return, and obstacles**

##### **(i) Right to return under international law**

According to the UN Guiding Principles on Internal Displacement, the competent authorities have the primary duty and responsibility to establish the conditions, and also to provide the means, to make three possible solutions available to IDPs: return to their former homes; local integration; and resettlement in another part of the country.<sup>377</sup>

<sup>374</sup> Report of the Representative of the Secretary-General on the human rights of internally displaced persons, *op cit*, para 16

<sup>375</sup> *Idem* Following its Special Follow-Up Mission to the Areas Affected by the South Ossetia Conflict, in November 2008, the Commissioner for Human Rights expressed “his serious concern over the fact that the Georgian Government, despite the substantial assistance of the international community, still has not managed to secure adequate living conditions and support to a number of those who continue to be displaced.” See Special Follow-up Mission to the Areas Affected by the South Ossetia Conflict Implementation of the Commissioner’s six principles for urgent human rights and humanitarian protection (12-14 November 2008, Tbilisi, Tskhinvali and Gori), Thomas Hammarberg Commissioner for Human Rights of the Council of Europe, CommDH(2008)37, 16 December 2008

<sup>376</sup> Report of the Representative of the Secretary General on the human rights of internally displaced persons, *op cit*, para 18

<sup>377</sup> Principle 28(1) states “Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.”

While HRL focuses primarily on the right of return from another country, there is an obligation on the governments concerned to do everything possible to protect the right to return within countries too.<sup>378</sup> This is also a rule under conventional and customary IHL, whereby “displaced persons have a right to voluntarily return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.”<sup>379</sup> As underlined in Principle 6(3) of the UN Guiding Principles, “displacement shall last no longer than required by the circumstances.” This right is strengthened by the IDPs’ freedom of movement and right to choose their place of residence.

Guarantees relating to decisions to return are fundamental. Such decisions must be voluntary, meaning that they are made without coercion and based on an informed choice, and return must take place in conditions of safety and dignity, which would allow the returnees to live without threats to their security and under economic, social and political conditions compatible with the requirements of human dignity.

#### **(ii) Impediments to the full exercise of the right to return**

The return of IDPs is one the most pressing concerns and one of the most complex issues in the context of the August 2008 conflict, as well as in a broader perspective with regard to IDPs from the conflicts in the 1990s.<sup>380</sup> From the outset, two points must be stressed: first, there is a desperate expectation on the part of IDPs to return to their homes and places of residence. This was underlined by all IDPs interviewed by the IFFMCG’s expert in March 2009 as well as in other interviews conducted by international organisations and NGOs.<sup>381</sup> At the same time, all IDPs stressed that their return would be possible only if their security was guaranteed. The second point to be highlighted: under no circumstances should the current question of the status of South Ossetia and Abkhazia be used to hamper or impede the right of IDPs to return. This has also been clearly stated by the Commissioner for Human Rights of the Council of Europe.<sup>382</sup>

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<sup>378</sup> Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, HUMAN RIGHTS IN AREAS AFFECTED BY THE SOUTH OSSETIA CONFLICT, 8 September 2008, *op. cit.*, para. 32.

<sup>379</sup> See Rules 132 in J.-M. HENCKAERTS, L. DOSWALD-BECK (eds), Customary International Humanitarian Law, Volume I, *op. cit.*, p. 468.

<sup>380</sup> See for example, among the five reports issued by the High Commissioner of the CoE, SPECIAL MISSION TO GEORGIA INCLUDING SOUTH OSSETIA SUMMARY OF FINDINGS, *op. cit.*, p. 2.

<sup>381</sup> For example, *ibid.*, para. 31.

<sup>382</sup> *Ibid.*, para. 32.

As noted above, according to government estimates in November 2008, 37,605 or so IDPs will not return in the foreseeable future, including 19,111 IDPs from the Tskhinvali region/South Ossetia, 1,821 IDPs from the upper Kodori Valley, and those IDPs who have spent the winter in displacement, namely 11,500 who cannot return to the area adjacent to the Tskhinvali region/South Ossetia and some 5,173 IDPs from Akhagori.<sup>383</sup> According to United Nations estimates, there will be some 30,000 long-term displaced persons as a result of the conflict.<sup>384</sup>

While the winter and weather conditions might have explained why only few families returned to their homes in the upper Kodori Valley, the IFFMCG visited the Kodori Valley in June and witnessed that most of the IDPs had not yet returned. According to different sources, between 150 and 200 persons have returned.<sup>385</sup>

The most difficult issue appears to be the return of persons displaced from South Ossetia. As stressed by the Commissioner for Human Rights of the Council of Europe in September, “the right to return should encompass the whole area of conflict, not only the ‘buffer zone’, but also South Ossetia itself.”<sup>386</sup> In this regard there seem to be differences among the population returning to this region. The Russian Federation stated that “by late September more than 25 thousand people had returned from the territory of Russia to South Ossetia,”<sup>387</sup> whereas ethnic Georgians are not able to return.<sup>388</sup>

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<sup>383</sup> Report of the Representative of the Secretary-General on the human rights of internally displaced persons, *op cit.*, p 2

<sup>384</sup> United Nations, Georgia Crisis Flash Appeal, October 2008, p 15

<sup>385</sup> Meetings of the IFFMCG with the *de facto* Minister for Foreign Affairs of Abkhazia on 29 May 2009 and with the “Abkhaz government in exile” on 4 June 2009

<sup>386</sup> SPECIAL MISSION TO GEORGIA INCLUDING SOUTH OSSETIA SUMMARY OF FINDINGS, *op cit.*, para 35

<sup>387</sup> Russia, Responses to Questions Posited by the IFFMCG (Legal Aspects). *op cit.*, p 8 According to the Office for Democratic Institutions and Human Rights of the OSCE, “the vast majority of the more than 30,000 persons who found refuge in Russia during the conflict have returned to their homes in South Ossetia” See OSCE. Human Rights in the War-Affected Areas following the Conflict in Georgia, *op cit.*, pp 6-7.

<sup>388</sup> The Commissioner for Human Rights of the Council of Europe in his latest report of 15 May 2009 confirmed that.

“According to recent estimates from the Georgian Government and UNHCR, over 30,000 persons still remain displaced. Around 18,000 individuals have been offered durable housing solutions by the Georgian Government and almost 4,000 opted for financial compensation. Approximately 12,500 still reside in collective centres or temporary private accommodation. As for the people who fled to the Russian Federation, most of them have returned to South Ossetia, except for some 1,200 who have chosen to remain in the Russian Federation. Most of the people displaced by the August 2008 conflict have been able to return to their homes in the areas adjacent to South Ossetia, and most of those who fled to the Russian Federation have been able to return. However, most ethnic Georgians who have fled South Ossetia have not been in a

The obstacles hampering the return of displaced persons are numerous. In September 2008 the United Nations Inter-agency Humanitarian Assessment Mission to South Ossetia stated *inter alia* that “a lack of the rule of law, violation of property rights, limited livelihood prospects, and broader political developments affecting reconciliation, render this a complex undertaking.”<sup>389</sup>

According to Georgia, “many of the ethnic Georgians who fled their villages in the Tskhinvali region/South Ossetia during the conflict and its immediate aftermath have not been able to return.” It referred *inter alia* to declarations made by the *de facto* South Ossetian authorities making people’s return conditional on their acceptance of South Ossetian passports and renunciation of Georgian passports, and mentioned testimonies from persons who had been stopped at Russian/Ossetian checkpoints reported by the HRAM of the OSCE.<sup>390</sup>

The IFFMCG has come to the conclusion that security and the destruction of property are currently the two main obstacles. These have also been highlighted by the Georgian authorities.<sup>391</sup> Similarly, the Russian Federation has noted that “as for their return to communities located to the North and North-East of Tskhinvali, this process has been physically hampered by the fact that a significant number of homes were destroyed during the military operation as well as by the remaining security risks.”<sup>392</sup> According to the Office for Democratic Institutions and Human Rights of the OSCE, “although many of the more than 130,000 persons displaced by the [August 2008] conflict have returned to their former places of residence, mainly in the ‘buffer zone’, over 20,000 persons, overwhelmingly ethnic Georgians, have been prevented from returning to their former places of residence in South Ossetia due to fear of insecurity, damage to their homes, or restrictions placed on their return,

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position to return,” Report on human rights issues following the August 2008 armed conflict, 15 May 2009, para 10.

<sup>389</sup> United Nations Inter-agency Humanitarian Assessment Mission to South Ossetia, *op. cit.*, para. 4.2. The Russian Federation also identified the following:

“[D]ue to the fact that the Russian Federation severed diplomatic ties with Georgia, since 29 August 2008 the process of voluntary repatriation of Georgian nationals to their home country has become significantly more complicated since many of these people have no proof of identity. Other key factors that hamper the efforts to ensure organised repatriation of displaced persons include the remaining ethnic tensions and the situation in the ‘buffer zones,’ which continues to teeter on the brink of conflict due to the build-up of Georgian military forces. These factors may potentially create new sources of tension along [the] South Ossetian and Abkhaz borders.” Responses to Question, *op. cit.*, p. 6.

<sup>390</sup> Georgia, Responses to Questions by the IFFMCG (Humanitarian Aspects, Question 2), provided to the IFFMCG on 5 June 2009, pp. 2-3.

<sup>391</sup> Report of the Representative of the Secretary-General on the human rights of internally displaced persons, *op. cit.*, p. 2.

<sup>392</sup> Russia, Responses to Questions Posited by the IFFMCG (Humanitarian Aspects), *op. cit.*, p. 7.



while many who fled from the Kodori region of Abkhazia fear to return because of uncertainties about the security situation.”<sup>393</sup>

When considering the extensive destruction and burning of houses carried out after the cease-fire of 12 August, and after most of the ethnic Georgians had left the villages, there are many indications that this destruction was committed deliberately in order to prevent IDPs from returning. In this regard, destruction as an obstacle to the right of return cannot be seen as a mere consequence of the hostilities. As Human Rights Watch have underlined, their researchers came to the conclusion that this destruction of ethnic Georgian villages around Tskhinvali – most of it after mid-August – was done “with the express purpose of forcing those who remained to leave and ensuring that no former residents would return.”<sup>394</sup>

In March 2009 the IIFFMCG was able to travel on the road between Tskhinvali and the village of Kurta where it witnessed extensive damage, with almost all the houses burned down or otherwise destroyed. Travelling along the same road in June, the IIFFMCG saw that all the ethnic Georgian villages were still completely empty.

As highlighted above, the IIFFMCG is also concerned at the fact that looting, destruction and torching occurred after the cease-fire. The United Nations Inter-agency Humanitarian Assessment Mission to South Ossetia stated that “the UNOSAT images of the villages north of Tskhinvali taken on 19 August appear now to be only a partial reflection of the current extent of property damage there.” In the village of Avnevi in the Frone valley, to the west of Tskhinvali, the Mission members observed “smoke rising from one ruin on 18 September, making it unlikely that it had been burned during the August conflict.”<sup>395</sup> There are also testimonies according to which some destruction and torching were being done deliberately to prevent displaced persons from returning. On 30 September 2008, during its mission, the Committee on Legal Affairs and Human Rights of the Council of Europe echoed the information provided by the Human Rights Watch investigators: “They have personally observed the looting and burning of the houses of ethnic Georgians (...) They have also asked several looters and arsonists, who were acting in complete openness, for the reasons for their

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<sup>393</sup> OSCE, *Human Rights in the War-Affected Areas following the Conflict in Georgia*, *op. cit.*, pp. 6-7.

<sup>394</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op. cit.*, p. 131.

<sup>395</sup> *Idem.*

actions. The answer they received was that they wanted to make sure that the Georgian inhabitants had no houses they could return to.”<sup>396</sup>

With regard to the measures undertaken to make the return of displaced persons possible, the Office for Democratic Institutions and Human Rights of the OSCE stressed that it is clear that the *de facto* authorities in South Ossetia and Abkhazia, including Russian military authorities, have not taken steps to ensure that displaced persons can return voluntarily to their former places of residence in safety and dignity, in line with the obligations on these authorities under international standards.<sup>397</sup>

Of particular concern is the practice by the *de facto* authorities in South Ossetia and Abkhazia of imposing certain conditions on those wishing to return. One of these is the requirement to become a citizen of Abkhazia or South Ossetia. This condition was described to the Commissioner for Human Rights of the Council of Europe by the *de facto* authorities in Tskhinvali.<sup>398</sup> The HRAM referred to declarations by the authorities in South Ossetia explicitly stating this condition.<sup>399</sup> Testimony from IDPs being prevented from returning seems to suggest that these declarations have produced an effect on the ground.<sup>400</sup>

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<sup>396</sup> Parliamentary Assembly of the Council of Europe (PACE), Committee on Legal Affairs and Human Rights, “The consequences of the war between Georgia and Russia,” Opinion by rapporteur Christos Pourgourides, Doc 11732 rev, 1 October 2008, para. 14, available at <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11732.htm>, para.34.

<sup>397</sup> OSCE, Human Rights in the War-Affected Areas following the Conflict in Georgia, *op cit*, p 6

<sup>398</sup> Special Follow-up Mission to the Areas Affected by the South Ossetia Conflict: Implementation of the Commissioner’s six principles for urgent human rights and humanitarian protection, *op cit*, p 1.

<sup>399</sup> The HRAM report states

“Mr Kokotiy (the leader of the separatist forces) reportedly made a statement in mid-September that Georgian “refugees” holding South Ossetian citizenship can freely return to their former places of residence. Displaced Georgians will be allowed to come back if they are ready to renounce Georgian citizenship and acquire South Ossetian citizenship.  
“Other *de facto* South Ossetian officials have expressed similar views. The *de facto* Minister for the Interior, for example, told the HRAM that he has found records of 4,000 ethnic Georgians living in South Ossetia who had been issued weapons since 2006 and that if these people tried to return they would be prosecuted. Others, he said, would only be allowed to return if they renounced their Georgian citizenship. The Deputy Chairperson of the *de facto* Council of Ministers (the *de facto* Deputy Prime Minister) told the HRAM ‘If a Georgian who decides to remain in South Ossetia does not meet our expectations, they will be expelled. I don’t want Georgians to return to the northern villages of Tamarasheni and others, and they won’t be able to.’” See Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights, OSCE, Human Rights in the War-Affected Areas following the Conflict in Georgia, 27 November 2008, p 48

<sup>400</sup> According to the HRAM

“A displaced person from the village of Dısevi, for example, told the HRAM that she tried to return to Dısevi but was prevented from doing so by Russian soldiers. Another concurred in a separate interview that ‘it is impossible to get through the Russian Ossetian check points’ and that it was not safe to return to tend the fields.  
“A displaced couple from Vanatı told the HRAM they have not been able to return to their house because police stop people from entering that area. A villager who tried to return to Ksuisı village said he was turned

While the Abkhaz *de facto* Minister for Foreign Affairs has declared that “there were no Abkhaz obstacles to the return of refugees in the Kodori Valley,”<sup>401</sup> based on information from UNOMIG the UN Secretary-General has noted that the “Abkhaz *de facto* authorities announced that all the local population, estimated in 2002 at up to 2,000, could return if the displaced persons obtained Abkhaz ‘passports’ and gave up their Georgian citizenship.”<sup>402</sup> This alleged link between return and the issuance of an Abkhaz passport raises broader questions regarding acts and situations that are not limited to the August conflict.

According to the HRAM, “some displaced persons appear to have been pressured by the Georgian authorities to return to their former places of residence in the areas adjacent to South Ossetia before conditions were in place to guarantee their security or an adequate standard of living, in contravention of OSCE commitments and other international standards.”<sup>403</sup>

The IFFMCG concludes that serious obstacles have prevented IDPs from returning to their homes in South Ossetia, and that for them to return no conditions other than those recognised by international standards should be imposed on them. Furthermore, the *de facto* South Ossetian and Abkhaz authorities, together with Russia, should take all appropriate steps to ensure that IDPs can return to their homes. Georgia must also respect the principle that a decision to return must be free from coercion. Finally, all sides should act in order to ensure that the right of return is fully implemented. This is critical with regard to the consequences of the August 2008 conflict, but also as a general measure to ensure a lasting solution to this conflict. Working to ensure the realisation of this right to return should give each side some leverage in negotiations and provide a basis for cooperation.

***The authorities in Abkhazia and South Ossetia, together with Russia, should take all appropriate measures to ensure that IDPs are able to return to their homes. No conditions for exercising this right, other than those laid down by international standards, shall be imposed on IDPs. Georgia shall respect the principle of return as a free, individual decision by displaced persons.  
Ensuring the realisation of the right to return is one of the basic prerequisites for achieving a lasting solution to the conflict.***

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back at a checkpoint after being told he should apply for a Russian passport and citizenship if he wanted to return to the village. Other villagers reported they were afraid to go back to their villages after their experiences there,” *ibid*, pp 48-49

<sup>401</sup> Meeting with the Abkhaz *de facto* Minister for Foreign Affairs, 3 March 2009, Sukhumi

<sup>402</sup> Report of the Secretary-General on the situation in Abkhazia, Georgia, pursuant to Security Council resolution 1839 (2008), 3 February 2009, S/2009/69, p. 8, para. 41

<sup>403</sup> OSCE, Human Rights in the War Affected Areas following the Conflict in Georgia, *op cit*, p 7

## **f) Protection of property rights**

Under IHL the property rights of displaced persons must be respected. This rule is considered to be a norm of customary law.<sup>404</sup> The protection of the right to property, subject to restrictions imposed by law in the public interest, is also guaranteed in Article 1 of the First Protocol to the EConvHR. The UN Guiding Principles on Internal Displacement state that “No one shall be arbitrarily deprived of property and possessions” and that “[t]he property and possessions of internally displaced persons shall in all circumstances be protected.”<sup>405</sup> Moreover Principle 29(2) holds that the “competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement” and that “when recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.”

The protection of property rights constitutes a critical issue: first, it entails ensuring that the property of displaced persons remains untouched until they can effectively return to their homes; secondly, it concerns property that has already been destroyed. It is therefore a prerequisite for a lasting peace in the region, as it also includes the issue of compensation.

According to the Russian Federation, the “property rights of displaced persons in the territory of South Ossetia are protected by the South Ossetian law enforcement authorities. Russian organisations cooperating with South Ossetia have been instructed not to engage in any transactions involving real estate of dubious legal standing.”<sup>406</sup> Russia has also stated that “Russian troops, jointly with South Ossetian law enforcement and military units, provided round-the-clock protection of homes and land allotments that remained undamaged in Georgian villages, at the same time ensuring the safety and security of South Ossetian residents regardless of their ethnic background.”<sup>407</sup>

On the contrary, many reports indicate the absence of proper measures to protect houses. The Office for Democratic Institutions and Human Rights of the OSCE indicated that the issue of

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<sup>404</sup> See Rule 133 in J-M. HENCKAERTS, L. DOSWALD-BECK (eds), *Customary International Humanitarian Law, Volume I, op cit*, p 472.

<sup>405</sup> See Principle 21.

<sup>406</sup> Russia, Responses to Questions Posited by the IIFMCG (Humanitarian Aspects), *op cit*, p 7.

<sup>407</sup> Russia, Responses to Questions Posited by the IIFMCG (Humanitarian Aspects), *op. cit.*, p. 11.

compensation for homes and other property lost during the conflict remains unresolved<sup>408</sup> It stressed that “the most disturbing aspect of property loss was the apparently widespread, deliberate burning of houses by those whom villagers described as ‘Ossetians’.”<sup>409</sup> Furthermore, north of Tskhinvali, when HRW researchers returned in September certain villages had been almost fully destroyed, while in Kekhvi the debris of some houses along the road appeared to have been bulldozed.<sup>410</sup>

The Commissioner for Human Rights of the Council of Europe recalled that those who are unable to return to their homes, because they are occupied or have been destroyed, are entitled to restitution or compensation.<sup>411</sup> Both governments have to respect the ICJ order on provisional measures of 15 October 2008, to “do all in their power (...) to ensure, without distinction as to national or ethnic origin, the protection of the property of displaced persons and of refugees”<sup>412</sup>

A 2009 report commissioned by the Council of Europe on the destruction of cultural monuments indicated that “owners of buildings damaged or destroyed in the villages in the so-called former ‘Buffer Zone’ are being consulted by the Governor’s services in order to know if they either prefer to receive subventions for repairing their houses or an amount of money to rebuild elsewhere. This measure aims at offering to all those affected by the conflict the possibility of being properly accommodated before the winter.”<sup>413</sup>

In June, Georgia indicated that “the Law on Restitution was adopted on December 29, 2006. The aim of the law is to provide property restitution, adequate immovable property in place or compensation of the material (property) damage to the victims who suffered damage as a

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<sup>408</sup> OSCE, Human Rights in the War-Affected Areas following the Conflict in Georgia, *op cit*, p 7

<sup>409</sup> *Ibid*, p 27

<sup>410</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op cit*, p 131

<sup>411</sup> Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Special Mission to Georgia and Russian Federation, *op cit*, para 38

<sup>412</sup> Case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation), Request for the indication of provisional measures, International Court of Justice, ICJ, 15 October 2008, p 41

<sup>413</sup> Council of Europe, Directorate-General IV education, culture and heritage, youth and sport, Assessment Mission on the situation of the cultural heritage in the conflict zone in Georgia, Technical Assessment Report, report prepared by Mr David Johnson, 20 October 2008, Reference AT(2008)386, p 6

result of a conflict in the Former Autonomous District of South Ossetia. Currently, steps are being taken for the implementation of the Law on Restitution.”<sup>414</sup>

The issue of property rights in connection with the conflicts in the 1990s is still unsettled.

At the time of writing this Report there also seem to be issues with regard to property rights in the Akhgori district. When meeting with the IIFMCG on June 2009, the head of the administration suggested that the land which had been privatised by the Georgian government before the August 2008 conflict would now be nationalised. Furthermore, the head of the administration also referred to houses that had been taken from Ossetians by Georgians in 1991 and would now need to be given back to the Ossetians. Such issues raise serious concerns and, if not properly addressed, in accordance with international standards, will certainly fuel more tensions between the communities in the region.

The IIFMCG considers that property rights of IDPs is an issue which indeed dates back to the conflict in the 1990s and goes far beyond the effects of the August hostilities. It requires a common effort from all stakeholders to ensure that it is included in a global restorative justice initiative together with the right to return.

The IIFMCG found that, in relation to the August 2008 conflict, there is a critical difference between the situation of property rights in Abkhazia and in South Ossetia. While only a very limited number of houses have been damaged in the course of the operations in Abkhazia, the situation in South Ossetia is dramatically different. Not only did the *de facto* South Ossetian authorities and Russian forces not take steps to protect the property of IDPs, but Ossetian forces actively participated in the looting and burning of houses. These violations also took place after the cease-fire.

Comprehensive programmes of compensation or another form of reparation should be designed to address the violation of IDPs’ property rights. Such measures, however, cannot be a substitute for the right to return, and should be considered together with it.

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<sup>414</sup> Georgia, Responses to Questions Posited by the IIFMCG (Humanitarian aspects, Question 2), provided to the IIFMCG on 5 June 2009, p. 5.

*The protection of the property rights of IDPs is a longstanding issue, with still unsettled disputes over property rights dating back to the conflicts in the 1990s.*

*In South Ossetia there has been a serious failure on the part of the authorities and the Russian forces to protect the property rights of IDPs during – and, especially, after – the August 2008 conflict. Furthermore, South Ossetian forces did participate in the looting, destruction and burning of houses during and after the conflict.*

*Comprehensive reparation programmes should be designed and implemented. They should be seen as a complement to the exercise of the right to return of IDPs, and not a substitute for this right.*

#### **E. Respect for human rights, discrimination against minorities**

While the conflict in Georgia cannot be seen as being solely related to ethnic and minority issues, this consideration does remain critical. Furthermore, the questions of discrimination against and respect for the human rights of minorities go far beyond the conflict itself. The HRAM of the OSCE stated:

*“The August conflict had clear minority implications. Ethnic Ossetians and Abkhaz are minority communities within Georgia, while as of the writing of this report ethnic Georgians are, in fact, minority communities in both South Ossetia and Abkhazia. The conflict unfolded to a significant degree along ethnic lines. In general, therefore, the human rights concerns resulting from the conflict are compounded by their implications as minority issues. In addition, a number of specific issues of discrimination and failure to protect the rights of persons belonging to minority communities have arisen or worsened in the aftermath of the conflict, especially with regard to the southern Gali district of Abkhazia.”<sup>415</sup>*

As noted by HRAM, existing human rights and minorities issues worsened following the August 2008 conflict. There is therefore a need to provide a brief overview of the situation with respect to human rights and discrimination against minorities before the conflict. An analysis of how the situation evolved in the aftermath of the conflict will then be conducted. While it goes far beyond the mandate of this Mission to look at the overall human rights situation, the purpose is to address the main issues in as much as they amount to discrimination and fuel resentment between communities. In this regard, dealing with such issues appears to be a prerequisite for reaching a lasting solution to the conflict and ensuring a true and comprehensive reconciliation between communities.

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<sup>415</sup> Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights, OSCE, Human Rights in the War-Affected Areas following the Conflict in Georgia, 27 November 2008, *op. cit.*, p. 18.

### **a) Overview of human rights and discrimination against minorities before the August 2008 conflict**

First it is necessary to outline the relationship between the conflicts in the 1990s and some human rights issues. As stressed in 2005 by the UN Committee on the Elimination of Racial Discrimination, “the conflicts in South Ossetia and Abkhazia have resulted in discrimination against people of different ethnic origins, including a large number of internally displaced persons and refugees.”<sup>416</sup>

Second, it is critical to be mindful of both the polarisation and the politicised way of dealing with human rights and humanitarian issues as a result of past conflicts, especially in the context of violations of IHL and HRL. These two aspects are particularly acute for Abkhazia.<sup>417</sup> As one researcher on Abkhazia rightly put it:

*“The serious mass violations of human rights in this period – with ethnically motivated murders civilians among them – extremely aggravated the ‘enemy image’ and mutual intolerance. In practically all the issues connected with this problem, be they the numbers of returnees, their legal status, the acquisition of passports, their security or even their access to education in their mother tongue, there are wide differences between the views of the conflicting sides.”*<sup>418</sup>

Third, existing human rights issues, mainly in the Gali district, worsened as a result of the conflict and its various consequences, while new issues also arose, for example in the Akhagori district.

Fourth, the authorities in Abkhazia and South Ossetia are bound by human rights obligations. As recalled by the OSCE High Commissioner on National Minorities following his visit to Georgia in November 2005, “international norms and standards require that any authority

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<sup>416</sup> Concluding Observations of the Committee on the Elimination of Racial Discrimination, Georgia, 15 August 2005, CERD/C/GEO/CO/3, 27/03/2007, para 5

<sup>417</sup> See Shalva Pichkhadze, “Settlement of the Georgian-Abkhaz conflict: The Problem of Displaced Persons,” in Georgian and Abkhaz Perspectives on Human Security and Development in Conflict-Affected Areas: A Policy Research Initiative, CITpax, May 2009, p 61, for the polarisation issue, see Natella Akaba, “Problems of reintegration of returnees to the Gal District of Abkhazia through the perspective of the human rights,” in Georgian and Abkhaz Perspectives on Human Security and Development in Conflict-Affected Areas: A Policy Research Initiative, *op cit*, p 48

<sup>418</sup> *Idem*



controlling territory and people, even if not recognised by the international community, must respect the human rights, including minority rights, of everyone.”<sup>419</sup>

To mention just one situation in which past issues are still relevant, one could take the Gali district in Abkhazia: the property rights of displaced persons, the language of education, freedom of movement and access to essential services and employment opportunities were already some of the key human rights issues prior to the August 2008 conflict. This was stressed *inter alia* by the UN High Commissioner for Human Rights following her visit to Georgia in February 2008.<sup>420</sup>

In his latest report on the human rights issues following the August 2008 armed conflict, dated May 2009, the Council of Europe Commissioner for Human Rights referred to his previous visit to this region in February 2007, when he examined a number of questions resulting from the earlier conflict in the 1990s. According to him “these are still relevant today” and “the main issues include further returns and security of returnees, freedom of movement, issues related to passports and identity documents, and education in the Georgian language in the Gali district.”<sup>421</sup> In October 2007 the UN Secretary-General had noted that “the Human Rights Office in Abkhazia, Georgia, continued to follow closely the issues that have an impact on the life of residents in the Gali district. It monitored conscription practices in the district, as well as the situation related to the freedom of movement of local residents and the issue of language of instruction, which remained a concern to the local population and those willing to return.”<sup>422</sup> In January 2008 he stressed that the language of instruction in schools in the Gali district also remained of concern.<sup>423</sup> Already in 2006 the OSCE High Commissioner on National Minorities had “appealed to the Abkhaz leadership to show flexibility regarding teaching in the mother-tongue, specifically teaching students in the

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<sup>419</sup> Statement by Rolf Ekéus, the OSCE High Commissioner on National Minorities, to the 616th Plenary Meeting of the OSCE Permanent Council, Vienna, Austria 29 June 2006, p. 3, available at [http://www.osce.org/documents/hcnm/2006/06/19959\\_en.pdf](http://www.osce.org/documents/hcnm/2006/06/19959_en.pdf)

<sup>420</sup> In this regard, Louise Arbour encouraged “the Abkhaz leadership to continue working towards sustainable rights-based solutions for internally displaced people, including protection of property rights. She also stressed the importance for education to be provided in relevant mother tongues, and for all local residents to be able to exercise their right to freedom of movement, including access to essential services and employment opportunities.” See UN Press Release, UN High Commissioner for Human Rights, “*Georgia makes progress but human rights concerns remain*,” 28 February 2008, available at <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/EF7E5E7D706BF6E1C12573FD007B237F?opendocument>

<sup>421</sup> Report on human rights issues following the August 2008 armed conflict, by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe (Visit: Tbilisi, Sukhumi and Gali, 8 to 12 February 2009), CommDH(2009)22, 15 May 2009, para. 51

<sup>422</sup> Report of the Secretary-General on the situation in Abkhazia, Georgia, S/2007/588, 3 October 2007, para. 15

<sup>423</sup> Report of the Secretary-General on the situation in Abkhazia, Georgia, S/2008/38, 23 January 2008, para. 24

Georgian language in the Gali district, and to ensure that this matter is resolved in full accordance with international norms.”<sup>424</sup> With regard to the so-called Abkhaz “passport,” this issue was referred to by the UN Secretary-General in April 2008, when he noted that “UNOMIG continued to follow [Abkhaz] plans to issue Abkhaz ‘passports’ to Gali district residents.” In his view, “while the *de facto* heads of administration and heads of villages have been instructed about the process, the issuing procedures are still unclear,” and “the concern of the Mission is that Gali district residents should not be forced to renounce their nationality, which would be at variance with international human rights norms.”<sup>425</sup>

In South Ossetia the consequences of the 1991-1992 conflict for human rights were still acute years after the cease-fire. As stressed in 2005 by the International Crisis Group, for example, there were still issues of displaced persons who were due to regain property or be compensated for their losses.<sup>426</sup>

While to address the human rights situation following the August 2008 conflict would take a report in itself, two regions of particular concern will be addressed here: the Gali district in Abkhazia and the Akhagori region in South Ossetia. The IFFMCG welcomes the finding of the OSCE report of February 2009 entitled “The Situation of Ossetians in Georgia Outside the Former Autonomous District of South Ossetia – after the war with Russia in August 2008,” that “contrary to initial concerns shared by human rights and humanitarian actors, the August 2008 war did not lead to a change of the situation of ethnic Ossetians in Georgian-controlled territory or to their long-term displacement in any significant numbers.”<sup>427</sup>

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<sup>424</sup> Statement by Rolf Ekéus, the OSCE High Commissioner on National Minorities, *op. cit.*, p. 3.

<sup>425</sup> Report of the Secretary-General on the situation in Abkhazia, Georgia, S/2008/219, 2 April 2008, para. 26.

<sup>426</sup> International Crisis Group, “Georgia-South Ossetia: Refugee Return the Path to Peace,” Europe Briefing No. 38, 19 April 2005, available at: <http://www.crisisgroup.org/home/index.cfm?l=1&id=3380>.

<sup>427</sup> The Reports states: “Contrary to initial concerns shared by human rights and humanitarian actors, the August 2008 war did not lead to a change of the situation of ethnic Ossetians in Georgian controlled territory or to their long-term displacement in any significant numbers. The population of ethnically mixed villages in the adjacent areas to the administrative boundary line of the former Autonomous District of South Ossetia has not raised any concerns over discrimination. On the contrary, firsthand reports testify to mutual support among neighbours of different ethnic background during wartime. Ethnic Ossetians to whom UNHCR had talked in collective centres had not raised concerns over discrimination either. The Representative of the UN Secretary-General on the Human Rights of IDPs, who visited Georgia in October 2008, met with persons of Ossetian ethnic origin among IDPs, usually from mixed marriages, and could not identify concerns related to their ethnic origin. Inhabitants of the areas adjacent to the former Autonomous District of South Ossetia had insisted that there were no inter-ethnic problems between Georgians and Ossetians, because they often lived in mixed marriages”. See OSCE, Report on The Situation of Ossetians in Georgia Outside the Former Autonomous District of South Ossetia; pp. 4-5, extracts from the Replies to Question 7, provided by Georgia, p. 1.

*There is a clear need to address the current human rights/discrimination issues following the August 2008 conflict in conjunction with the previously existing human rights concerns, many of them related to the conflict in the 1990s. It is critical to adopt a comprehensive approach in order for the settlement of those issues to be part of a lasting solution.*

## **a) Grounds**

### **(i) Ethnic origin**

Ethnic considerations with regard to the August 2008 conflict in Georgia and its aftermath concern the ethnic Georgians, the South Ossetians and the Abkhaz. Discussing the question of ethnicity and its nuances goes far beyond the scope of this Report. Nevertheless, it is important to stress that in Abkhazia, in the Gali District for example, ethnic Georgians are in fact Mingrelians, a sub-ethnic group of the Georgian people.

The question of ethnicity is, however, closely intertwined with the issue of citizenship acquired through new passports.

### **(ii) The question of the issuance of passports**

Although this phenomenon first referred to the issuance by the Russian Federation of Russian passports to Abkhaz and South Ossetians,<sup>428</sup> it also relates to the acquisition by Georgians of Abkhaz or South Ossetian passports.

“Passportisation” was described as the process whereby the Russian Federation conferred Russian nationality on South Ossetians and Abkhaz, *inter alia* to allow them to travel internationally.<sup>429</sup> The *de facto* Ministry of Foreign Affairs of Abkhazia stated:

*“So in actual fact only Russia came to our assistance, agreeing to provide the people of Abkhazia with international-type Russian passports. From that moment on Abkhaz were able to travel outside the Republic and take advantage of the rights and freedoms afforded to them under international laws and standards”*<sup>430</sup>

As outlined by Human Rights Watch, “by the end of 2007, according to the South Ossetian authorities, some 97 per cent of residents of South Ossetia had obtained Russian passports. As

<sup>428</sup> AI, *Civilians in the Line of Fire – The Georgia-Russia Conflict*, *op. cit.*, p. 7.

<sup>429</sup> *Idem*. See also HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op. cit.*, p. 18.

<sup>430</sup> Abkhaz authorities, Responses to Questions Posited by the IIFFMCG (Legal Aspects), submitted to the IIFFMCG in April 2009, p. 3.

Russia imposed a visa regime with Georgia in 2000, Russian passports allowed Ossetians and Abkhaz to cross freely into Russia and entitled them to Russian pensions and other social benefits.”<sup>431</sup>

Following the conflict, the acquisition of Russian citizenship became even more politicised, with claims by Georgia in the case of the Akhagori district that “the separatist authorities are making territorial claims supported by the Russian Federation and actively disseminating Russian passports to the remaining residents.”<sup>432</sup>

The question of passports now also concerns the acquisition of Abkhaz or South Ossetian passports by ethnic Georgians. For Abkhazia, for example, according to the UN Secretary-General, “the issuance of Abkhaz ‘passports’ in the Gali district started formally at the end of March”; “[i]t appears that during the following two months the issuance was put on hold,” and “[i]n June the *de facto* authorities in the Gali district restarted the process, with limited results, owing to the reluctance of Gali district residents to state in the application forms that they renounce their Georgian citizenship.”<sup>433</sup> In April 2009 the Abkhaz *de facto* Ministry of Foreign Affairs stated that “according to the Passport and Visa Service of the Abkhaz Ministry of the Interior, 2,108 Gali district residents applied for citizenship and 583 passports have already been issued.”<sup>434</sup>

The question of Abkhaz and South Ossetian “passports” is a highly sensitive and politicised one. While they are more *internal identity papers* than passports in the international meaning of the term, the related issues surrounding the procedures and conditions in which they are issued, as well as the concrete consequences of not having such a document, give rise to many debates and disputes. This is mainly due to the fact that the documents are discussed in the context of the unsettled status of these two break-away regions.

Beyond the specific question of passports, the key objective is that people living in the region of Gali or in South Ossetia are provided with the same basic rights, regardless of their ethnic background or citizenship. The question of a passport becomes a human rights issue insofar as

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<sup>431</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op. cit.*, p. 18.

<sup>432</sup> Amended request for the indication of provisional measures of protection submitted by the Government of Georgia, Request to the ICJ, *op. cit.*, p. 2.

<sup>433</sup> Report of the Secretary-General on the situation in Abkhazia, Georgia, 23 July 2008, S/2008/480, p. 6, para. 30.

<sup>434</sup> Abkhaz authorities, Replies to questions on legal issues related to the events of last August, submitted to the IFFMCG in April 2009, p. 10.

either people are coerced, directly or indirectly, into giving up their current citizenship or they are discriminated against on this basis.

### c) Rights concerned and alleged discrimination

The Gali District is identified by Georgia as “the only remaining territory where ethnic Georgians continue to live in Abkhazia, with a Georgian population of approximately 42,000 persons.”<sup>435</sup> According to Georgia, “immediately prior to the August 8 Russian aggression, this population faced increasing intimidation and pressure to adopt Russian citizenship.”<sup>436</sup> In September 2008 Tbilisi also stressed that these “ethnic Georgians [lived] in constant fear of violent attacks and expulsions”<sup>437</sup> and that they were being “forced out of their homes by a campaign of harassment and persecution.”<sup>438</sup> The Georgian authorities referred more specifically to “the continuing discriminatory treatment of ethnic Georgians in the Gali District of Abkhazia, including but not limited to pillage, hostage-taking, beatings and intimidation, denial of the freedom of movement, denial of their right to education in their mother tongue, pressure to obtain Russian citizenship and/or Russian passports, and threats of punitive taxes and expulsion for maintaining Georgian citizenship.”<sup>439</sup>

One of the most practical consequences of the conflict seems to be the limitation of freedom of movement in both the Gali District<sup>440</sup> and Akhalkgori.<sup>441</sup> This is a critical issue with far-reaching disruptive effects on the lives of the people living there, as many residents have close links with outside areas and are reliant in many ways on having the freedom to move across the administrative boundary.

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<sup>435</sup> Public sitting held on Monday 8 September 2008, at 10 a.m., at the Peace Palace, Verbatim Record, in the case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), CR 2008/22, International Court of Justice, The Hague, 2008, p. 9, para. 41.

<sup>436</sup> Amended request for the indication of provisional measures of protection submitted by the Government of Georgia, 13 August 2008, p. 7, para. 17.

<sup>437</sup> Public sitting held on Monday 8 September 2008, at 10 a.m., at the Peace Palace, Verbatim Record, in the case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), CR 2008/22, International Court of Justice, The Hague, 2008, p. 18, para. 10.

<sup>438</sup> *Idem.*

<sup>439</sup> Case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Request for the indication of provisional measures, International Court of Justice, ICJ, 15 October 2008, p. 6.

<sup>440</sup> Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights, OSCE, Human Rights in the War-Affected Areas following the Conflict in Georgia, 27 November 2008, p. 57 and p. 63.

<sup>441</sup> *Ibid.*, p. 33 and p. 50.

This issue of the increasing restrictions on freedom of movement in the Gali District following the conflict was underlined by the Council of Europe Commissioner for Human Rights:

*“The people living in that district have been relying – for various reasons, including commercial purposes, commuting for employment, family ties, medical care or social needs, education, security concerns, etc – on freedom of movement across the Inguri river to the Zugdidi area. Prior to the summer of 2008, such movement was essentially unrestricted. Since the summer of 2008, new restrictions have been imposed on movement across the administrative border, which has rendered the population in Gali more isolated than before. The restrictions on movement have reportedly led to cases of bribery at crossing points.”*<sup>442</sup>

The IFFMCG supports the statement by the Commissioner on “a need to find a solution which will reconcile appropriate security measures with the legitimate interest of local populations to enjoy free movement across the Inguri river.”<sup>443</sup>

The freedom of movement also includes the right to return for displaced persons, notably the return of ethnic Georgian IDPs. For example, a villager who was trying to return to Ksuisi village in South Ossetia said he was turned back at a checkpoint after being told he should apply for a Russian passport and citizenship if he wanted to return to the village.<sup>444</sup> This practice also concerns Abkhaz and South Ossetian citizenship as a condition for ethnic Georgians to return to their place of residence. As highlighted above, this condition was described to the Commissioner for Human Rights of the Council of Europe by the *de facto* authorities in Tskhinvali.<sup>445</sup> While the Abkhaz *de facto* Minister for Foreign Affairs declared that “there were no Abkhaz obstacles to the return of refugees in the Kodori Valley,”<sup>446</sup> the UN Secretary-General noted that the “Abkhaz *de facto* authorities announced that all the local population, estimated in 2002 at up to 2,000, could return if the displaced persons obtained Abkhaz ‘passports’ and gave up their Georgian citizenship.”<sup>447</sup>

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<sup>442</sup> Report on human rights issues following the August 2008 armed conflict, 15 May 2009, *op cit*, paras 55 ff

<sup>443</sup> *Ibid*, p 58

<sup>444</sup> Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights, OSCE, Human Rights in the War-Affected Areas following the Conflict in Georgia, 27 November 2008, pp 48-49

<sup>445</sup> Special Follow-up Mission to the Areas Affected by the South Ossetia Conflict Implementation of the Commissioner’s six principles for urgent human rights and humanitarian protection, *op cit*, p 1

<sup>446</sup> Meeting with the Abkhaz *de facto* Minister for Foreign Affairs, 3 March 2009, Sukhumi

<sup>447</sup> Report of the Secretary-General on the situation in Abkhazia, Georgia pursuant to Security Council resolution 1839 (2008), 3 February 2009, S/2009/69, p 8, para 41

A similar question arises in the case of Akhagori. Human Rights Watch stated:

*“The new head of the Akhagori district administration, Anatoly Margiev, told Human Rights Watch that the border was not likely to close, though not all of his staff shared this view. Margiev also told Human Rights Watch that as of January 2009 the administration would start processing South Ossetian passports for all residents of Akhagori, ‘in order [for them] to be able to move freely in North and South Ossetia. Following that, they will be also given Russian citizenship’ ”*<sup>448</sup>

More generally, as mentioned earlier, the issue of passports raises several questions. First are the coercive nature of the acquisition of passports and the related question of renouncing Georgian citizenship. This issue is particularly salient in the case of the Gali district.

According to the HRAM of the OSCE, “moves by the *de facto* authorities to encourage residents of Gali to give up their Georgian citizenship appear coercive and discriminatory and are further exacerbating the situation of the Georgian community in the district.”<sup>449</sup> This seems to apply as regards both Abkhaz passports and Russian ones. The Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe referred to “ethnic Georgians in the Gali District of Abkhazia [who] are reportedly also beginning to be put under pressure to accept Abkhaz passports.”<sup>450</sup> According to Georgia, “reports received from residents of Gali – which is now isolated from the rest of Georgia due to the closure of the administrative border at the Enguri Bridge – suggest that they are being harassed, attacked, and threatened of expulsion if they do not accept Russian passports”<sup>451</sup>

The *de facto* Abkhaz authorities rejected these allegations and stated:

*“Despite the fact that the refugees who returned to the Gali district felt a certain political pressure (parenthetically, this political pressure continues to this day) and expressed uncertainty with respect to applying for Abkhaz citizenship and passports, Abkhaz authorities have done everything within their power to regain the trust of its people. Currently, the returnees have the right to obtain the Abkhaz nationality and passports without any pressure*

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<sup>448</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op cit*, p. 150

<sup>449</sup> Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights OSCE, *Human Rights in the War Affected Areas following the Conflict in Georgia*, 27 November 2008, pp. 7-8

<sup>450</sup> Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), *The implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia*, Report, *op cit*, para. 60

<sup>451</sup> Document submitted by Georgia, “Russian Invasion of Georgia – Facts & Figures,” 8 September 2008, p. 4.

*or coercion – this is a free choice of every citizen of Abkhazia and every person who considers him or herself to be a resident of this country* <sup>452</sup>

The Secretary-General of the United Nations noted that “the Human Rights Office continued to monitor developments concerning the issuance of Abkhaz passports in the Gali district.”<sup>453</sup> There seem to be different degrees of pressure. Whether or not this amounts to coercion is questionable. According to the HRAM of the OSCE “there are now growing pressures on residents of the Gali district to obtain Abkhaz passports, which may be significant enough to constitute coercion.”<sup>454</sup> In March 2009 UNOMIG informed the IFFMCG that while renouncing one’s Georgian nationality was not an explicit condition when filing a request for obtaining an Abkhaz passport,<sup>455</sup> in practice, applications without a declaration of renunciation were systematically rejected, and all 18 applications without such declarations had been refused. UNOMIG noted that although ethnic Georgians are not forced to take an Abkhaz passport, in practice there is a certain amount of pressure to do so, given that such passports are required in order to access certain services.<sup>456</sup> Whatever type of pressure is used, credible reports indicate an absence of free choice. This appears to be reaching a point where, as stressed by an NGO to the HRAM, “conditions are being created that will make it impossible for many of the residents of Gali to live normally without an Abkhaz passport.”<sup>457</sup>

While the *de facto* authorities in Sukhumi reaffirmed, at a meeting with the IFFMCG in June 2009, that the process of giving Abkhaz passports to Georgians residing in Gali is carried out exclusively on a voluntary basis, the above information on direct or indirect coercion is cause for serious concern. The IFFMCG strongly states that the process of obtaining a passport and, most importantly, the renouncing of one’s nationality, must not involve coercion, be it direct or indirect.

The second issue with regard to passports is the consequence for ethnic Georgians of not having one. According to information received by the HRAM of the OSCE, an Abkhaz

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<sup>452</sup> Abkhaz authorities, Responses to Questions Posited by the IFFMCG (Legal Aspects), submitted to the IFFMCG in April 2009, p 10

<sup>453</sup> Report of the Secretary-General on the situation in Abkhazia, Georgia, pursuant to Security Council resolution 1839 (2008), 3 February 2009, S/2009/69, p 5, para 25

<sup>454</sup> Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights, OSCE, Human Rights in the War-Affected Areas following the Conflict in Georgia, 27 November 2008, p 68

<sup>455</sup> The OSCE however noted that “Reportedly, the application form for an Abkhaz passport includes a statement that ‘I voluntarily renounce my Georgian citizenship’ ” *Ibid* , p 69.

<sup>456</sup> Meeting with UNOMIG officials, March 2009, Gali

<sup>457</sup> Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights, OSCE, Human Rights in the War-Affected Areas following the Conflict in Georgia, 27 November 2008, p 68



passport is required for all employees of the local administration, including doctors and teachers; a passport is also needed to transact business and for other legal activities.<sup>458</sup> The HRAM also stressed that “Abkhaz law permits dual citizenship with Russia, but not with Georgia, a provision that many consider discriminatory.”<sup>459</sup>

As underlined by the authorities in Sukhumi, at a meeting with the IIFFMCG, the alternative option for people who do not wish to obtain an Abkhaz passport is to obtain a residence permit. However, as stressed by the Council of Europe Commissioner for Human Rights, “the information as to the rights and entitlements applying to holders of residence permits is somewhat unclear.”<sup>460</sup>

While the question of passports is a very complex and highly controversial one, the IIFFMCG believes that the main objective must be to ensure in practice that this issue does not deprive ethnic Georgians of their rights.

Another much-debated issue in the Gali district is education in the Georgian language for the population of this area. The UN Secretary-General noted that “the Human Rights Office continued to monitor developments concerning the language of instruction, reporting that the number of academic hours allocated to studying the Georgian language was reduced for the 2008-2009 school year.”<sup>461</sup>

The Abkhaz *de facto* authorities stated that “the Gali district has 21 schools, 11 of which are Georgian schools.” They also stressed that “there has been no interruption of teaching in Georgian, a fact confirmed by international observers.” According to Article 6 of the Constitution of the Republic of Abkhazia: “The State guarantees all ethnic groups that inhabit Abkhazia the right to freely use their native language.”<sup>462</sup>

However, as pointed out by the Council of Europe Commissioner for Human Rights in May 2009, “there have been many assertions about a deterioration of the situation following the

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<sup>458</sup> *Idem.*

<sup>459</sup> *Ibid.*, p. 69.

<sup>460</sup> Report on human rights issues following the August 2008 armed conflict, 15 May 2009, *op. cit.*, para. 59.

<sup>461</sup> Report of the Secretary-General on the situation in Abkhazia, Georgia pursuant to Security Council Resolution 1839 (2008), 3 February 2009, S/2009/69, p. 5, para. 25.

<sup>462</sup> Abkhaz authorities, Responses to Questions Posited by the IIFFMCG (Legal Aspects), submitted to the IIFFMCG in April 2009, p. 6.

August 2008 conflict”<sup>463</sup> concerning the language of education for ethnic Georgians. In this regard the OSCE High Commissioner on National Minorities “underlined that measures to reinforce the role of one language and culture should not be pursued at the expense of other languages and cultures.”<sup>464</sup>

*Serious concern is expressed about the situation of ethnic Georgians in the Gali district (Abkhazia) and the Akhgori district and the effective protection of their rights. The de facto authorities in Abkhazia and South Ossetia must ensure that the rights of these persons are protected. The issue of the status of Abkhazia and South Ossetia can under no circumstances be allowed to result in discrimination or the infringement of their rights.*

## **F. Investigation into and prosecution of violations of IHL and human rights law**

Under IHL, States have an obligation to investigate war crimes allegedly committed by their nationals and members of their armed forces, as well as other persons falling under their jurisdiction.<sup>465</sup> The obligation to investigate and prosecute applies in both international and non-international armed conflict.<sup>466</sup>

A number of human rights treaties include a clear obligation on States to prosecute persons suspected of having committed serious violations of human rights. Notably, the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment impose a general obligation on all States Parties to provide an effective remedy against violations of the rights and freedoms contained in these two core human rights treaties. This also includes a duty to investigate and punish those responsible.<sup>467</sup>

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<sup>463</sup> Report on human rights issues following the August 2008 armed conflict, 15 May 2009, *op cit*, para 68

<sup>464</sup> Press release, Statement by the OSCE High Commissioner on National Minorities following his visit to Georgia (14-20 September 2008), The Hague, 23 September 2008

<sup>465</sup> See for example Article 146 of Geneva Convention IV

<sup>466</sup> According to Rule of 158 of the ICRC Study on Customary International Law “States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects.” See I-M HENCKAERTS, L DOSWALD-BECK (eds), *Customary International Humanitarian Law*, Volume I, *op cit*, p 607

<sup>467</sup> Principle 4 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation For Victims of Gross Violations of Human Rights and Serious Violations of International Humanitarian Law adopted by the UN General Assembly in December 2005, states “In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him.”

These obligations to investigate and prosecute call for accountability on the part of all the sides that committed violations of IHL and HRL, whether they be Russians, Georgians, South Ossetians or Abkhaz.

Furthermore, it is not enough under international law merely to conduct an investigation into war crimes and violations of HRL. Such an investigation must be effective, prompt, thorough, independent and impartial, and must be followed by prosecution if violations are established.<sup>468</sup>

This obligation to investigate and prosecute must be read in the light of documented cases of violations of IHL and HRL committed during and after the August 2008 conflict. It must also be recalled that this obligation applies primarily to violations committed by a State's own forces or persons under its control, and must not be limited to investigating the violations committed by the other parties to the conflict.

First it is crucial to note the contrast between the efforts undertaken by the Russian Federation to investigate, with a view to prosecution, crimes allegedly committed by Georgian forces and the absence to date of prosecutions of Russian citizens, including soldiers. In its Monitoring Committee Report, the Council of Europe Parliamentary Assembly pointed out.

*“The Investigative Committee of the General Prosecutor's Office of Russia launched an investigation into genocide committed by Georgian troops against Russian citizens (ethnic Ossetians) in South Ossetia. In addition, it opened an investigation into crimes committed by Georgia against the Russian military. It would seem that there is no intention to investigate possible violations of human rights and humanitarian law committed by Russian forces and forces under the control of the de facto South Ossetian authorities. Indeed, the special Investigative Committee reportedly closed its investigations on the ground in South Ossetia in mid-September, at a time when credible reports indicated that looting, pillaging, as well as*

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<sup>468</sup> Principle 19 of the Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity endorsed by the Commission on Human Rights in 2005 refers to the States' “ obligation to undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished ”

*acts of ethnic cleansing were taking place on a daily basis in the areas under Russian control, including in the so-called 'buffer zone' ”*<sup>469</sup>

In its replies to the questionnaire sent by the IIFFMCG, the Russian Ministry of Defence first stated that “during the peace enforcement operation against Georgia no instances have been identified where norms of International Humanitarian Law or Human Rights were violated by military personnel of the Russian Federation Armed Forces.”<sup>470</sup> In responses to additional questions asked by the IIFFMCG, the Russian Federation was less categorical but still noted that “to the best of its knowledge, Russian military personnel never committed any violations of International Humanitarian Law.” “As for the potential violations of human rights committed by Russian servicemen,” it pointed out *inter alia* that “victims of such violations have specific legal options to obtain reparations for such violations.” It further indicated that they could begin by filing lawsuits with the Russian courts, but that it was not aware of any such cases.<sup>471</sup>

When meeting with the IIFFMCG’s experts in Moscow in July 2009, the representatives of the Investigative Committee of the General Prosecutor’s Office of Russia indicated that the Committee’s mandate was only to investigate violations committed against Russian nationals.<sup>472</sup> They also informed the IIFFMCG that investigations into crimes against other persons was the responsibility of the South Ossetian authorities, and that to their knowledge approximately 80 cases were currently being investigated by these authorities. Given the large number of inhabitants of South Ossetia having Russian nationality, the former argument is only partly relevant. Furthermore, coordination procedures must be set up in order for the Russian Investigative Committee to exchange information with the relevant South Ossetian authorities if it comes across evidence of violations against persons that are not covered by its activities. Most importantly, owing to the limited mandate of the Investigative Committee, there is a need to ensure that other investigative bodies from Russia carry out comprehensive investigations.

In its replies to the questionnaire, Georgia noted the following:

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<sup>469</sup> The implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia, *op cit* , para 50, available at <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc09/EDOC11800.htm>

<sup>470</sup> Russia, Responses to Questions Posited by the IIFFMCG (Humanitarian Aspects), *op cit* , p 16

<sup>471</sup> Russia, Responses to Questions Posited by the IIFFMCG (Legal Aspects), *op cit* , pp 11-12.

<sup>472</sup> Meeting with the representatives of the Investigative Committee of the General Prosecutor’s Office of Russia, Moscow, 29 July 2009.

*“The investigation was launched concerning the violations committed in the course of the Russian-Georgian war in August 2008. Namely, on 9 August 2008, a couple of days after the Russian invasion of Georgia, the Office of the Prosecutor launched an investigation including under Article 411 (deliberate violation of humanitarian law provisions during internal and international armed conflicts) and Article 413 (other violations of international humanitarian law, including looting, illegal acquisition and destruction of civilian property) of the Criminal Code of Georgia. On August 11, another criminal case was opened on the facts of looting as provided by Article 413 of the Criminal Code of Georgia. These investigations have been merged. It is important to note that the investigation is not against anyone, but is launched on the facts and intends to shed light on the overall situation. Every person whose culpability is revealed in the course of the investigation will be subject to relevant legal proceedings. No charges have yet been made due to the difficulties to gather sufficient evidence. Initial statements from prisoners of war, civilian hostages have been taken, forensic examinations have been conducted, and seizure and inspection of affected areas under Georgian control has been implemented. However, lack of access to the affected areas in the Tskhinvali region/South Ossetia is a substantial impediment for a results-oriented efficient investigation.”<sup>473</sup>*

In no way can the current issue regarding the status of South Ossetia be allowed to prevent investigations or diminish the accountability of those responsible for IHL or HRL violations during and, most importantly, after the conflict in South Ossetia and in the buffer zone, be they from the regular forces, volunteers or other individuals. While there is a role for the *de facto* authorities to play in this regard, Russia also has a responsibility as it has forces in South Ossetia. Moreover, given the documented cases of violations committed by volunteers from Russia who may currently be on Russian territory, the obligation to investigate and prosecute these, in addition to the violations committed by its own forces, is directly applicable to Russia.

This obligation to investigate and prosecute goes beyond a mere requirement in law. It is critical for the sake of initiating a meaningful and comprehensive reconciliation process following the conflict, and for a lasting peace.

***In the light of the grave violations of IHL and HRL committed during the conflict and in the weeks after the cease-fire, Russia and Georgia should undertake or continue prompt,***

<sup>473</sup> Georgia, Responses to Questions Posited by the IFFMCG (Humanitarian Issues, Questions 9 and 10), provided to the IFFMCG on 5 June 2009, p. 2.

*thorough, independent and impartial investigations into these violations, and should prosecute their perpetrators. This is also an obligation incumbent on the authorities in South Ossetia. The fight against impunity is one of the prerequisites for a true and lasting solution to the conflict.*

## **G. Reparation**

There is a general obligation under IHL for a state responsible for violations of international humanitarian law to make full reparation for the loss or injury caused.<sup>474</sup>

The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law set out in more detail the rights of victims to restitution, compensation and rehabilitation.

It is worth noting that the Russian Federation stated that “residents of South Ossetia who suffered as a result of the hostilities received compensation paid out of the Federal budget. Several types of such compensation were envisaged: 1) all civilian victims residing in South Ossetia received a one-time payment in the amount of 1 000 roubles; 2) separate payments were earmarked for retirees; 3) finally, residents who had lost their property during the hostilities were paid up to 50 thousand roubles.”<sup>475</sup>

This raises serious concerns as it would mean that no such reparations were paid to persons who suffered as a result of the hostilities on the territory of Georgia proper or in Abkhazia. Furthermore, it is crucial that such compensation should also be allocated to ethnic Georgians for the reconstruction of *their homes* in South Ossetia.

The Russian and Georgian governments should provide compensation for civilian damage and destruction caused by violations of international humanitarian law for which they are respectively responsible. Compensation is also vital in the light of the extensive destruction of property by South Ossetian forces and other armed individuals.

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<sup>474</sup> See for example Article 91 of Additional Protocol I of 1977 and Rule 150 of the ICRC Study on International Customary Humanitarian Law, in J-M HENCKAERTS, L. DOSWALD-BECK (eds), *Customary International Humanitarian Law, Volume I, op cit*, p 537

<sup>475</sup> Russia, Responses to Questions Posited by the IIFMCG (Legal Aspects), *op cit*, p 12

*Accountability and reparation for violations of IHL and HRL are vital for a just and lasting peace. In the short term, this is also crucial in order to enable individuals who lost their property to rebuild their lives.*

#### **IV Allegations of genocide**

Although the allegations of ethnic cleansing, made by Georgia against the Russian Federation and South Ossetia in relation to the armed conflict between Russia and Georgia and its aftermath, could be addressed together with those of genocide, as they are two clearly distinct concepts it is preferable to review the former separately. Furthermore, as ethnic cleansing is linked mainly to the displacement of persons, it will be discussed later under that heading.

Allegations of genocide were made during the conflict in Georgia and after the cease-fire. Owing to both the seriousness of the term “genocide” for public opinion and in the collective consciousness, and its very specific legal definition and corresponding consequences in international law, it is extremely important to assess these allegations carefully. The expression “crime of crimes,” used by the ICTR, illustrates the highly unique nature of genocide.<sup>476</sup> There is consequently a need not only to establish facts and ascertain the law, but – more than for any other allegations – to aim at avoiding any post-conflict tension that could result from persisting resentment among communities over accusations of genocide. The gravity of this crime is translated into the very strict conditions required under international law for acts to be qualified as such.<sup>477</sup> As allegations were made by the Russian Federation and by the *de facto* South Ossetian authorities, the available evidence produced should be analysed against the backdrop of this legal definition. Georgia did not make such claims. In the context of their replies to the questionnaire sent by the IIFFMCG, the Georgian authorities stressed that Georgia “does not concede that the crime of the genocide has been committed by either party to the conflict during and/or in the aftermath of the 2008 hostilities.”<sup>478</sup>

<sup>476</sup> Prosecutor v Kambanda (Case No ICTR-97-23-S) Judgment and Sentence, 4 September 1998, para 16.

<sup>477</sup> William Schabas rightly stresses “Why is genocide so stigmatized? In my view, this is precisely due to the rigorousness of the definition and its clear focus on crimes aimed at the eradication of ethnic minorities or, to use the Convention terminology, ‘national, racial, ethnical and religious’ ” In *Genocide in international law: the crime of crimes*, Cambridge University Press, 2000, p 9

<sup>478</sup> Georgia, Responses to Questions Posited by the IIFFMCG, (Humanitarian Aspects), provided to the IIFFMCG on 5 June 2009, p 1

Allegations of genocide were made by the Russian Federation against the Georgian forces. A number of political declarations by Russian authorities in the early days of the conflict explicitly accused Georgia of genocide.<sup>479</sup> These accusations have to be linked to the number of victims given by the Russian authorities at the time, who claimed 2,000 people had been killed. The declarations were accompanied by measures to investigate into alleged genocide.<sup>480</sup> The Deputy Chairman of the Committee announced that his office was opening “a genocide probe based on reports of actions committed by Georgian troops aimed at murdering Russian citizens – ethnic Ossetians – living in South Ossetia.”<sup>481</sup> As reported by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, “on 23 December 2008, the Head of the Investigation Commission of the General Prosecutor’s Office of Russia announced that the Commission had finalised its investigations into the deaths of 162 South Ossetian civilians – a considerably lower number of deaths of civilians than originally announced by the Russian authorities – and of 48 members of the Russian military troops during the war, and that it had collected sufficient evidence to bring charges against Georgia of genocide against South Ossetians.”<sup>482</sup>

Georgia was also accused of genocide by the *de facto* South Ossetian authorities and non-governmental organisations from South Ossetia. An adviser to the *de facto* President of South Ossetia stated that over 300 lawsuits had been sent to the International Criminal Court, seeking to bring the Georgian authorities to justice for “genocide” committed in the August 8-

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<sup>479</sup> For instance, the President of the Russian Federation, Dmitry Medvedev, stated on 10 August 2008 that “the actions of the Georgian side cannot be called anything other than genocide” in “SKP RF Opened a Criminal Investigation into the Killings of Russian Citizens in South Ossetia,” *Kommersant Online*, August 14, 2008, <http://www.kommersant.ru/doc.aspx?DocsID=1011523&ThemesID=301>, quoted by HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op cit*, p 70.

The Prime Minister, Vladimir Putin, declared the same day “I believe there were elements of genocide” in “Putin accuses Georgia of genocide,” *Russia Today*, 10 August 2008, available at <http://www.russiatoday.com/news/news/28744>

<sup>480</sup> President Medvedev asked the Investigative Committee of the Russian Federation Prosecutor’s Office to document the evidence of crimes committed by Georgian forces in South Ossetia in order to create a “necessary basis for the criminal prosecution of individuals responsible for these crimes” in “SKP RF Opened a Criminal Investigation into the Killings of Russian Citizens in South Ossetia,” *Kommersant Online*, August 14, 2008, <http://www.kommersant.ru/doc.aspx?DocsID=1011523&ThemesID=301>, quoted by HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op cit*, p 70

<sup>481</sup> Igor Komissarov, Deputy Chairman of the Investigative Committee of the General Prosecutor’s Office Reported by RIA Novosti, 14 August 2008, quoted by AI, 2008, p 56 See also Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), *The implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia*, Report, Doc 11800, 26 January 2009, Co-rapporteurs Luc van den BRANDE and Matyas EORSI, para 50

<sup>482</sup> *Idem* para 50



12 attack.<sup>483</sup> As noted by Human Rights Watch, such accusations were also “widely publicised by the Public Commission for Investigating War Crimes in South Ossetia, a group of Russian and South Ossetian public activists working with the prosecutor’s office of the *de facto* South Ossetian authorities.”<sup>484</sup> The commission was created on 12 August 2008 and issued a report aimed at documenting the case of genocide against South Ossetians. The head of the Public Committee declared that “now the world community has got access to photo and video and other documents which prove that Georgian soldiers in South Ossetia were actually committing genocide against its people.”<sup>485</sup> Representatives of two NGOs whom the IFFMCG met in Tskhinvali in March 2009 made the same accusations of genocide.

Allegations of genocide were also made by the *de facto* Abkhaz authorities, who stated that “documented proof of genocide perpetrated by the Georgian government against ethnic Abkhaz is still to be presented before the highest international judicial institutions.”<sup>486</sup>

In its replies to the IFFMCG questionnaire, Georgia submitted “that no crime of Genocide has been committed by the Georgian side, as neither acts meeting the gravity of the said crime nor the facts commonly known to support this allegation took place or were substantiated.”<sup>487</sup> Georgia also noted that “unlike the SKP [Investigative Committee of the Prosecution Service of the Russian Federation], even international humanitarian organisations were not given access to the territory before August 19-20, 2008” and that “as such, during the first stages of evidence-gathering, the SKP was the sole fact-finding institution present on the ground.”<sup>488</sup> It contested the “reliability of the information” allegedly gathered by the SKP and denounced the “exaggerated claims made by the Russian authorities.” It stressed that “the SKP has not given any legal explanation as to how the acts allegedly committed by Georgian soldiers amounted to genocide by Georgia.”<sup>489</sup> Georgia further noted that “the number of dead (civilian) persons officially declared by the Russian authorities poses question marks as to

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<sup>483</sup> RIA Novosti, “South Ossetians sue Georgia for genocide,” 1 September 2008, <http://en.rian.ru/world/20080901/116453506.html>

<sup>484</sup> HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, *op cit*, p. 72

<sup>485</sup> Public Committee for Investigation of War Crimes in South Ossetia, *South Ossetia – Chronicle of Contract Murder*, available at <http://www.ossetia-war.com/book>

<sup>486</sup> *De facto* Abkhaz authorities, Replies to questions on legal issues related to the events of last August, submitted to the IFFMCG in April 2009, p. 10

<sup>487</sup> Georgia, Responses to Questions Posited by the IFFMCG (Humanitarian Aspects), provided to the IFFMCG on 5 June 2009, p. 1

<sup>488</sup> *Ibid* pp. 1-2

<sup>489</sup> *Ibid*, p. 2

whether the list includes only civilians or also representatives of South Ossetia militias, who during the combat operation represented legitimate military targets.”<sup>490</sup>

The 1948 Genocide Convention defines genocide as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.”<sup>491</sup> The acts listed in Article 2 must be carried out with intent to destroy the group as such, in whole or in part.<sup>492</sup> The words “as such” emphasise that intent to destroy the protected group.<sup>493</sup> This “specific intent” is the key to qualifying a series of acts as genocide and distinguishing them from other crimes. The term “in part” in the context of the intent “to destroy a protected group” implies a certain scale, as clarified by international case-law. It requires the intention to destroy “a considerable number of individuals”<sup>494</sup> or “a substantial part” of a group.<sup>495</sup> Finally, intent must also be distinguished from motive. The Commission of Inquiry on Darfur, defining the motive as “the particular reason that may induce a person to engage in criminal conduct,” stressed that “from the viewpoint of criminal law, what matters

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<sup>490</sup> *Idem*

<sup>491</sup> See article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948

<sup>492</sup> Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, 25 January 2005, p. 124, para. 490. The commission further elaborates these two elements: “The objective element is twofold. The first, relating to the prohibited conduct, is as follows: (i) the offence must take the form of (a) killing, or (b) causing serious bodily or mental harm, or (c) inflicting on a group conditions of life calculated to bring about its physical destruction, or (d) imposing measures intended to prevent birth within the group, or (e) forcibly transferring children of the group to another group. The second objective element relates to the targeted group, which must be a ‘national, ethnical, racial or religious group.’ Genocide can be charged when the prohibited conduct referred to above is taken against one of these groups or members of such a group. “Also the subjective element or mens rea is twofold: (a) the criminal intent required for the underlying offence (killing, causing serious bodily or mental harm, etc.) and, (b) “the intent to destroy, in whole or in part” the group as such. This second intent is an aggravated criminal intention or *dolus specialis*: it implies that the perpetrator consciously desired the prohibited acts he committed to result in the destruction, in whole or in part, of the group as such, and knew that his acts would destroy, in whole or in part, the group as such” (paras 490-491).

<sup>493</sup> ICI, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment of 26 February 2007, I C.J. 2007 Reports, para. 187. See also *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I C.J. Reports 1996, para. 26.

<sup>494</sup> See *Kayishema and Ruzindana* (ICTR, Trial Chamber, 21 May 1999), at § 97, quoted by International Commission of Inquiry on Darfur, *op. cit.*, para. 492.

<sup>495</sup> See *Jelisić* (ICTY Trial Chamber, 14 December 1999, at para. 82), *Bagilishema* (ICTR, Trial Chamber, 7 June 2001, at § 64) and *Semanza* (ICTR, Trial Chamber, 15 May 2003, at para. 316), quoted by International Commission of Inquiry on Darfur, *op. cit.*, para. 492.

is not the motive, but rather whether or not there exists the requisite special intent to destroy a group”<sup>496</sup>

Given the specificity of such a requirement, the question of whether there is proof of this genocidal intent is consequently critical.<sup>497</sup> In practice, however, clearly establishing the proof of such an intent, by means of facts, may be a very difficult task. The International Commission of Inquiry on Darfur, relying on established jurisprudence from international *ad hoc* criminal tribunals, made the following assessment:

*‘Whenever direct evidence of genocidal intent is lacking, as is mostly the case, this intent can be inferred from many acts and manifestations or factual circumstances. In Jelisić the Appeals Chamber noted that ‘as to proof of specific intent, it may, in the absence of direct explicit evidence, be inferred from a number of facts and circumstances, such as the general context the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts’ (§ 47) ‘498*

The term “genocide,” whether in the context of a judicial or fact-finding process or in a more political context, must still be used in a careful assessment based on the existing legal

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<sup>496</sup> International Commission of Inquiry on Darfur, *op cit*, para 493 “For instance, in the case of genocide a person intending to murder a set of persons belonging to a protected group, with the specific intent of destroying the group (in whole or in part), may be motivated, for example, by the desire to appropriate the goods belonging to that group or set of persons, or by the urge to take revenge for prior attacks by members of that groups, or by the desire to please his superiors who despise that group”

<sup>497</sup> This holds true beyond the issue of whether the type of standards of proof must be different when considering state responsibility or when assessing of international individual criminal responsibility for genocide. With respect to ICJ ruling in the Genocide Convention case this question raised significant discussion. An author criticized the fact that “behind the formula of ‘fully conclusive evidence’, when dealing with Articles II and III of the Genocide Convention the Court adopted for all practical purposes a typical criminal law ‘beyond any reasonable doubt’ standard of proof. See Andrea Gattini, ‘Evidentiary Issues in the ICJ’s Genocide Judgment,’ *Int Criminal Justice* 2007, Vol 5 pp 889-904. See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Judgment of 26 February 2007, I C J 2007 Reports, para 189. In case such intent is not established, the qualification of genocide cannot be ascertained. In the case of Darfur, the Commission of inquiry “concluded that the Government of the Sudan has not pursued a policy of genocide. Arguably, two elements of genocide might be deduced from the gross violations of human rights perpetrated by Government forces and the militias under their control. These two elements are, first, the *actus reus* consisting of killing, or causing serious bodily or mental harm, or deliberately inflicting conditions of life likely to bring about physical destruction, and, second, on the basis of a subjective standard the existence of a protected group being targeted by the authors of criminal conduct. However, the crucial element of genocidal intent appears to be missing, at least as far as the central Government authorities are concerned. Generally speaking the policy of attacking, killing and forcibly displacing members of some tribes does not evince a specific intent to annihilate in whole or in part, a group distinguished on racial, ethnic, national or religious grounds.” International Commission of Inquiry on Darfur, *op cit* p 4

<sup>498</sup> International Commission of Inquiry on Darfur, *op cit*, para 502

definition and on facts. In the light of this brief overview of the legal definition of genocide, the allegations made in the context of the conflict in Georgia were unsupported by clear factual evidence, both at the time they were made and at the time of writing this Report.

In its replies to the question asked by the IIFFMCG with respect to allegations of genocide, the Russian Federation first noted the following:

*“References made by the Russian side to acts of genocide perpetrated against the Ossetian people by the Georgian side in August 2008 should be viewed in the context of the preliminary information that was received during the first hours of the conflict and prior to it. As far as we can judge, there were indeed reasons to believe that the actions undertaken by the Georgians were aimed at exterminating fully or partially the Ossetian ethnic group as such (large-scale and indiscriminate use of heavy weapons and military equipment by the Georgian side against the civilian population of Ossetia on the night of 7 to 8 August, a proactive ‘anti-Ossetian’ policy conducted by the Georgian government).”<sup>499</sup>*

This statement contrasts strikingly with the legal conditions and the type of evidence required under international law in order to qualify certain acts as genocide. While the facts may be no less serious even where the term is not used, declarations that do use the term “genocide” must rely on a careful and timely analysis of facts. Such a cautious approach seems to be favoured by the Russian Federation itself in its replies to the IIFFMCG when it further states that “the Inquiry Committee appointed by the Russian Federation Prosecutor-General’s Office is about to finalise its investigation” and that “once all of the available pieces of evidence are analysed a decision will be taken with respect to a specific legal determination as well as whether it would be expedient to submit the materials of this criminal case to a court of law.”<sup>500</sup>

The question remains whether, one year after the conflict, the available evidence supports the allegations of genocide. Although the Russian Federation made the aforementioned nuanced statements, it also reaffirmed that “at the same time it should also be noted that crimes committed by Georgian paramilitary forces in the territory of South Ossetia were mentioned in numerous transcripts detailing testimonies of victims and witnesses and shown on photographic materials” and that “the foregoing materials contain detailed information proving in essence that there were instances of genocide against ethnic Ossetians and military

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<sup>499</sup> Russia, Responses to Questions Posited by the IIFFMCG (Humanitarian Aspects), p. 1.

<sup>500</sup> *Idem.*

crimes were perpetrated by the Georgian side.”<sup>501</sup> When meeting with the IFFMCG’s experts in Moscow in July 2009, the representatives of the Investigative Committee of the General Prosecutor’s Office of Russia reiterated the conclusion that in their view, based on the same elements contained in the Russian replies to the IFFMCG’s questionnaire, genocide has been committed against ethnic South Ossetians.<sup>502</sup>

Georgia, on the contrary, claimed that “according to publicly available evidence (witness statements), not only genocidal intent but even discriminatory intent was missing among Georgian soldiers during the ground operations.”<sup>503</sup>

As described the alleged facts identified by the Russian Federation do not establish the “specific intent” required for acts to be qualified as genocide. Here are the main reasons that prevent the IFFMCG from reaching the same conclusion as Russia in the light of the facts presented.

These facts, taken separately or together, do not substantiate the specific intent. First, the destruction of buildings predominantly used by South Ossetia may have been the result of combat. Second, the indiscriminate use of artillery systems, if proved, would actually not be

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<sup>501</sup> *Ibid*, p 2 The replies provided by the Russian Federation further refer inter alia to the following alleged facts documented and established by the Inquiry Committee appointed by the Russian Federation Prosecutor General’s Office:

Figures of victims (with “162 civilian residents – nationals of South Ossetia [who] were murdered and 255 suffered various degrees of injuries”), accounts of destruction with for example “655 residential buildings destroyed and torched by state-of the art weapons systems used by Georgia against Tskhinvali and other communities in South Ossetia, 2139 residential buildings and facilities used predominantly by ethnic Ossetians were partially destroyed”, “records of inspections conducted on locations, transcripts detailing testimonies of witnesses and victims as well as information made available by the General Staff of the Russian Federation Armed Forces backed by documents and electronic media captured during the peace enforcement operation in Georgia (detailed aerial photographs of local terrain and tactical maps, military staff plans, orders and other documents)” that showed according to Russia that “the [General] Staff of the Georgian Armed Forces had developed plans to invade the territory of South Ossetia and Abkhazia well in advance, [i]n particular, these documents envisaged that villages populated predominantly by ethnic Ossetians were to be destroyed”, “indiscriminate artillery systems were to be used during the offensive, including multiple launch rocket systems that cause massive civilian casualties when used in populated areas and inflict large-scale damage to vital civilian facilities”, “instances where in the course of the military operation Georgian armed forces used cluster munitions and 500 kg air-delivered bombs against the civilian population”, “more than 36 thousand ethnic Ossetians left the territory of South Ossetia between 7 and 16 August 2008”, “an Action Plan designed to block and poison water supplies to Tskhinvali and adjacent communities during the military operation [that] has recently been annexed to the materials of the criminal case currently under review by the Inquiry Committee” (pp 2 5). The Russian Federation concluded that “the foregoing facts give us reasons to believe that the Georgian side had a deliberate plan to destroy Ossetians as an ethnic group” (p 5).

<sup>502</sup> Meeting with the representatives of the Investigative Committee of the General Prosecutor’s Office of Russia, Moscow, 29 July 2009.

<sup>503</sup> Georgia, Responses to Questions Posited by the IFFMCG (Humanitarian Aspects), provided to the IFFMCG on 5 June 2009, p 3

an element demonstrating a specific intention but would rather show the absence of such intent, precisely because they are used in an indiscriminate manner, which could make it difficult or impossible to target a particular group. Third, the nature or type of a weapon is not sufficient to indicate a specific intent to destroy a protected group.<sup>504</sup> Fourth, as stressed by the ICJ, a bombardment in itself is not sufficient to prove the specific intent.<sup>505</sup> Nor does the report issued by the Public Committee for the Investigation of War Crimes in South Ossetia, and identified as proving the genocide against South Ossetians, contain evidence of this specific intent<sup>506</sup>

More generally, various sources contested the allegations of genocide, questioning whether the available evidence was sufficient to support them. The Rapporteur of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe noted that “the facts do not seem to support the genocide allegations against Georgia: the number of Ossetian (civilian) victims of the Georgian assault (‘thousands’ according to early numbers cited by the Russian authorities relying on ‘provisional data’) seem to be much exaggerated; now it appears that most Ossetian victims (whose number is also much lower now) were combatants. Individual atrocities such as those described in certain Russian media and submissions to the Committee of Ministers would be serious crimes in their own right, but not attempted genocide.”<sup>507</sup> Human Rights Watch questioned the reliability of the investigation conducted by the Investigative Committee of the Russian Federation Prosecutor’s Office.<sup>508</sup>

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<sup>504</sup> As underlined by the ICJ in its Nuclear Weapons Advisory Opinion “in the view of the Court, it would only be possible to arrive at such a conclusion after having taken due account of the circumstances specific to each case.” Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I C J Reports 1996 para 26

<sup>505</sup> Legality of Use of Force (Serbia and Montenegro v Belgium), Request for the Indication of Provisional Measures, Order, 2 June 1999 para 40

<sup>506</sup> Public Committee for Investigation of War Crimes in South Ossetia, South Ossetia – Chronicle of Contract Murder, <http://www.ossetia-war.com/book>

<sup>507</sup> Parliamentary Assembly of the Council of Europe (PACE), Committee on Legal Affairs and Human Rights, “The consequences of the war between Georgia and Russia,” Opinion by rapporteur Christos Pourgourides, Doc 11732 rev, 1 October 2008, para 14, available at <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11732.htm> See also PACE, Political Affairs Committee, “The consequences of the war between Georgia and Russia,” Opinion by the rapporteur Mr Lindblad, Doc 11731, 1 October 2008, para 17, available at <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11731.htm>

<sup>508</sup> This organisation referred to two cases where atrocities were reported by the investigators to have been committed in Tsinagari and in Khetagurovo, but were then attributed by the Russian authorities to two other villages, respectively Dmenisi and Sarabuki. A number of inhabitants of those villages were interviewed by HRW but said they never heard about such facts. HRW stated that such elements “raise serious concerns about the accuracy and thoroughness of the investigation.” *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, op cit, pp 71-72

In view of the above, the IFFMCG expresses serious doubts about the allegations of genocide made against the Georgian authorities. While this could not be construed as interfering with a pending determination still under review before judicial or investigative bodies, such as the ICC Prosecutor's Office,<sup>509</sup> or within the Investigative Committee of the Russian Federation Prosecutor's Office, it is the Mission's opinion that such allegations were made too prematurely and lacked certain elements required under international law. Given the nature and gravity of such a crime, there is an imperative need for all sides to conduct informative and educational initiatives to counteract the negative impact of such accusations among the population. This is particularly significant when considering that some violations of IHL and HRL during the conflict and its aftermath were motivated by referring to "thousands of civilian casualties in South Ossetia," as reported by Russian federal TV channels."<sup>510</sup>

*In the light of the above, the Mission believes that to the best of its knowledge the allegations of genocide in the context of the armed conflict between Russia and Georgia and its aftermath are not founded in law nor substantiated by factual evidence.*

*The Mission suggests that measures should be taken to ensure that unfounded allegations of genocide do not further fuel tensions or revengeful acts. Educational and informative initiatives in this respect should be envisaged.*

## **V. Main findings and observations under IHL and HRL**

### **a) Main Findings**

Two general findings should be stressed before spelling out in detail the conclusions of this Chapter, as both are central to any measure aimed at addressing the situation:

First, two categories of conduct seem to emerge from the research, each on a different scale. On the one hand were acts perpetrated within the framework of the hostilities, such as violations of the law on the conduct of hostilities and, in a small number of cases, summary executions. Of course such acts can still be qualified as violations of IHL. At the same time there were also acts on a much larger scale, such as the burning and looting of villages, which

<sup>509</sup> "ICC Prosecutor Confirms Situation in Georgia under Analysis," International Criminal Court press release, August 20, 2008, available at <http://www.icc-cpi.int/press/pressreleases/413.html>

<sup>510</sup> HRW stressed that "some of the local residents interviewed by Human Rights Watch justified the torching and looting of the ethnic Georgian enclave villages by referring to 'thousands of civilian casualties in South Ossetia,' as reported by Russian federal TV channels." See HRW, *Up In Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, op cit, p 74

were committed during the conflict but, most importantly, also continued for weeks after the cease-fire.

Secondly, it is critical to realise and take into account the influence of and role played in the August 2008 conflict by the legacies of past abuses (whether from the 1990s conflicts or later incidents), both in fuelling allegations of violations and as motives – notably revenge – that help explain substantiated violations. This factor is crucial if measures conducive to a lasting peace are to be introduced.

While the first main finding is highly sensitive and would carry heavy implications in terms of the predictable reactions of the parties, it is crucial to be aware of this difference and to take it into account when considering lessons learned and prospects for the future.

Moreover this difference could also have an impact on the formulation of lessons learned, which the IIFMCG would like to draft. Indeed, while certain violations call for accountability and compensation/reparation measures, others require more detailed, tailored measures, especially as violations are still occurring at the time of writing the Report.

**Here are the main findings under IHL and HRL:**

- Allegations of genocide against Ossetians are not substantiated by evidence.
- There is serious and concurring evidence to indicate that ethnic cleansing has been committed against ethnic Georgians in South Ossetia, through forced displacement and the destruction of property.
- Violations of IHL and HRL were committed by Georgia, Russia and South Ossetia. Very few examples of violations by Abkhaz forces were documented during the conflict or in its aftermath.
- While the August 2008 conflict lasted only five days, numerous violations of IHL were committed during this period by Georgia, Russia and South Ossetia.
- Very serious violations of IHL and HRL were committed by South Ossetian forces, armed groups and individuals after the cease-fire.
- Violations mainly concern IHL on the conduct of hostilities, treatment of persons and property and forced displacement.



- More specifically, violations include indiscriminate attacks and a lack of precautions by Georgia and Russia; a widespread campaign of looting and burning of ethnic Georgian villages by South Ossetia, as well as ill treatment, beating, hostage-taking and arbitrary arrests; and the failure by Russia to prevent or stop violations by South Ossetian forces and armed groups and individuals, after the cease-fire, in the buffer zone and in South Ossetia.
- The situation of the ethnic Georgians in the Gali District following the conflict and still at the time of writing this Report gives cause for serious concern under HRL.
- The situation of the ethnic Georgians in the Akhgori region also raises serious concerns, as many continue to leave this region at the time of writing.
- Issues relating to insecurity and the destruction of property are key obstacles to the return of displaced persons, in particular the return of ethnic Georgians to South Ossetia.
- Dangers posed by explosive remnants of war, notably unexploded munitions from cluster bombs, also need to be addressed.
- Measures still need to be taken by all sides to ensure accountability and reparation for all violations.

Regarding areas of concern, the situation of IDPs should be highlighted. As stressed by the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, three elements must be in place for successful return operations, which will also lead to a stabilisation of the situation: “(i) ensuring safety for the life and limb of returnees, (ii) returning property to the displaced and reconstructing their houses, and (iii) creating an environment that sustains return and reintegration, that is, which allows life under adequate conditions, including income-generating opportunities, non-discrimination and possibilities for political participation.”<sup>511</sup>

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<sup>511</sup> Walter Kalin, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, “*Legal aspects of the return of internally displaced persons and refugees to Abkhazia, Georgia*,” 29 November 2007.

## b) Lessons Learned

Six main lessons learned can be outlined

- The conduct of hostilities in populated areas requires particular precautions in order to minimise civilian losses and damage to civilian property. The use of artillery or cluster bombs does not allow IHL to be respected in such areas
- Georgia and Russia should sign the Convention on Cluster Munitions of 30 May 2008.
- Given the link between the violations committed in past conflicts and during the August 2008 conflict:

first, there is a need for education and information measures to dismiss unfounded allegations of genocide against Ossetians which could fuel more tension between the communities;

second, there is a vital need for accountability and reparation measures in relation to the August 2008 conflict in order to address violations committed and defuse further resentment among the communities;

finally, comprehensive transitional justice approaches should be envisaged, both to cover the August 2008 conflict and its links to past conflicts and to address the legacy of past abuses, in order to build a lasting peace and allow victims from all sides to express their needs and views. In this regard, the IFFMCG should embrace and back the proposals outlined by the International Center for Transitional Justice in its recent report entitled *Transitional Justice and Georgia's Conflicts Breaking the Silence*.<sup>512</sup>

- Measures to ensure the protection of the rights of minorities should be taken by all sides to defuse tension and avoid fuelling new resentments.
- Issues of property rights, in relation to this conflict and also to past conflicts, should be addressed.
- The issue of the status of South Ossetia and Abkhazia remains as salient as ever. This is not only a political and diplomatic question but also a legal and practical one. In this regard the "Law on Occupied Territories of Georgia" adopted by the Georgian Parliament on 23 October 2008 raises certain issues that need to be dealt with by the Georgian

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<sup>512</sup> Magdalena Frichova, *Transitional Justice and Georgia's Conflicts Breaking the Silence*, International Center for Transitional Justice, May 2009, available at [www.ictj.org/ICTJFrichova\\_GEO\\_BreakingtheSilence\\_pa2009.pdf](http://www.ictj.org/ICTJFrichova_GEO_BreakingtheSilence_pa2009.pdf)

authorities, as recommended by the European Commission for Democracy through Law (Venice Commission) in its Opinion of March 2009.<sup>513</sup> When meeting with the IIFMCG in June 2009, representatives of the Ministry of Foreign Affairs of Georgia indicated that the Parliament intended to look at the recommendations of the Venice Commission at the end of summer 2009, to improve the Law.

### **c) Further preventive measures and recommendations**

The authorities of Abkhazia and South Ossetia are encouraged to commit themselves formally to respecting and ensuring the implementation of the Geneva Conventions and their Additional Protocols.

Additionally or alternatively, the parties should endeavour to sign special agreements on specific humanitarian issues (such as protected zones, or displaced persons), or on bringing into force in their relationship the entirety of the Geneva Conventions and Protocols, as for example envisaged in Article 3(2) of the Geneva Conventions.

Once the relevant international instruments have been acceded to, the principles and rules they embody must be incorporated into domestic law and practice. This first means thinking about and adapting the appropriate domestic regulations, recommendations, procedures and practical actions. Such measures have already been adopted in the region, but they may not be fully satisfactory and should in any case be re-examined in the light of the lessons learned from the August 2008 conflict. Here are some specific practical measures whose adoption is highly recommended:

All the authorities concerned should, already in peacetime, plan the location of military establishments in areas as remote as possible from civilian population concentrations and civilian buildings, in particular hospitals, schools and cultural sites.

As envisaged in particular by the Geneva Conventions and Protocols, the authorities are invited to mark relevant establishments and transports with the specific protection signs/emblems (i.e. in particular: the red cross for medical installations; a shield, pointed below, per saltire blue and white, for cultural goods; and three bright orange circles on the same axis for works and installations containing dangerous forces).

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<sup>513</sup> European Commission for Democracy through Law (Venice Commission) Opinion on the Law on Occupied Territories of Georgia, Adopted by the Venice Commission at its 78<sup>th</sup> Plenary Session (Venice, 13-14 March 2009), CDL-AD(2009)015, Strasbourg, 17 March 2009, Opinion No. 516 / 2009.

It is also extremely useful to identify – already in peacetime – a service, which may be the local Red Cross Society, entrusted in particular with the tasks of collecting, registering and transmitting information about missing, displaced and dead persons, separated family members and prisoners.

For IHL to be respected in time of armed conflict, the principles need to be familiar to everybody and the more specific rules known to those who will have to implement them in practice. This of course also goes for human rights standards and rules. We know that efforts to achieve this are being made in Russia and Georgia. They should indeed be continued and strengthened. Similar steps should be taken in Abkhazia and South Ossetia. Basic knowledge should be the concern of everybody. However, more advanced dissemination, education and training should target particular sectors of the population, such as civil servants, journalists and the younger generations through secondary-school and university programmes. But, obviously, the most important target population are the arms-bearers (i.e. armed and police forces, militias, etc.). They must be properly instructed, and IHL requirements must be incorporated into their “rules of engagement.” Cooperation and support programmes for dissemination, education and training in IHL and HRL with NGOs, international organisations or third States, such as those already initiated by the ICRC or the OSCE, are highly recommended.

The Fact-Finding Mission supports the following recommendations made by some representatives of the relevant UN agencies and regional and nongovernmental organisations, as essential elements conducive to a lasting peace in the region:

- The Commissioner for Human Rights of the Council of Europe has “call[ed] upon all concerned parties to allow free and unhindered access for international organisations to all the conflict-affected areas (including those which were indirectly affected), from all directions, at all times, so that the population can be provided with all the necessary humanitarian assistance and human rights support and the work of confidence-building can proceed.”<sup>514</sup>
- The Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights of the OSCE has recommended that all parties to the conflict “respect fully, within their respective jurisdictions, all OSCE human rights commitments and other

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<sup>514</sup> Commissioner for Human Rights of the Council of Europe, Report on human rights issues following the August 2008 armed conflict, 15 May 2009, CommDH(2009)22, para 75.

international human rights obligations. Special attention should be devoted to ensuring that conditions are created for members of minority communities to enjoy all their human rights and freedoms.”<sup>515</sup>

- The Representative of the UN Secretary-General on the human rights of internally displaced persons has “call[ed] on all parties to take all necessary steps to ensure persons displaced by the recent and past conflicts are able to enjoy their right to return voluntarily to their former homes in safety and dignity, and to guarantee recovery of their property and possessions. Where such recovery is not possible, they should obtain appropriate *compensation or another form of just reparation.*”<sup>516</sup>
- The International Center for Transitional Justice has noted that “fifteen years of abortive efforts at conflict resolution indicate that political settlements in the region could be difficult to achieve without addressing demands for justice and the need for reconciliation.”<sup>517</sup>
- The Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights of the OSCE has recommended that all parties to the conflict “undertake a thorough and genuine investigation of allegations of, and prosecute, human rights violations and other unlawful acts committed during the conflict by persons under their jurisdiction or control. Any individuals believed to have been involved in human rights violations or other serious crimes should be held to account and prosecuted in accordance with the law. The parties should co-operate in exchanging information and evidence for such prosecutions. In addition to holding individuals accountable, there should be full public disclosure of the facts surrounding human rights violations during the conflict.”<sup>518</sup>
- The Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights of the OSCE has also noted that “bearing in mind the obligation to provide remedies for human rights violations contained in the ECHR and other international human rights conventions, and following the United Nations Basic Principles and

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<sup>515</sup> Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights, OSCE, *Human Rights in the War-Affected Areas following the Conflict in Georgia*, 27 November 2008, p. 77.

<sup>516</sup> Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kalin, A/HRC/10/13/Add.2, 13 February 2009, para. 59.

<sup>517</sup> Magdalena Frichova, *Transitional Justice and Georgia’s Conflicts: Breaking the Silence*, International Center for Transitional Justice, May 2009, p. 39, available at: [www.ictj.org/.../ICTJFrichova\\_GEO\\_BreakingtheSilence\\_pa2009.pdf](http://www.ictj.org/.../ICTJFrichova_GEO_BreakingtheSilence_pa2009.pdf)

<sup>518</sup> Human Rights Assessment Mission of the Office for Democratic Institutions and Human Rights, OSCE, *Human Rights in the War-Affected Areas following the Conflict in Georgia*, 27 November 2008, p. 76.

Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, the parties should ‘establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.’ Reparations should include the restitution of victims to their situation before the violation, compensation for economic damage suffered, and rehabilitation including medical and psychological care. Any compensation programme should take gender considerations into account to ensure that women heads of households and other female victims have equal access to restitution, compensation and rehabilitation.”<sup>519</sup>

- The International Crisis Group noted that both investigation and prosecution “serve multiple purposes, not the least of which is to correct misinformation on the scale and nature of atrocities, when appropriate, so as to reduce the likelihood of revenge violence and to promote longer-term reconciliation.”<sup>520</sup>
- “The Commissioner for Human Rights of the Council of Europe has also taken note of the decision, reached by the parties at the Geneva talks on 17 February 2009, to establish a joint incident prevention mechanism. The aim of the mechanism is to promote stability and security by providing a timely and adequate response to security incidents and/or criminal activities, ensuring the security of vital installations and infrastructure, as well as ensuring the effective delivery of humanitarian aid. Under the agreement, the security forces of all parties to the conflict and international monitors (UN, EU and OSCE) are to meet at least every week, or more often if needed, and may agree to conduct joint visits. The Commissioner considers that this mechanism has the potential to contribute to improving security in the conflict-affected areas, and calls upon all of the actors to implement it in practice and in good faith.”<sup>521</sup>

Many of these measures entail cooperation between all the parties; dealing with such issues in a transparent and equal manner, with concrete solutions, may lay the foundations for dialogue and understanding.

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<sup>519</sup> *Idem.*

<sup>520</sup> International Crisis Group, *RUSSIA VS GEORGIA: THE FALLOUT*, Europe Report No.195 – 22 August 2008, p. 29.

<sup>521</sup> Commissioner for Human Rights of the Council of Europe, Report on human rights issues following the August 2008 armed conflict, 15 May 2009, CommDH(2009)22, para. 36.

## VI Cases before International Courts

The August 2008 conflict gave rise to a number of complaints, both individual and interstate, which have been lodged with the available courts.

It is crucial to consider the findings of the IFFMCG against this background. Given the cases pending, the report of the IFFMCG, if made public, will be used extensively by all parties and by the relevant courts. So, in addition to providing victims and parties with a balanced analysis of the August 2008 conflict and its aftermath, it is also advisable for the Report to be made public in order to provide information in the context of judicial proceedings.

The first case in relation to the August 2008 conflict regards the proceedings instituted by Georgia before the European Court of Human Rights on 11 August 2008 alleging that the Russian Federation was violating the European Convention on Human Rights. On 6 February 2009, in accordance with Article 33 of the European Convention on Human Rights, Georgia lodged an inter-state application against the Russian Federation with the European Court of Human Rights.

There are also a number of applications from individuals that have been or are to be filed with the European Court of Human Rights. On 14 January 2009, for example, the Court announced that it had examined seven applications against Georgia, and that it had received a total of more than 3 300 cases from South Ossetians and Russians “with a similar factual background.”<sup>522</sup> Several Georgian nongovernmental organizations are also providing assistance to ethnic Georgians in bringing cases to the Court.

Another interstate complaint relating to the August 2008 conflict has been lodged by Georgia against the Russian Federation in the International Court of Justice (ICJ). On 12 August 2008 Georgia instituted proceedings against the Russian Federation, and on 14 August it submitted a request to the ICJ for the indication of provisional measures. This case is based on the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). On 15 October 2008 the ICJ issued an order on provisional measures calling on Russia and Georgia to observe their legal obligations under the ICERD to prevent “irreparable prejudice”

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<sup>522</sup> European Court of Human Rights, “Seven applications against Georgia Concerning Hostilities in South Ossetia”, Press release by the Registrar, 14 January 2009, available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=&sessionId=18135459&skin=hudoc-pr-en>

to the rights of persons before the court could rule on the merits of the case.<sup>523</sup> This case is currently pending before the Court.

While there are currently no cases pending before the International Criminal Court, on 20 August 2008 the ICC Prosecutor confirmed that the situation in Georgia is under analysis by his Office.<sup>524</sup>

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<sup>523</sup> Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation), International Court of Justice, General List 140, Request for the Indication of Provisional Measures, October 15, 2008

<sup>524</sup> ICC Press Release, "ICC Prosecutor confirms situation in Georgia under analysis," ICC OTP-20080820 PR346, 20 August 2008  
[http://www2.icc-cpi.int/menus/icc/press%20and%20media/press%20releases/press%20releases%20\(2008\)/icc%20prosecutor%20confirms%20situation%20in%20georgia%20under%20analysis?lan=en-GB](http://www2.icc-cpi.int/menus/icc/press%20and%20media/press%20releases/press%20releases%20(2008)/icc%20prosecutor%20confirms%20situation%20in%20georgia%20under%20analysis?lan=en-GB)





GEORGIA/RUSSIA

# Up In Flames

Humanitarian Law Violations and Civilian Victims  
in the Conflict over South Ossetia

HUMAN  
RIGHTS  
WATCH





## **Up In Flames**

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# Up In Flames

## Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia

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# Map of South Ossetia





## Executive Summary

### Overview

The armed conflict over South Ossetia lasted one week in August 2008 and will have consequences for lifetimes and beyond. The conflict and its aftermath have seen lives, livelihoods, homes, and communities devastated in South Ossetia and bordering districts of Georgia. A significant casualty of the conflict was all sides' respect for international humanitarian law.

South Ossetia is a breakaway region of Georgia that shares a border and has very close ties with Russia. The armed conflict, in the making since spring 2008, started August 7 with Georgia's military assault in South Ossetia and Russia's military response the following day, and lasted until a ceasefire on August 15, with Georgian forces in retreat and Russian forces occupying South Ossetia and, temporarily, undisputed parts of Georgia.<sup>1</sup> The week of open conflict, and the many subsequent weeks of rampant violence and insecurity in the affected districts, took a terrible toll on civilians, killing hundreds, displacing tens of thousands, and causing extensive damage to civilian property. Today, there is an acute need for accountability for all perpetrators of violations of human rights and humanitarian law, and for security conditions to allow all displaced persons to return in safety and dignity to their homes.

Human Rights Watch carried out a series of research missions in Russia and Georgia, including in South Ossetia, focusing on violations by all parties to the conflict. We interviewed more than 460 victims, witnesses, and others, and looked at reporting (and misreporting) of the conflict in Russia and in Georgia. The international legal framework within which Human Rights Watch examined the conflict includes international humanitarian law—chiefly the Geneva Conventions—relating to the conduct of hostilities, humane treatment, and occupation; and international human rights law, including international law concerning displaced persons and the right to return.

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<sup>1</sup> The term 'undisputed' is used to refer to any part of Georgia, except South Ossetia and Abkazia, both areas which are subject to dispute over their sovereignty and have made bids for independence.

Human Rights Watch found:

- In a number of instances Georgian forces used indiscriminate and disproportionate force in artillery assaults on South Ossetia, and in some cases used disproportionate force in their ground assault. The majority of these instances derived from Georgia's use of multiple rocket launching systems, which cannot distinguish between civilian and military objects, in areas populated by civilians. Many civilians were killed or wounded.
- In a number of instances in South Ossetia and in undisputed Georgian territory Russian forces violated international humanitarian law by using aerial, artillery, and tank fire strikes that were indiscriminate, killing and wounding many civilians.
- Cluster munitions were used by Russian and Georgian forces, causing civilian deaths and putting more civilians at risk by leaving behind unstable "minefields" of unexploded bomblets. Their use and impact on civilians in the conflict demonstrates why in December 2008, 94 governments signed up to a comprehensive treaty to ban cluster munitions, which had been negotiated just months before the conflict commenced.
- As an occupying power in Georgia, Russia failed overwhelmingly in its duty under international humanitarian law to ensure, as far as possible, public order and safety in areas under its effective control, instead allowing South Ossetian forces, including volunteer militias, to engage in wanton and widescale pillage and burning of Georgian homes and to kill, beat, rape, and threaten civilians.
- After Georgian forces withdrew from South Ossetia on August 10, South Ossetian forces over a period of weeks deliberately and systematically destroyed ethnic Georgian villages in South Ossetia that had been administered by the Georgian government. They looted, beat, threatened, and unlawfully detained numerous ethnic Georgian civilians, and killed several, on the basis of the ethnicity and imputed political affiliations of the residents of these villages, with the express purpose of forcing those who remained to leave and ensuring that no former residents would return. From this, Human Rights Watch has concluded that South Ossetian forces attempted to ethnically cleanse these villages. Approximately 22,000 villagers, the majority of whom had fled South Ossetia before the conflict started, remain displaced.
- In committing this violence, South Ossetian forces egregiously violated multiple obligations under humanitarian law, for which there must be individual criminal accountability and prosecution for war crimes where appropriate. To the extent that a number of these prohibited acts were committed as part of a widespread or

systematic attack directed against the civilian population, they may be prosecuted as crimes against humanity.

- Residents of Akhgori district—an area in the east of South Ossetia populated mostly by ethnic Georgians and currently occupied by Russian forces—face threats and harassment by militias and anxiety about a possible closure of the district’s administrative border with the rest of Georgia. Both factors have caused great numbers of people to leave their homes for undisputed Georgian territory.
- During the time when Russian forces occupied Georgian territory south of the South Ossetian administrative border, Ossetian militias looted, destroyed, and burned homes on a wide scale, deliberately killed at least nine civilians, and raped at least two. Russian forces were at times involved in the looting and destruction, either as passive bystanders, active participants, or by providing militias with transport into villages.
- Georgian forces beat and ill-treated at least five of the 32 Ossetians detained in August in the context of the armed conflict.
- After the withdrawal of Georgian forces from South Ossetia, South Ossetian forces, at times together with Russian forces, arbitrarily detained at least 159 ethnic Georgians. South Ossetian forces killed at least one detainee and subjected nearly all of them to inhuman and degrading treatment and conditions of detention. They also tortured at least four Georgian prisoners of war and executed at least three. All of these acts are war crimes, for which individual criminal accountability must be established.

This report measures each party’s compliance with obligations under international law, rather than measure it against the conduct of the other party. Exposing violations committed by one party does not excuse or mitigate violations committed by another party. Which party started the conflict has no bearing on parties’ obligations to adhere to international humanitarian and human rights law and to hold violators accountable. Those seeking answers to questions about who committed worse, or more violations, or who bears responsibility for starting the conflict, will not find them in this report.

\* \* \*

Human Rights Watch urges the Georgian and Russian governments to investigate and hold accountable those from their respective forces responsible for international humanitarian law violations, including war crimes. As it exercises in effective control over South Ossetia, Russia should investigate and hold accountable South Ossetian forces responsible for war crimes and other violations of international humanitarian and human rights law. The Russian and Georgian governments should provide compensation for civilian damage and

destruction caused by violations of international humanitarian law for which they are respectively responsible.

The permanent forced displacement of thousands of people cannot be countenanced. As it exercises effective control over South Ossetia, Russia has an obligation to provide security to all persons living there, regardless of ethnicity; this is especially urgent in Akhalkgori district. Ethnic Georgians displaced from South Ossetia should be allowed to voluntarily return. Russia should publicly promote and implement the right of all persons displaced by the conflict, without regard to their ethnic background or imputed political affiliations, to return and live in their homes in South Ossetia in safety and dignity. Russia should prevail on South Ossetian authorities to publicly acknowledge this and to facilitate returns.

### **Brief Chronology of the Armed Conflict**

After months of escalating tensions between Russia and Georgia and following skirmishes between Georgian and South Ossetian forces, on August 7, 2008, Georgian forces launched an artillery assault on Tskhinvali, South Ossetia's capital, and outlying villages. Assaults by Georgian ground and air forces followed. Russia's military response began the next day, with the declared purpose of protecting Russian peacekeepers stationed in South Ossetia and residents who had become Russian citizens in recent years. Beginning on August 8, Russian ground forces from the 58th Army crossed into South Ossetia and Russian artillery and aircraft hit targets in South Ossetia and undisputed Georgian territory. South Ossetian forces consisting of several elements—South Ossetian Ministry of Defense and Emergencies, South Ossetian Ministry of Internal Affairs, South Ossetian Committee for State Security, volunteers, and Ossetian peacekeeping forces—also participated in the fighting.

Georgian commanders ordered their troops to withdraw from South Ossetia on August 10, and two days later Russian forces moved into and occupied undisputed Georgian territory south of the administrative border with South Ossetia, including the city of Gori. In a separate operation from the west, moving through the breakaway region of Abkhazia (also supported by Russia), Russian forces also occupied the strategically important cities of Poti, Zugdidi, and Senaki in western Georgia.

Russia said that its forces completed their withdrawal from undisputed Georgian territory on October 10, in accordance with an August 15 ceasefire agreement between Russia and Georgia brokered by the French European Union presidency. The Georgian government disputes this, pointing to Russian forces' presence in Perevi, a village on the South Ossetian administrative border, as well as Akhalkgori.

## Violations by Georgian Forces

### *Indiscriminate and disproportionate use of force*

During the shelling of Tskhinvali and neighboring villages and the ground offensive that followed, Georgian forces frequently failed to abide by the obligation to distinguish between military targets that can be legitimately attacked, and civilians, who may not be targeted for attack. This was compounded by Georgia's failure to take all feasible measures to avoid or minimize civilian casualties. While Human Rights Watch found no evidence that Georgian forces sought to deliberately target civilians, from our research Human Rights Watch concluded that Georgian forces demonstrated disregard for the protection of civilians during the shelling campaign, resulting in large-scale damage to civilian objects and property, and civilian casualties.

The sole fact of civilian casualties or destruction of civilian objects is not an indication that a violation of international humanitarian law occurred. What is important to seek to determine is whether there was evidence of a legitimate military target in the attack area at the time, and how that target was attacked. Circumstances did not always allow such a determination. Yet many of the attacks on South Ossetia during the brief conflict can be clearly attributed to Georgian forces—based on witness accounts, the direction of the attack, and the timing of the damage in light of the advance of Georgian forces.

In many cases Human Rights Watch researchers found no evidence of military objectives in the area under attack, while in many others we found that Georgian attacks struck legitimate military targets, causing combatant and, in some cases, collateral civilian casualties. In some cases we investigated, evidence suggests that the Georgian attacks against lawful military objectives may have been disproportionate, as the expected loss of civilian life or destruction of civilian property would have exceeded any anticipated military gain.

The massive shelling of Tskhinvali and neighboring villages by Georgian forces was indiscriminate because, at the very least, the Georgian military effectively treated a number of clearly separated and distinct military objectives as a single military objective in an area that contained a concentration of civilians and civilian objects. In a number of artillery attacks Georgian forces failed to take all feasible precautions to minimize loss of life or injury to civilians.

Georgia's use of multiple rocket launching systems, such as BM-21s ("Grads") in civilian populated areas violated international humanitarian law's principle of distinction. These

weapons cannot be targeted with sufficient precision to be accurate against military targets, and their broad area effect makes their use incompatible with the laws of war in areas where civilians or civilian objects (such as schools or hospitals) are located. The use of such weapons in populated areas is indiscriminate by nature and thus prohibited under international humanitarian law.

Georgian forces attacked vehicles in which many Ossetian civilians were trying to flee the conflict zone on August 8–10, which resulted in death and injuries. The cases Human Rights Watch describes in this report indicate that—in those cases at least—disproportionate force was used and precautions were not taken to avoid or minimize loss of civilian life.

### *Conduct of ground troops*

During Georgian forces' ground offensive there were also attacks which, Human Rights Watch's investigation suggests, failed to respect the principle of proportionality: attacks such as when Georgian tanks targeted buildings in which Ossetian fighters may at times have been present, but where there were also many civilians sheltering in the basement. Several Ossetian civilians reported looting by Georgian ground forces but otherwise generally did not report other specific incidents of abusive treatment during the ground offensive by Georgian troops. Those detained by Georgian forces, however, reported they were ill-treated when taken into custody.

## **Violations by Russian Forces**

### *Indiscriminate and disproportionate use of force*

Russian forces attacked areas in undisputed Georgian territory and in South Ossetia with aerial, artillery, and tank fire strikes, some of which were indiscriminate, killing and injuring civilians. With regard to many aerial and artillery attacks Russian forces failed to observe their obligations to do everything feasible to verify that the objects to be attacked were military objectives (and not civilians or civilian objects) and to take all feasible precautions to minimize harm to civilians. In one case, Russian forces attacked medical personnel, a grave breach of the Geneva Conventions and a war crime.

As noted above, the mere fact of civilian casualties or destruction of civilian objects does not mean that a humanitarian law violation occurred. In each attack examined, Human Rights Watch sought to determine whether there was evidence of a legitimate military target in the attack area, and if so how that target was attacked.

Between August 8 and 12, Russian forces attacked Georgian military targets in Gori city and in ethnic Georgian villages in both South Ossetia and undisputed Georgian territory, often causing civilian casualties and damage to civilian objects such as houses or apartment blocks. The proximity of these military targets to civilian objects varied. In several cases, the military targets were within meters of civilians and civilian homes, and the attacks against them resulted in significant civilian casualties.

In other cases the apparent military targets were located as far as a kilometer away from civilian objects, and yet civilian casualties also resulted. In attacking any of these targets the Russian forces had an obligation to strictly observe the principle of proportionality, and to do everything feasible to assess whether the expected civilian damage from the attack would likely be excessive in relation to the direct military advantage anticipated. In many cases the attacks appear to have violated this proportionality principle. In yet other cases, Human Rights Watch investigated—but was not able to identify—any legitimate military targets in the immediate vicinity at the time of the attacks. The absence of a military target in the vicinity of an attack raises the possibility that Russian forces either failed in their obligation to do everything feasible to verify that the targets were military and not civilian, that they were reckless toward the presence of civilians in their target zone, or that Russian forces deliberately targeted civilian objects.

In several incidents involving military force against civilian vehicles, Russian forces may have intentionally targeted civilians. Deliberate attacks on civilians amount to war crimes.

### *Conduct of ground troops*

Several local residents told Human Rights Watch that many of the Russian servicemen who occupied undisputed Georgian territories behaved in a disciplined manner and in some cases even protected the civilian population from Ossetian forces, militia members, or looters. Nevertheless Russian forces played a role in the widespread looting of Georgian homes by Ossetian forces. Russian forces facilitated and participated in these war crimes, albeit in less prominent roles than South Ossetian forces, but we identified four cases in which Russian forces played an active and discernable role in looting.

Human Rights Watch also documented incidents in which Russian tanks fired at close range into civilian homes.

### *Russia's responsibility as occupying power*

When Russian forces entered Georgia, including South Ossetia, which is *de jure* part of Georgia, they did so without the consent or agreement of Georgia. International humanitarian law on occupation therefore applied to Russia as it gained effective control over areas of Georgian territory. Russia failed overwhelmingly in its duty as an occupying power to ensure, as far as possible, public order and safety in areas under its effective control in South Ossetia. This allowed South Ossetian forces to engage in wanton and widescale pillage and burning of Georgian homes and to kill, beat, rape, and threaten civilians. Roadblocks set up by Russian forces on August 13 effectively stopped the looting and torching campaign by Ossetian forces, but the roadblocks were inexplicably removed after just a week.

### **Violations by South Ossetian Forces**

#### *In South Ossetia*

Beginning just after the withdrawal of Georgian troops from South Ossetia, South Ossetian forces, including volunteer militias, embarked on a campaign of deliberate and systematic destruction of the Georgian government-administered villages in South Ossetia. This involved the widespread and systematic pillage and torching of houses, and beatings and threats against civilians. Starting August 10, after Russian ground forces had begun to fully occupy South Ossetia and were moving onward into undisputed Georgian territory, Ossetian forces followed closely behind them and entered the ethnic Georgian villages.

Upon entering these villages, Ossetian forces immediately began going into houses, searching for Georgian military personnel, looting property, and burning homes. They also physically attacked many of the remaining residents of these villages, and detained dozens of them. Human Rights Watch received uncorroborated reports of at least two extrajudicial killings of ethnic Georgians in South Ossetia that took place amidst the pillage. In most cases, Russian forces had moved through this set of Georgian villages by the time South Ossetian forces arrived. In other cases, Russian forces appeared to give cover to South Ossetian forces while they were committing these offenses.

By August 11 the attacks intensified and became widespread. Looting and torching of most of these villages continued intermittently through September, and in some through October and November.

Ossetian forces rounded up at least 159 ethnic Georgians (some of whom were abducted from undisputed Georgian territory), killing at least one and subjecting nearly all of them to



inhuman and degrading treatment and conditions of detention. They also tortured at least four Georgian prisoners of war and executed at least three.

Human Rights Watch's observations on the ground and dozens of interviews conducted led us to conclude that the South Ossetian forces sought to ethnically cleanse this set of Georgian villages: that is, the destruction of the homes in these villages was deliberate, systematic, and carried out on the basis of the ethnic and imputed political affiliations of the residents of these villages, with the express purpose of forcing those who remained to leave and ensuring that no former residents would return.

### *In undisputed Georgian territory*

Beginning with the Russian occupation of Georgia and through the end of September, Ossetian forces, often in the presence of Russian forces, conducted a campaign of deliberate violence against civilians, burning and looting their homes on a wide scale, and committing execution-style killings, rape, abductions, and countless beatings.

### *Crimes against humanity*

In both locations South Ossetian forces, including volunteer militias, egregiously violated multiple obligations under humanitarian law. Murder, rape, acts of torture, inhuman or degrading treatment, and wanton destruction of homes and property are all strictly prohibited under both humanitarian law and serious violations of human rights law, and the perpetrators of such acts should be held criminally responsible for them. To the extent that any of these prohibited acts was committed as part of a widespread or systematic attack directed against any civilian population, they may be prosecuted as a crime against humanity. Where any of these acts, as well as acts such as imprisonment, unlawful detention of civilians, pillaging and comprehensive destruction of homes and property, were carried out with discriminatory intent against a particular group, in this case ethnic Georgians, they also constitute the crime of persecution, a crime against humanity, prosecutable under the statute of the International Criminal Court.

## **Use of Cluster Munitions**

During the armed conflict both Georgian and Russian forces used cluster munitions, which are munitions that release dozens or hundreds of bomblets, or submunitions, and spread them over a large area. Because cluster munitions cannot be directed at specific fighters or weapons, civilian casualties are virtually guaranteed if cluster munitions are used in populated areas. For this reason, using cluster munitions in populated areas should be

presumed to be indiscriminate attack, which is a violation of international humanitarian law. Cluster munitions also threaten civilians after conflict: Because many submunitions fail to explode on impact as designed, a cluster munitions strike often leaves a high number of hazardous unexploded submunitions—known as duds—that can easily be set off upon contact.

Human Rights Watch was not able to conduct adequate research to establish whether Georgia's use of cluster munitions was indiscriminate. Due to either malfunction or human error, Georgian cluster munitions landed in undisputed Georgian territory on days prior to the arrival of Russian forces there, killing at least one civilian and wounding two others. The report documents how at least three people were killed and six wounded by cluster duds that exploded upon contact in three villages in undisputed Georgian territory.

Georgia has acknowledged its use of clusters, and conducted a campaign following the armed conflict to warn civilians of the dangers posed by unexploded submunitions.

Russia has not acknowledged its own use of cluster munitions. Russian forces used cluster munitions in strikes against targets in populated areas in the Gori and Kareli districts just south of the South Ossetian administrative border, killing at least 12 civilians and injuring at least 46 at the time of attack. All of these strikes amounted to indiscriminate attacks. The Russian and Georgian governments should join the 95 nations that have signed the Convention on Cluster Munitions, which imposes a comprehensive ban on the use of these weapons. Russia should make every effort to assist demining organizations with clearance and risk education in contaminated areas currently under effective Russian control, and Georgia should expand its cooperation with these organizations.

## **International Responses to the Conflict**

Since the end of the conflict the European Union, the Organization for Security and Cooperation in Europe (OSCE), and the Council of Europe have put in place mechanisms to monitor the human rights situation and promote security and stability near and in South Ossetia. Russia and Georgia should fully cooperate with these initiatives. The Russian government in particular should provide full, unimpeded access to South Ossetia to these intergovernmental organizations so that they may fully implement these initiatives.

At the end of 2008 Russia refused to approve budgetary support for the OSCE's presence in Georgia, claiming that the organization had to separate its work on Georgia's two breakaway regions—Abkhazia and South Ossetia—from work on other parts of Georgia. At this writing

the OSCE was in the process of closing its offices in Georgia. Human Rights Watch urges the Russian government to reconsider its objections and to facilitate OSCE access to South Ossetia.

The United States government, a close ally of Georgia, should press the Georgian government to investigate and hold accountable violations of humanitarian law, and should prevail on the Georgian government to cooperate with various intergovernmental inquiries. The European Union and the United States, as participants in ongoing talks on security and returns of displaced persons, should urge Russia to uphold its responsibility to facilitate returns of all displaced persons to South Ossetia.

## Methodology

A team of Human Rights Watch researchers conducted a number of research missions from August to November 2008 in South Ossetia and in undisputed parts of Georgia, and in August in North Ossetia (in the Russian Federation), to document violations of international humanitarian law and human rights law committed by all sides in the conflict.

Human Rights Watch researchers conducted three approximately one-week missions in South Ossetia beginning on August 10, and again in September and November. One of these missions was carried out jointly with Human Rights Centre Memorial, a Russian nongovernmental human rights organization.

Human Rights Watch researchers conducted research in undisputed parts of Georgia continuously from August 11 to 28, and again for one week in mid-September and one week in mid-October. Extensive research was conducted in the Gori and Kareli districts of undisputed Georgian territory while those districts were under Russian occupation. Human Rights Watch experts on armaments, including cluster munitions, participated in research missions in August and October. Human Rights Watch's Tbilisi-based researcher conducted follow up research after fact-finding missions.

Human Rights Watch researchers conducted over 460 in-depth interviews with victims and witnesses of abuses committed by all parties to the conflict. Interviewees included persons residing in towns and villages of South Ossetia and undisputed Georgian territory; persons displaced from South Ossetia and undisputed parts of Georgia living in displaced person shelters in various parts of Georgia; persons displaced from the conflict and temporarily staying in North Ossetia; persons formerly detained by Russian and Ossetian forces; persons formerly detained by Georgian forces; former prisoners of war detained by Georgian forces; former prisoners of war detained by Russian and Ossetian forces; Georgian soldiers participating in active combat in South Ossetia; and members of South Ossetian militia and other forces.

In the course of their research, Human Rights Watch staff visited the following places in South Ossetia: Tskhinvali, Khetagurovo, Dmenisi, Sarabuki, Gromi, Tbeti, Novyi Tbet, Gudzhabauri, Muguti, Ubiati, Batatykau, Kohat, Bikari, Zonkar, Zakori, Ahalgori, Kanchaveti, Znauri, Alkhasheni, Archneti, Sinaguri, Kekhvi, Kurta, Kvemo Achabeti, Zemo Achabeti, Tamarasheni, Eredvi, Disevi, Beloti, Satskheneti, Atsriskhevi, Avnevi, Nuli. In undisputed Georgian territory Human Rights Watch visited: Gori city, Karbi, Tortiza, Kheltubani, Tkviavi,

Akhaldaba, Variani, Ruisi, Dzlevijvari, Pkhvenisi, Tedotsminda, Karaleti, Tirdznisi, Koshka, Ergneti, Karaleti, Knolevi, Avlevi Ptsa, Khashuri, and Tseronisi.

Interviews with victims and witnesses in South Ossetia were conducted in Russian by native Russian speakers. Interviews in Georgia with victims and witnesses were in some cases conducted in Russian by native or fluent Russian speakers; in some cases in Georgian by a native Georgian speaker; and in other cases in Georgian with the assistance of an interpreter translating from Georgian to English. The majority of interviews were conducted in private; a small proportion were conducted in groups. Before being interviewed, interviewees were told of the purpose of the interview, informed what kinds of issues would be covered, and asked whether they wanted to proceed. No incentives were offered or provided to persons interviewed. (More detail on the methodology used for particular aspects of the research is included in the relevant chapters below.)

We have indicated where the names of individuals interviewed by Human Rights Watch (and in some cases, other identifying information) were changed to protect their security.

As part of our research, we also sought to meet with government officials representing each party to the conflict. In Georgia we held meetings with the National Security Council, the Ministry of Defense, the Ministry of Interior, the Ministry of Foreign Affairs, the Ministry of Justice, and the Office of the Prosecutor General. The Georgian government also provided written responses to Human Rights Watch letters of August 29 and November 12, 2008.

Human Rights Watch requests for meetings in Russia with the Ministry of Defense, the Ministry of Interior, the Ministry of Emergency Situations, and the Office of the President went unanswered. Human Rights Watch letters of October 13, 2008—sent repeatedly to the Ministry of Defense, the Ministry of Emergency Situations, and the Office of the President requesting answers to specific questions—also went unanswered. (See Appendix) The Office of the Prosecutor General replied on December 21, 2009 to our request for information by stating that the request had been forwarded to the Investigative Committee under the Procuracy of the Russian Federation and the General Prosecutor of the Republic of South Ossetia. (See Appendix).

In South Ossetia, we met with de facto authorities, including the deputy prosecutor general, the South Ossetia Committee for Print and Information, and the South Ossetia human rights ombudsman.

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Our research endeavored to identify violations of international humanitarian law irrespective of which party to the conflict may have been responsible. Issues related to the causes and origins of the conflict, as well as responsibility for starting the conflict, are not within Human Rights Watch's mandate and therefore were not part of our research.

The issue of civilian casualties is of great concern to Human Rights Watch, particularly when these casualties are caused by violations of international humanitarian law. However, Human Rights Watch did not have the capacity or expertise to carry out research to determine a conclusive number of civilian casualties.

*A note on geographical and family names*

The names of towns and villages in South Ossetia differ in the Georgian and Ossetian languages. Most Georgian nomenclature ends in the letter "i," whereas Ossetian nomenclature does not. For example, Tskhinvali, the Georgian name for the capital of South Ossetia, is known as Tskhinval in Ossetian. The Alkhagori district is known by Ossetians by its Russian nomenclature, Leningori.

This report's use of the Georgian nomenclature has no political significance or implications.

In a number of Georgian villages numerous people who are not related have the same family name.

## PART 1: BACKGROUND

### 1.1 Background on South Ossetia

South Ossetia is located along Georgia's northern frontier in the Caucasus Mountains, bordering North Ossetia, a republic of the Russian Federation. The region is surrounded to the south, east, and west by undisputed Georgian territories. Prior to the August 2008 conflict, South Ossetia's population consisted of ethnic Ossetians and Georgians and numbered some 70,000 people, 20 to 30 percent of whom were ethnic Georgians.<sup>2</sup> South Ossetia's capital, Tskhinvali, had a population of about 30,000. A number of villages in South Ossetia were overwhelmingly populated by ethnic Georgians, principally in three valleys: Didi Liakhvi (directly north of Tskhinvali and including Kekhvi, Kurta, Zemo Achabeti, Kvemo Achabeti, and Tamarasheni);<sup>3</sup> Patara Liakhvi (northeast of Tskhinvali and including Eredvi, Vanati, Beloti, Prisi, Satskheneti, Atsriskhevi, Argvitsi, Berula, and Disevi); and Froni (west of Tskhinvali and including Avnevi, Nuli, and Tighva). A large part of the Akhagori district was also overwhelmingly Georgian-populated.<sup>4</sup> With a handful of exceptions in the west of South Ossetia, villages inhabited mainly or exclusively by ethnic Georgians were administered by Tbilisi, while Tskhinvali and Ossetian-inhabited villages were under the administration of the de facto South Ossetian authorities.

#### 1991-92 Conflict in South Ossetia

During the Soviet era, South Ossetia was an autonomous oblast, or region, of the Georgian Soviet Socialist Republic. It sought greater autonomy from Tbilisi in the period before the breakup of the Soviet Union. In autumn 1990 South Ossetia proclaimed full sovereignty within the USSR and boycotted the election that brought the political party of Zviad Gamsakhurdia, a Georgian nationalist, to power in Georgia. Gamsakhurdia's government responded fiercely to those developments and abolished the autonomous oblast status of

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<sup>2</sup> "Facts about South Ossetia," *International Herald Tribune*, August 8, 2008, <http://www.ihf.com/articles/ap/2008/08/08/news/Georgia-South-Ossetia-Glance.php> (accessed November 19, 2008); and Eka Tsamalashvili and Brian Whitmore, "Eyewitness Accounts Confirm Shelling of Georgian Villages," RFE/RL, November 19, 2008. [http://www.rferl.org/content/Eyewitness\\_Accounts\\_Confirm\\_Shelling\\_Of\\_Georgian\\_Villages/1349256.html](http://www.rferl.org/content/Eyewitness_Accounts_Confirm_Shelling_Of_Georgian_Villages/1349256.html) (accessed November 19, 2008).

<sup>3</sup> The Didi Liakhvi valley villages were located along the strategic TransCam highway between Tskhinvali and Java. Tamarasheni and Kekhvi mark the valley's boundaries, located 1 and 8 kilometers north of Tskhinvali, respectively. See the map on page 1.

<sup>4</sup> Prior to the conflict, the Akhagori district, which borders the Mskheta district of undisputed Georgia and is about 59 kilometers north of Tbilisi, was administered by Tbilisi and had no ties with the South Ossetian capital. The only main road from Akhagori leads via Mskheta to Tbilisi.

South Ossetia in December 1990,<sup>5</sup> leading to increased tensions and armed conflict in 1991-92. Direct military confrontation between South Ossetian separatists and Georgian police and paramilitaries started in January 1991, leading to a year of skirmishes and guerrilla warfare with sporadic Russian involvement overwhelmingly in support of the separatists. The conflict resulted in some 1,000 dead, 100 missing, extensive destruction of property and infrastructure, as well as thousands of displaced people, including ethnic Georgians from South Ossetia and ethnic Ossetians from other parts of Georgia.<sup>6</sup>

(Another conflict in Georgia was fought in the early 1990s in Abkhazia, a former Autonomous Republic of Soviet Georgia located in northwestern Georgia between the Black Sea and the Caucasus Mountains. The 1992-93 military confrontation there led to some 8,000 deaths, 18,000 wounded, and the forced displacement of over 200,000 ethnic Georgians.<sup>7</sup>)

The first conflict in South Ossetia culminated in the region's de facto secession from Georgia in 1992. On June 24, 1992, in the Russian city of Sochi, Russian and Georgian leaders Boris Yeltsin and Eduard Shevardnadze signed an agreement that brought about a ceasefire.<sup>8</sup> The Sochi Agreement established the Joint Control Commission (JCC), a body for negotiations composed of Georgian, Russian, North Ossetian, and South Ossetian representatives, and the Joint Peacekeeping Forces (JPKFs), a trilateral peacekeeping force with Georgian, Russian, and Ossetian units.<sup>9</sup> These units operated under a joint command, the JPKF commander being nominated by the Russian Ministry of Defence and appointed by the JCC. Battalion commanders were directly appointed by each side. Although the JPKF were meant as a joint force, in reality they were three separate battalions, deployed in different locations and more loyal to their respective sides than to the JPKF commander.

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<sup>5</sup> See Julian Birch, "Ossetia – land of uncertain frontiers and manipulative elites," *Central Asia Survey*, 18(A), 1999; and Nikola Svetkovsky, Danish Association for Research on the Caucasus, "The Georgian-South Ossetia Conflict," <http://www.caucasus.dk/publication5.htm> (accessed December 20, 2008).

<sup>6</sup> On humanitarian law violations during the 1991-92 conflict in South Ossetia, see Helsinki Watch (now Human Rights Watch, Europe and Central Asia Division), *Bloodshed in the Caucasus: Violations of Humanitarian Law and Human Rights in the Georgia-South Ossetia Conflict*, March 1992.

<sup>7</sup> On humanitarian law violations during the 1992-1993 conflict in Abkhazia, see Human Rights Watch/Helsinki, *Georgia/Abkhazia: Violations of the Laws of War and Russia's Role in the Conflict*, vol. 7, no. 7, March 1, 1995, <http://www.hrw.org/legacy/reports/1995/Georgia2.htm>.

<sup>8</sup> Agreement on the Principles of Settlement of the Georgian-Ossetian Conflict, June 24, 1992, [http://rrc.ge/law/shetanx\\_1992\\_06\\_24\\_r.htm?lawid=368&lng\\_3=ru](http://rrc.ge/law/shetanx_1992_06_24_r.htm?lawid=368&lng_3=ru) (in Russian) (accessed December 23, 2008).

<sup>9</sup> *Ibid.* art. 3. The Organization for Security and Co-operation in Europe (OSCE) also participated in JCC meetings.



## 2003-06: New Leadership in Georgia, New Agenda for Recovering South Ossetia

The peacekeeping and conflict settlement process evolved slowly over the years, with lengthy periods of inactivity. For 12 years there was no military confrontation. After his election in January 2004, President Mikheil Saakashvili made the restoration of Georgia's territorial integrity one of his top priorities. Tbilisi's initial approach to recovering South Ossetia was to simultaneously launch a large-scale anti-smuggling operation, aimed at undermining the major source of income for the de facto South Ossetian leadership, as well as a humanitarian aid "offensive" in an attempt to win the loyalty of Ossetians.<sup>10</sup> The anti-smuggling operation was focused primarily on closing a wholesale market near Tskhinvali, a hub for goods smuggled from Russia that entered Georgia's internal markets without proper customs clearance.<sup>11</sup> Saakashvili's government also initiated economic and cultural projects, including an Ossetian-language television station, pensions, free fertilizer, and humanitarian aid.<sup>12</sup>

In the late 1990s the Russian government began proactively to offer to residents of South Ossetia and Abkhazia Russian citizenship and to facilitate their acquisition of Russian passports for foreign travel; by the end of 2007, according to the South Ossetian authorities, some 97 percent of residents of South Ossetia had obtained Russian passports.<sup>13</sup> As Russia imposed a visa regime with Georgia in 2000, Russian passports allowed Ossetians and Abkhaz to cross freely into Russia and entitled them to Russian pensions and other social benefits.<sup>14</sup>

### *2004 spike in tensions*

As part of the anti-smuggling campaign, in May 2004 several Georgian Ministry of Interior units landed by helicopter in the three Gori district villages adjacent to the South Ossetian administrative border, and one Tbilisi-administered village inside South Ossetia. The units

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<sup>10</sup> International Crisis Group (ICG), "Georgia: Avoiding War in South Ossetia," Europe Report No. 159, November 26, 2004, <http://www.crisisgroup.org/home/index.cfm?l=1&id=3128> (accessed December 23, 2008).

<sup>11</sup> The most frequently smuggled commodities included wheat flour, dairy products, cigarettes, gasoline, and kerosene. Alexandre Kukhianidze, Aleko Kupatadze, and Roman Gotsiridze, "Smuggling through Abkhazia and Tskhinvali Region/South Ossetia," Report for the American University's Transnational Crime and Corruption Centre (TRACC), 2003, pp. 8, 27, 38; and "Governor Blows up By-Roads to Prevent Smuggling," *Civil Georgia*, December 28, 2003, <http://www.civil.ge/eng/article.php?id=5904&search=Ergneti%20market> (accessed November 17, 2008).

<sup>12</sup> ICG, "Georgia: Avoiding War in South Ossetia," p. 12.

<sup>13</sup> "Interview with the President of Unrecognized South Ossetia, Eduard Kokoity," (in Russian), *RIA Novosti*, November 29, 2007, <http://www.rian.ru/interview/20071129/90125886.html> (accessed January 13, 2009).

<sup>14</sup> Possession of a Russian passport for foreign travel confers citizenship and voting rights, but does not automatically confer such privileges as registering births and marriages, the right to residence, and other benefits, which require possession of an internal passport.

proceeded to set up roadblocks that restricted traffic from South Ossetia. This move led to renewed hostilities in the following months that resulted in dozens of casualties, but stopped short of warfare.<sup>15</sup> The parties of the JCC agreed on a new ceasefire in August 2004.

Following the August 2004 crisis, the security situation in South Ossetia remained tense, with frequent exchanges of fire between the sides that occasionally resulted in deaths, and increased the rate of crime.<sup>16</sup> In another bid to alter the status quo peacefully, in late 2006 the Georgian government began strongly supporting an alternative South Ossetian administration led by Dmitry Sanakoev.<sup>17</sup> Following parallel presidential elections in November 2006, two competing governments existed in South Ossetia: the secessionist de facto government headed by Eduard Kokoity in Tskhinvali and a pro-Tbilisi government headed by Sanakoev, based in Kurta, an ethnic Georgian village five kilometers from Tskhinvali.<sup>18</sup> The Sanakoev administration maintained authority over the ethnic Georgian villages and a large part of the Akhmagori district of South Ossetia, while Tskhinvali administered the rest of South Ossetia.

Instability and occasional skirmishes persisted,<sup>19</sup> and negotiations between Tbilisi and Tskhinvali within the JCC framework stalled. Georgia pushed for a change in the JCC format, as it saw the JCC as a “three against one” arrangement: Tbilisi called for limiting Russia’s role and insisted on participation of the European Union, United States, and Organization for Security and Co-operation in Europe (OSCE) in the talks.<sup>20</sup> Tskhinvali opposed any format

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<sup>15</sup> “South Ossetia Crisis Abates,” Institute for War and Peace Reporting (IWPR), Caucasus Reporting Service No. 236, June 3, 2004; “South Ossetia Tensions Still High,” IWPR, Caucasus Reporting Service No. 242, July 14, 2004; and “South Ossetia Conflict Heats Up,” IWPR, Caucasus Reporting Service No. 246, August 12, 2004.

<sup>16</sup> “Georgian Police Targeted on Smuggling Faultlines,” *Civil Georgia*, February 1, 2005, <http://www.civil.ge/eng/article.php?id=8937&search=Georgian%20Police%20Targeted%20on%20Smuggling%20Faultlines> (accessed November 19, 2008); “Five Die in South Ossetia Shootout,” *Civil Georgia*, May 30, 2005, <http://www.civil.ge/eng/article.php?id=10000&search=Five%20Die%20in%20South%20Ossetia%20Shootout> (accessed November 19, 2008).

<sup>17</sup> “Staging ‘Alternative Choice’ for South Ossetia,” *Civil Georgia*, November 7, 2006, <http://www.civil.ge/eng/article.php?id=14030&search=Sanakoev> (accessed on October 30, 2008); “Signs of Status Quo Change in South Ossetia,” *Civil Georgia*, November 14, 2006, <http://www.civil.ge/eng/article.php?id=14082> (accessed October 30, 2008). Dmitri Sanakoev had served in the previous Tskhinvali administration of de facto president Ludvig Chibirov (1996-2001).

<sup>18</sup> “Simultaneous Polls in South Ossetia,” *Civil Georgia*, November 12, 2006, <http://www.civil.ge/eng/article.php?id=14061&search=Sanakoev> (accessed October 30, 2008).

<sup>19</sup> “Four Die in South Ossetia Skirmish,” *Civil Georgia*, September 8, 2006, <http://www.civil.ge/eng/article.php?id=13498&search=Five%20Die%20in%20South%20Ossetia%20Shootout> (accessed November 19, 2008); “Two Die in South Ossetia Shooting,” *Civil Georgia*, March 25, 2007, <http://www.civil.ge/eng/article.php?id=14857&search=Two%20Die%20in%20South%20Ossetia%20Shooting> (accessed November 19, 2008).

<sup>20</sup> “Tbilisi Proposes New Negotiating Format for South Ossetia,” *Civil Georgia*, March 1, 2008, <http://www.civil.ge/eng/article.php?id=17244> (accessed October 30, 2008).

change and instead pushed for a formal agreement on the non-use of force, with strong Russian support.<sup>21</sup> Russia, which has considered itself a guarantor of stability in the region, since August 2004 also began to emphasize an obligation to protect the large number of Ossetians to whom it had given Russian passports.<sup>22</sup>

## 2006-08: Tensions Rise between Russia and Georgia

An increasingly strained relationship between Georgia and Russia compounded rising tensions between Tskhinvali and Tbilisi. The relationship between Moscow and Tbilisi was completely severed in September 2006 when Russia, in response to Georgia's detention of four alleged Russian spies, halted all air, land, and sea traffic with the country, and began a widespread crackdown on ethnic Georgians. During this time, Russia expelled more than 2,300 Georgians from Russia.<sup>23</sup>

By April 2008 communication between Russia and Georgia was being restored, but Russia, angered by Western countries' recognition of Kosovo's independence in February 2008 and by Georgia's continued efforts to join NATO, moved to deepen its cooperation with the breakaway administrations in Abkhazia and South Ossetia.<sup>24</sup> Georgia responded by blocking further negotiations over Russia's accession to the World Trade Organization.<sup>25</sup> Georgian use of unmanned reconnaissance drones in the airspace above the breakaway republics and the downing of one such drone by a Russian airplane on April 20 strained the relationship further.<sup>26</sup>

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<sup>21</sup> See "Russian Foreign Ministry calls on Georgia to Sign Agreement on Non-Use of Force" ("МИД РФ призвал Грузию подписать с Абхазией договор о неприменении силы"), *RIA Novosti*, February 21, 2008, <http://www.rian.ru/politics/20080221/99807286.html> (accessed December 21, 2008); and "Tskhinvali Insists on Talks in Frames of JCC," *Civil Georgia*, July 24, 2008, <http://www.civil.ge/eng/article.php?id=18841&search=> (accessed November 20, 2008).

<sup>22</sup> "On the meeting with Russian State Secretary and First Deputy Minister of Foreign Affairs V.V. Loshchinin and leader of South Ossetia E. D. Kakoity," ("О встрече статс-секретаря – первого заместителя Министра иностранных дел России В.В. Лощинина с руководителем Южной Осетии Э.Д. Кокойты"), Ministry of Foreign Affairs of the Russian Federation press release, July 30, 2004, [http://www.mid.ru/brp\\_4.nsf/sps/350A468FEDAB61E3C3256EE10028CB43](http://www.mid.ru/brp_4.nsf/sps/350A468FEDAB61E3C3256EE10028CB43); and "Russian Foreign Minister Warned Tbilisi Against Attempting on Russian Peacekeepers' Lives," *Regnum*, July 20, 2006, <http://www.regnum.ru/english/676284.html> (accessed January 13, 2009). See also Paul A. Goble, "Russian 'Passportization,'" *New York Times*, September 9, 2008, <http://topics.blogs.nytimes.com/2008/09/09/russian-passportization/> (accessed November 17, 2008).

<sup>23</sup> Human Rights Watch, *Singled Out: Russia's Detention and Expulsion of Georgians*, vol. 19, no. 5(D), October 2007, <http://hrw.org/reports/2007/russia1007/>.

<sup>24</sup> "Information for the Media: About the President's Orders to the Government of the Russian Federation in Relation to Abkhazia and South Ossetia," Ministry of Foreign Affairs of the Russian Federation, 501-16-04-2008, April 16, 2008, [http://www.mid.ru/brp\\_4.nsf/sps/FD56A80A7198CD7CC325742D003F807C](http://www.mid.ru/brp_4.nsf/sps/FD56A80A7198CD7CC325742D003F807C) (accessed November 12, 2008).

<sup>25</sup> "Tbilisi Suspends Talks on Russia WTO Entry Terms," *Civil Georgia*, April 29, 2008, <http://www.civil.ge/eng/article.php?id=17710&search=WTO> (accessed November 12, 2008).

<sup>26</sup> "UNOMIG Issues Report of Georgian UAV Downing Incident," *Civil Georgia*, reproduced on UNOMIG website, May 26, 2008, <http://www.unomig.org/media/headlines/?id=10677&y=2008&m=05&d=26> (accessed November 12, 2008).

## The Lead-up to the August 2008 War

In the months preceding the August war, tensions in South Ossetia steadily escalated as Georgian and South Ossetian forces engaged in violent attacks and mutual recriminations. In July Georgian forces hit nine residential homes in Tskhinvali and a nearby village with artillery fire, resulting in two dead and 11 wounded. Georgia said it had been forced to return fire after an attack. In response, South Ossetia announced a general mobilization, but halted it within hours when Georgian forces ceased firing.<sup>27</sup> A week later, Russia confirmed Georgian allegations that four Russian air force jets had conducted overflights over Tskhinvali in violation of Georgia's airspace, a move that caused Georgia to recall its ambassador to Russia. Russia stated that the overflights had been necessary to "cool hot heads in Tbilisi" and prevent attempts to settle the dispute over South Ossetia through military means.<sup>28</sup>

Military exercises conducted by both sides also contributed to rising tensions. On July 15, the Fourth Infantry Brigade of the Georgian Army conducted an exercise near Tbilisi with US forces, called "Immediate Response 2008."<sup>29</sup> On the same day, the Russian military launched "Caucasus 2008," a military exercise involving 8,000 troops not far from the Roki tunnel connecting Russia and South Ossetia. While the main stated goal of the exercise was to evaluate capacity for joint operations in connection with the terrorist threat in southern Russia, the Russian Ministry of Defense announced that, in connection with the deteriorating situation in Georgia, it would also address issues of peace enforcement in conflict zones.<sup>30</sup> Upon completing its military exercise, Georgia concentrated its entire artillery brigade in the city of Gori, just 30 kilometers from Tskhinvali.<sup>31</sup>

Toward the end of July, violent skirmishes between Georgian and South Ossetian forces became more frequent. On July 29, Georgian and South Ossetian each accused the other of firing on the other side. On August 1, several Georgian police officers were injured in a bomb

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<sup>27</sup> "EU Calls for Calm After Clash in Georgia Rebel Region," Reuters, July 4, 2008, [http://uk.reuters.com/article/homepageCrisis/idUKLo4712416.\\_CH\\_.242020080704](http://uk.reuters.com/article/homepageCrisis/idUKLo4712416._CH_.242020080704) (accessed November 12, 2008).

<sup>28</sup> "Russian MFA Information and Press Department Commentary Concerning the Situation in South Ossetia," Ministry of Foreign Affairs of the Russian Federation, July 10, 2008, [http://www.un.int/russia/new/MainRoot/docs/off\\_news/100708/newen3.htm](http://www.un.int/russia/new/MainRoot/docs/off_news/100708/newen3.htm) (accessed November 12, 2008).

<sup>29</sup> "U.S. Troops Start Training Exercise in Georgia," Reuters, July 15, 2008, <http://wiredispatch.com/news/?id=252675> (accessed November 12, 2008).

<sup>30</sup> "'Kavkaz-2008,' a Major Joint Exercise, Started in the North Caucasus Military District," Ministry of Defense of the Russian Federation news release, July 15, 2008, <http://www.mil.ru/info/1069/details/index.shtml?id=47490> (accessed November 12, 2008).

<sup>31</sup> Normally the brigade is divided between the cities of Senaki and Gori. "The Chronicle of a Caucasian Tragedy Part 2: Practicing for War," Spiegel Online International, August 25, 2008, <http://www.spiegel.de/international/world/0,1518,574812-2,00.html> (accessed November 12, 2008).

attack in South Ossetia.<sup>32</sup> Later that day snipers shot and killed six South Ossetian police officers. The next morning automatic weapon and mortar fire resumed between the southwest side of Tskhinvali and the Georgian settlement of Zemo Nikozi.<sup>33</sup> The renewed violence prompted several hundred civilians, mostly women and children, to evacuate to Russia.<sup>34</sup>

Over the next few days, the sides exchanged fire, but apparently without casualties. Tbilisi continued to amass forces close to the South Ossetia administrative border. According to some accounts, by the morning of August 7 there were 12,000 Georgian troops and 75 tanks and armored personnel carriers gathered not far from the South Ossetian border.<sup>35</sup>

Fighting intensified toward the evening on August 6 and throughout August 7. Georgian authorities claim that its forces opened fire in response to the Ossetian side firing mortars on villages inhabited by ethnic Georgians. The de facto South Ossetian authorities claim that Georgian forces were trying to capture a strategic hill overlooking a road connecting Tskhinvali and several Ossetian villages.<sup>36</sup> On the evening on August 7 President Saakashvili announced a unilateral ceasefire.<sup>37</sup> Hours later, however, he rescinded the ceasefire, citing continued Ossetian shelling of Georgian villages.<sup>38</sup>

## The Fighting and Immediate Political Aftermath

Late in the evening of August 7, Georgian forces initiated massive shelling of Tskhinvali and surrounding villages in an attack that is widely considered the start of the war. The Georgian government says its forces launched the attack to suppress firing positions from which South Ossetian militia had attacked Georgian peacekeeping forces and Georgian villages.

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<sup>32</sup> “M.I.A.: Five Policeman Injured in S. Ossetia Blast,” *Civil Georgia*, August 1, 2008, <http://www.civil.ge/eng/article.php?id=18868&search=> (accessed November 12, 2008).

<sup>33</sup> “M.I.A.: Seven Georgians Injured in S. Ossetia Shootout,” *Civil Georgia*, August 2, 2008, <http://www.civil.ge/eng/article.php?id=18872&search=> (accessed November 12, 2008).

<sup>34</sup> “More than 800 People Taken Out from Tskhinvali to North Ossetia” (“Из Цхинвала в Северную Осетию вывезены более 800 человек”), *Regnum*, August 5, 2008, <http://www.regnum.ru/news/1036345.html> (accessed November 12, 2008).

<sup>35</sup> “The Chronicle of a Caucasian Tragedy Part 2: Practicing for War,” *Spiegel Online International*.

<sup>36</sup> “Intensive Shootout Reported in S. Ossetia,” *Civil Georgia*, August 6, 2008, <http://www.civil.ge/eng/article.php?id=18909&search=> (accessed November 12, 2008); see also “Chronicle of the Georgia-Ossetia Conflict—Background” (“Хроника грузино-осетинского конфликта. Справка”), *RIA-Novosti*, August 8, 2008, [http://www.rian.ru/osetia\\_spravki/20080808/150186831.html](http://www.rian.ru/osetia_spravki/20080808/150186831.html) (accessed December 21, 2008)

<sup>37</sup> “President Orders Immediate Cease Fire, Says Russian Peacekeepers Acknowledge Having Lost Control over Separatist Rebels,” *Georgia Update*, Government of Georgia, August 7, 2008, <http://georgiaupdate.gov.ge/doc/10003551/20080807,%20Cease%20Fire.pdf> (accessed November 12, 2008).

<sup>38</sup> See for example, “National Security Council Chief Testifies Before War Commission,” *Civil Georgia*, October 28, 2008, [http://www.civil.ge/eng/\\_print.php?id=19845](http://www.civil.ge/eng/_print.php?id=19845) (accessed November 12, 2008).

Georgian authorities also claim that they had received information that Russian forces were moving south through the Roki tunnel in the early morning of August 7, and that they launched the attack to prevent a full-scale Russian invasion of their country.<sup>39</sup> Russian authorities, however, contend that the movements at the Roki tunnel were part of normal rotation of Russian peacekeeping troops stationed in South Ossetia,<sup>40</sup> and that the Georgian attack on Tskhinvali was an act of aggression against Russian peacekeeping forces and the civilian population.<sup>41</sup>

Throughout the night between August 7 and 8, Georgian forces shelled Tskhinvali, using, among other weapons, BM-21 “Grad,” a multiple rocket launcher system capable of firing 40 rockets in 20 seconds. Attacks intensified overnight and into the morning of August 8 as Georgian ground forces moved toward Tskhinvali. Around 8 a.m. Georgian ground forces entered Tskhinvali and street fighting erupted between Georgian forces and groups of South Ossetian forces, mainly militia, who tried to stop the Georgian offensive. In the course of the day, several villages in South Ossetia fell under Georgian forces’ control.<sup>42</sup>

During the day on August 8, regular Russian ground forces moved through the Roki tunnel toward Tskhinvali while Russian artillery and aircraft subjected Georgian ground forces in Tskhinvali and other places to heavy shelling and bombardment. Georgian forces bombed

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<sup>39</sup> During a hearing before a Georgian parliamentary commission studying the causes of the August war, several high-ranking officials stated that President Saakashvili gave three orders at 11:35 p.m. on August 7: 1. Stop all military movement from Russia to Georgia; 2. Suppress firing positions from which Georgian peacekeeping forces and villages were being attacked; 3. Protect the civilian population in implementing these orders. Georgian officials further insist that Tskhinvali was not a target per se, but that it was necessary to suppress firing positions in Tskhinvali and that Georgian forces needed to take control of Tskhinvali to evacuate civilians located in villages to the north of Tskhinvali. See for example, “Chief of Staff Testifies Before War Commission”, *Civil Georgia*, October 29, 2008, <http://www.civil.ge/eng/article.php?id=19851&search=chief%20of%20staff%20> (accessed November 12, 2008). Georgia later released recordings of intercepted phone conversations between members of the South Ossetian border guard to prove that Russian forces were moving through the Roki tunnel early on the morning of August 7. See “Georgia Offers Fresh Evidence on War’s Start,” *New York Times*, September 15, 2008, <http://www.nytimes.com/2008/09/16/world/europe/16georgia.html?scp=1&sq=roki%20tunnel&st=cse> (accessed November 12, 2008).

<sup>40</sup> “Georgia Offers Fresh Evidence on War’s Start,” *New York Times*.

<sup>41</sup> “Statement in connection with the situation in South Ossetia” (“Заявление в связи с ситуацией в Южной Осетии”), press service of the President of the Russian Federation, August 8, 2008, [http://www.kremlin.ru/appears/2008/08/08/1522\\_type63374type63378type82634\\_205027.shtml](http://www.kremlin.ru/appears/2008/08/08/1522_type63374type63378type82634_205027.shtml) (accessed November 17, 2008). The veracity of the Georgian government’s claims was also disputed by a former OSCE military observer stationed in South Ossetia at the time. See Jon Swain, “Georgia fired first shot, say UK monitors,” TimesOnline, <http://www.timesonline.co.uk/tol/news/world/europe/article5114401.ece> (accessed December 20, 2008). See also Ellen Barry and C.J. Chivers, “Georgia Claims on Russia War Called into Question,” *New York Times*, November 6, 2008, [http://www.nytimes.com/2008/11/07/world/europe/07georgia.html?\\_r=2&pagewanted=1&ref=europe](http://www.nytimes.com/2008/11/07/world/europe/07georgia.html?_r=2&pagewanted=1&ref=europe) (accessed December 21, 2008).

<sup>42</sup> “Official: Georgian Forces Capture Five Villages,” *Civil Georgia*, August 8, 2008, <http://www.civil.ge/eng/article.php?id=18946&search=> (accessed November 12, 2008); and “Russian Peacekeepers Say Georgian War Planes Strike S. Ossetia,” *Civil Georgia*, August 8, 2008, <http://www.civil.ge/eng/article.php?id=18951&search=> (accessed November 12, 2008).



and shelled Russian military targets as Russian forces moved toward Tskhinvali.<sup>43</sup> By the evening of August 8, Russian authorities declared that units of the 58<sup>th</sup> Army were deployed in the outskirts of Tskhinvali and that their artillery and combat tanks had suppressed Georgian firing positions in Tskhinvali.<sup>44</sup> At the same time, Georgia's President Saakashvili declared that Georgian forces completely controlled Tskhinvali and other locations.<sup>45</sup>

Russian aircraft also attacked several targets in undisputed Georgian territory beginning on August 8. Starting from around 9:30 a.m. on August 8, Russian aircraft attacked targets in several villages in the Gori district, Gori city, and, in the afternoon, Georgian military airports near Tbilisi.<sup>46</sup>

Over the next two days, Russian forces continued to move into South Ossetia, eventually numbering by some estimates 10,000 troops with significant artillery force.<sup>47</sup> Georgian armed forces persisted with attempts to take Tskhinvali, twice being forced back by heavy Russian fire and fire from South Ossetian forces, including volunteer militias. Early in the morning of August 10, Georgian Defense Minister Davit Kezerashvili ordered his troops to withdraw from Tskhinvali and fall back to Gori city.<sup>48</sup>

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<sup>43</sup> Georgian authorities insist that aerial attacks were directed against only legitimate military targets including the Gupta Bridge linking northern and southern portions of South Ossetia, and that the Georgian Air Force did not attack any targets in Tskhinvali. See, for example, "Chief of Staff Testifies Before War Commission," *Civil Georgia*, [http://www.civil.ge/eng/\\_print.php?id=19851](http://www.civil.ge/eng/_print.php?id=19851) (accessed January 15, 2009). Russian authorities, however, claim that Georgian air attacks were used against targets in Tskhinvali as well. See, for example, "Main points of the presentation by Deputy Chief of the General Staff of the Armed Forces of the Russian Federation General-Lieutenant A.A. Nogovitsyn before representatives of the press on August 9, 2008" ("Тезисы выступления заместителя начальника Генерального штаба Вооруженных Сил РФ генерал-полковника А.А. Ноговицына перед представителями СМИ 9 августа 2008 года"), Ministry of Defense of the Russian Federation news release, <http://www.mil.ru/info/1069/details/index.shtml?id=49318> (accessed November 17, 2008).

<sup>44</sup> "Units of the 58th Army, having previously occupied positions on the outskirts of Tskhinvali, suppressed with tank fire and shelling firing positions of the Georgian forces, from which they shelled the city of Tskhinvali and positions of the peacekeeping forces," Ministry of Defense of the Russian Federation news release, August 8, 2008, <http://www.mil.ru/info/1069/details/index.shtml?id=49292> (accessed November 17, 2008).

<sup>45</sup> "Saakashvili confirms that Georgian forces control Tskhinvali and speaks of 30 casualties" ("Саакашвили утверждает, что Цхинвали контролируется грузинскими войсками, и говорит о 30 погибших"), Regnum, August 8, 2008, <http://www.regnum.ru/news/1038629.html> (accessed November 17, 2008).

<sup>46</sup> For an overview over Russian aircraft attacks in undisputed Georgian territory recorded by Georgian authorities, see "Russian Invasion of Georgia," Georgia Update, Government of Georgia, October 8, 2008, <http://georgiaupdate.gov.ge/doc/10006697/Microsoft%20Word%20-%201%20Russian%20Attacks%20Summary.pdf> (accessed November 12, 2008).

<sup>47</sup> "The five-day war" ("Пятидневная война"), *Kommersant Vlast*, August 18, 2008, <http://www.kommersant.ru/doc.aspx?DocsID=1011909> (accessed November 17, 2008). Georgian sources put the number higher. See, for example, "A Two-Sided Descent Into Full-Scale War," *Washington Post*, August 17, 2008, [http://www.washingtonpost.com/wp-dyn/content/article/2008/08/16/AR2008081600502\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2008/08/16/AR2008081600502_pf.html) (accessed November 12, 2008). Russian forces in South Ossetia reportedly consisted of units from the 58th Army of the North Caucasus military district, the 76th Airborne Division from Pskov, the 98th Airborne Division from Ivanovo, and Special Forces from the Moscow-based 45th Detached Reconnaissance Regiment. See, for example, "Chronology of the War in South Ossetia: Second Day" ("Хроника войны в Южной Осетии: день второй"), *Lenta.ru*, August 10, 2008, <http://www.lenta.ru/articles/2008/08/09/ossetia/> (accessed November 21, 2008).

<sup>48</sup> "A Two-Sided Descent Into Full-Scale War," *Washington Post*.

Even though the Russian Ministry of Defense announced that Russian forces had ended all combat operations at 3 p.m. on August 12 and that all units had received an order to remain in their positions,<sup>49</sup> Russian armed forces crossed the South Ossetian administrative border on August 12 and moved toward Gori city.<sup>50</sup> The exact time when Russian forces occupied Gori city is disputed. The Russian authorities admitted that they were removing military hardware and ammunition from a depot in the vicinity of Gori on August 13,<sup>51</sup> but denied that there were any tanks in the city itself.<sup>52</sup> Russian tanks blocked roads into Gori city on August 14.<sup>53</sup> By August 15, Russian troops had advanced past Gori city as far as the village of Igoeti, 45 kilometers west of Tbilisi.<sup>54</sup> In a separate operation from the west, moving through Abkhazia, Russian forces occupied the strategically important cities of Poti, Zugdidi, and Senaki in western Georgia, establishing checkpoints and roadblocks there.

By August 16, President Saakashvili and his Russian counterpart President Dmitry Medvedev had signed a six-point ceasefire agreement brokered by French President Nicolas Sarkozy in his capacity as leading the French European Union presidency. The ceasefire agreement called for cessation of hostilities and the withdrawal of all forces to their pre-August 6 positions, while allowing Russian peacekeeping forces to implement additional security measures until an international monitoring mechanism would be in place.<sup>55</sup>

Beginning August 15, the Russian authorities started a gradual pull-back of Russian forces from undisputed Georgian territory, with withdrawal accelerating by August 20. Russian troops left Gori city on August 22, but established military checkpoints in the villages of Variani and Karaleti, just a few kilometers north of the city. This created what the Russian authorities called a security zone and what commonly became known as a “buffer zone,” approximately 20 kilometers wide and controlled by Russian forces. Although civilians were

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<sup>49</sup> “The Russian Army does not conduct active military activities from 15:00 Tuesday” (“Российская армия с 15:00 вторника не ведет активных боевых действий”), Ministry of Defense of the Russian Federation news release, August 13, 2008, <http://www.mil.ru/info/1069/details/index.shtml?id=49435> (accessed November 17, 2008).

<sup>50</sup> See, for example, witness testimony from the village of Tkviavi in Chapter 3.2.

<sup>51</sup> “Russia Says Removing Ammo from Near Gori,” *Civil Georgia*, August 13, 2008, <http://www.civil.ge/eng/article.php?id=19101&search=Gori> (accessed November 12, 2008).

<sup>52</sup> “There are no Russian tanks in Gori” (“В Гори нет российских танков”), Ministry of Defense of the Russian Federation news release, August 13, 2008, <http://www.mil.ru/info/1069/details/index.shtml?id=49429> (accessed November 17, 2008).

<sup>53</sup> “Russia, Georgia Negotiate Handover of Key Town,” Reuters UK, August 14, 2008, <http://uk.reuters.com/article/latestCrisis/idUKLE9710420080814> (accessed November 12, 2008).

<sup>54</sup> “Russia Convoy Moves Deeper Inside Georgia: Witness,” Reuters, August 15, 2008, <http://www.reuters.com/article/GCA-Georgia/idUSLF9676120080815#> (accessed November 12, 2008). Russian forces only briefly occupied Igoeti on August 15, withdrawing to just outside the village on the same day.

<sup>55</sup> “Georgia: the 6 Points Plan,” Embassy of France in Washington, August 14, 2008, <http://ambafrance-us.org/spip.php?article1101> (accessed November 12, 2008).



allowed to enter and exit the zone, subject to document and vehicle inspections, Russian forces denied access to Georgian police. Russian troops finally withdrew to South Ossetia in early October, although Russian troops still occupy a village on the border.<sup>56</sup>

As Russian forces withdrew, the EU deployed a mission under the European Security and Defense Policy, and the OSCE deployed military observers in undisputed Georgian territory adjacent to the South Ossetian border. Both sets of observers have been denied access to South Ossetia, however. On December 23 Russia refused to approve budgetary support for the OSCE's presence in Georgia, requesting separate OSCE missions in Georgia's breakaway regions. At this writing the OSCE was in the process of closing its offices in Georgia, including monitoring activities in the undisputed Georgian territories adjacent to South Ossetia.

On August 26, the Russian authorities recognized the independence of Abkhazia and South Ossetia<sup>57</sup> in a move widely criticized by the EU, the Council of Europe, NATO, and the OSCE (Russia's move has gone almost completely unmatched internationally—the only country to have followed suit in recognizing Abkhazia and South Ossetia as independent states is Nicaragua). Moscow says it will keep a total of 7,600 troops in Abkhazia and South Ossetia.<sup>58</sup>

The EU, OSCE, and United Nations have co-hosted a series of talks between Georgian, Russian, and de facto South Ossetian authorities, focusing on stability and displaced persons. The first round of talks, held in mid-October, stalled over the issue of the status of the delegations from South Ossetia and Abkhazia. One of the two subsequent rounds, held in December, resulted in an oral agreement between the Russian and Georgian sides to prevent and investigate security incidents that have plagued the ceasefire.<sup>59</sup>

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<sup>56</sup> "Russian Compliance in Georgia is Disputed," *New York Times*, October 10, 2008, <http://www.nytimes.com/2008/10/11/world/europe/11georgia.html?scp=5&sq=georgia%20gori&st=cse> (accessed November 12, 2008).

<sup>57</sup> "Statement from the Ministry of Foreign Affairs of the Russian Federation," Ministry of Foreign Affairs of the Russian Federation, 1246-26-08-2008, August 26, 2008, [http://www.mid.ru/brp\\_4.nsf/sps/6E758FAF78A475AFC32574B100545BD9](http://www.mid.ru/brp_4.nsf/sps/6E758FAF78A475AFC32574B100545BD9) (accessed November 17, 2008).

<sup>58</sup> "Russia Plans 7,600 force in Georgia Rebel Regions," Reuters, September 9, 2008, <http://www.reuters.com/article/topNews/idUSL272497420080909> (accessed November 12, 2008).

<sup>59</sup> "Russia/Georgia talks advance, but no agreement," Reuters AlertNet, December 18, 2008, <http://alertnet.org/thenews/newsdesk/LI633254.htm> (accessed December 21, 2008).

## 1.2 International Legal Framework

This chapter addresses the general international legal issues related to the August 2008 conflict in Georgia. This includes international humanitarian law relating to the conduct of hostilities, humane treatment, and occupation; international human rights law; and international law concerning displaced persons and the right to return. Discussion of specific violations of International humanitarian law and human rights law are found within the relevant chapters below.

### International Humanitarian Law Governing Hostilities

The conduct of the armed conflict in Georgia and South Ossetia is primarily governed by international humanitarian law, also known as the laws of war. International humanitarian law imposes upon parties to a conflict legal obligations to reduce unnecessary suffering and protect civilians and other non-combatants, or those *hors de combat*, such as prisoners. It does not regulate *whether* states and armed groups can engage in armed conflict, but rather *how* they engage in hostilities.<sup>60</sup> All armed forces involved in the hostilities, including non-state armed groups, must abide by international humanitarian law.<sup>61</sup> Individuals who violate humanitarian law with criminal intent may be prosecuted in domestic or international courts for war crimes.<sup>62</sup>

Under international humanitarian law, the hostilities that occurred between Russia and Georgia constitute an international armed conflict—a conflict between two states. The law applicable to international armed conflict includes treaty law, primarily the four Geneva Conventions of 1949 and its First Additional Protocol of 1977—Protocol I—and the Hague Regulations of 1907 regulating the means and methods of warfare, as well as the rules of customary international humanitarian law.<sup>63</sup> Both Georgia and Russia are parties to the 1949

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<sup>60</sup> See International Committee of the Red Cross (ICRC), *Commentary, IV Geneva Convention* (Geneva: International Committee of the Red Cross, 1958), pp. 16-17.

<sup>61</sup> See generally the discussion of the applicability of international humanitarian law to non-state armed groups in ICRC, *Customary International Humanitarian Law* (Cambridge, UK: Cambridge University Press, 2005), pp. 497-98.

<sup>62</sup> See provisions on grave breaches in the four Geneva Conventions of 1949; see also ICRC, *Customary International Humanitarian Law*, rule 158.

<sup>63</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted August 12, 1949, 75 U.N.T.S. 31, entered into force October 21, 1950; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, adopted August 12, 1949, 75 U.N.T.S. 85, entered into force October 21, 1950; Geneva Convention relative to the Treatment of Prisoners of War, adopted August 12, 1949, 75 U.N.T.S. 135, entered into force October 21, 1950; Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted August 12, 1949, 75 U.N.T.S. 287, entered into force October 21, 1950; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), adopted June 8, 1977,

Geneva Conventions and Protocol I.<sup>64</sup>

Since South Ossetia is recognized as part of Georgia, fighting between the non-state South Ossetian forces and militia and Georgian forces falls under the laws applicable to non-international (internal) armed conflict.<sup>65</sup> Internal armed conflicts are governed by article 3 common to the four Geneva Conventions of 1949 (Common Article 3), the Second Additional Protocol of 1977 to the Geneva Conventions (Protocol II, to which Georgia is a party), as well as customary international humanitarian law.<sup>66</sup>

Customary humanitarian law as it relates to the fundamental principles concerning conduct of hostilities is now recognized as largely the same whether it is applied to an international or a non-international armed conflict.

International human rights law also continues to be applicable during armed conflicts.<sup>67</sup> Georgia and Russia are both parties to the major international and regional human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR).<sup>68</sup> These treaties guarantee all individuals their fundamental rights, many of which correspond to the protections afforded under

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1125 U.N.T.S. 3, entered into force December 7, 1978; Convention (IV) Respecting the Laws and Customs of War on Land and the Annexed Regulations Concerning the Laws and Customs of War on Land of 18 October 1907 (Hague Regulations), 3 Martens Nouveau Recueil (ser. 3) 461, 187 Consol. T.S. 227, entered into force January 26, 1910.

<sup>64</sup> The authoritative Commentary to the Geneva Conventions of 1949 by the International Committee of the Red Cross (ICRC) notes that the determination of the existence of an armed conflict between states in which the conventions apply does not depend on a formal declaration of war or recognition of a state of hostilities. Rather, the factual existence of armed conflict between two states party automatically brings the Conventions into operation. Thus any hostilities between Georgian and Russian forces would fall within the full Geneva Conventions. See ICRC, *Commentary, IV Geneva Convention*.

<sup>65</sup> The ICRC Commentary to the Geneva Conventions lists a set of conditions that provide guidance in defining an internal armed conflict, foremost among them whether the insurgent party “possesses an organized military force, an authority responsible for its acts, [is] acting within a determinate territory and [is] having means of respecting and ensuring respect for the conventions.” *Ibid.* South Ossetian forces clearly meet these criteria.

<sup>66</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609, entered into force December 7, 1978.

<sup>67</sup> See the judgments of the International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996, ICJ Reports (July 8, 1996) para. 25; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004, ICJ Reports (July 9, 2004), paras. 106-113; *Armed activities on the territory of the Congo (Democratic Republic of the Congo v. Uganda)*, ICJ Reports (December 19, 2005), para. 216. The UN Human Rights Committee has also held that the International Covenant on Civil and Political Rights “applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.” Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 11.

<sup>68</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16 at 52, U.N. Doc. A/6316 (1966)), 999 U.N.T.S. 171, entered into force March 23, 1976; European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force September 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on September 21, 1970, December 20, 1971, January 1, 1990, and November 1, 1998, respectively.

international humanitarian law including the prohibition on torture, inhuman and degrading treatment, nondiscrimination, and the right to a fair trial for those charged with criminal offenses.<sup>69</sup>

## Basic Principles of International Humanitarian Law

The fundamental tenets of international humanitarian law are "civilian immunity" and "distinction."<sup>70</sup> While humanitarian law recognizes that some civilian casualties are inevitable, it imposes a duty on warring parties at all times to distinguish between combatants and civilians, and to target only combatants and other military objectives.<sup>71</sup> Civilians lose their immunity from attack when and only for such time that they are directly participating in hostilities.<sup>72</sup>

Civilian objects, which are defined as anything not considered a military objective, are also protected.<sup>73</sup> Direct attacks against civilian objects, such as homes, businesses, places of worship, hospitals, schools, and cultural monuments are prohibited —unless the objects are being used for military purposes.<sup>74</sup>

Humanitarian law further prohibits indiscriminate attacks. Indiscriminate attacks are of a nature to strike military objectives and civilians or civilian objects without distinction. Examples of indiscriminate attacks are those that are not directed at a specific military objective, or that use weapons that cannot be directed at a specific military objective or that use weapons that cannot be limited as required by humanitarian law. Prohibited indiscriminate attacks include area bombardment, which are attacks by artillery or other means that treat as a single military objective a number of clearly separated and distinct

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<sup>69</sup> While in a time of war or public emergency restrictions on and derogations from many of these rights are permitted (for example, restrictions on freedom of assembly and right to privacy), such restrictions are limited to those strictly required by the necessity of the situation and which are compatible with obligations under international humanitarian law.

<sup>70</sup> See Protocol I, arts. 48, 51(2), and 52(2).

<sup>71</sup> Article 48 of Protocol I states, "Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives."

<sup>72</sup> Protocol I, art. 51(3).

<sup>73</sup> *Ibid.*, art. 52(1). Military objectives are combatants and those objects that "by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage." *Ibid.*, art. 52(2).

<sup>74</sup> *Ibid.*, art. 52(2).

military objectives located in an area containing a concentration of civilians and civilian objects.<sup>75</sup>

Also prohibited are attacks that violate the principle of proportionality. Disproportionate attacks are those that are expected to cause incidental loss of civilian life or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated from the attack.<sup>76</sup>

Humanitarian law requires that the parties to a conflict take constant care during military operations to spare the civilian population and “take all feasible precautions” to avoid or minimize the incidental loss of civilian life and damage to civilian objects.<sup>77</sup> These precautions include doing everything feasible to verify that the objects of attack are military objectives and not civilians or civilian objects,<sup>78</sup> and giving “effective advance warning” of attacks when circumstances permit.<sup>79</sup>

International humanitarian law does not prohibit fighting in urban areas, although the presence of civilians places greater obligations on warring parties to take steps to minimize harm to civilians. Forces deployed in populated areas must avoid locating military objectives near densely populated areas,<sup>80</sup> and endeavor to remove civilians from the vicinity of military objectives.<sup>81</sup> Belligerents are prohibited from using civilians to shield military objectives or operations from attack—“shielding” refers to purposefully using the presence of civilians

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<sup>75</sup> Ibid., art. 51(4). Similarly, if a combatant launches an attack without attempting to aim properly at a military target, or in such a way as to hit civilians without regard to the likely extent of death or injury, it would amount to an indiscriminate attack. Ibid. art. 51(5)(a).

<sup>76</sup> Ibid., art. 51(5)(b). The expected danger to the civilian population and civilian objects depends on various factors, including their location (possibly within or near a military objective), the accuracy of the weapons used (depending on the trajectory, the range, environmental factors, the ammunition used, etc.), and the technical skill of the combatants (which can lead to random launching of weapons when combatants lack the ability to aim effectively at the intended target). ICRC, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, (Geneva: Martinus Nijhoff Publishers, 1987), p. 684.

<sup>77</sup> Protocol I, art. 57. The ICRC *Commentary to Protocol I* states that the requirement to take “all feasible precautions” means, among other things, that the person launching an attack is required to take the steps needed to identify the target as a legitimate military objective “in good time to spare the population as far as possible.” ICRC, *Commentary on the Additional Protocols*, p. 682.

<sup>78</sup> If there are doubts about whether a potential target is of a civilian or military character, it “shall be presumed” to be civilian. Protocol I, art. 52(3). The warring parties must do everything feasible to cancel or suspend an attack if it becomes apparent that the target is not a military objective. Ibid., art. 57(2).

<sup>79</sup> Ibid., art. 57(2).

<sup>80</sup> Ibid., art. 58(b).

<sup>81</sup> Ibid., art. 58(a).

with the intent to render military forces or areas immune from attack.<sup>82</sup> At the same time, the attacking party is not relieved from the obligation to take into account the risk to civilians on the grounds that it considers the defending party responsible for having located legitimate military targets within or near populated areas.

With respect to persons within the control of a belligerent party's forces, humanitarian law requires the humane treatment of all civilians and captured combatants. It prohibits violence to life and person, particularly murder, mutilation, cruel treatment, and torture.<sup>83</sup> It is also unlawful to commit rape and other sexual violence; to carry out targeted killings of civilians, including government officials and police, who are not participating in the armed conflict; and to engage in pillage and looting.<sup>84</sup>

Captured members of the Russian and Georgian armed forces are considered prisoners-of-war and fall under the extensive provisions of the Third Geneva Convention. For captured members of South Ossetian militias to qualify as prisoners of war would require that militia members had a regular chain of command; wore distinct insignia or uniforms; carried arms openly; and conducted operations in accordance with the laws of war.<sup>85</sup> As discussed below, the South Ossetian militias did not meet all four conditions and so must be detained, along with other civilians who are taken into custody, in accordance with the Fourth Geneva Convention on the protection of civilian persons.

## Individual Criminal Responsibility

With respect to individual responsibility, serious violations of international humanitarian law, including deliberate, indiscriminate, and disproportionate attacks harming civilians, when committed with criminal intent, are considered war crimes.<sup>86</sup> An act is carried out with criminal intent if it is done deliberately or recklessly. For example, a commander who knew that civilians remained in an area but still indiscriminately bombarded that area would be criminally responsible for ordering an unlawful attack.

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<sup>82</sup> *Ibid.*, art. 51(7). The prohibition on shielding is distinct from the requirement that all warring parties take "constant care" to protect civilians during the conduct of military operations by, among other things, taking all feasible precautions to avoid locating military objectives within or near densely populated areas. *Ibid.*, arts. 57, 58. It is shielding only when there is a specific intent to use the civilians to deter an attack.

<sup>83</sup> See generally, Article 3 common to the four Geneva Conventions of 1949, which is binding on all parties to a non-international armed conflict.

<sup>84</sup> See, for example, ICRC, *Customary International Humanitarian Law*, "Fundamental Guarantees," rules 87-105.

<sup>85</sup> Third Geneva Convention, art. 4(A)(2).

<sup>86</sup> See grave breaches provisions of the 1949 Geneva Conventions and Protocol I; see also ICRC, *Customary International Humanitarian Law*, "War Crimes," rule 156.

Individuals may also be held criminally liable for attempting to commit a war crime, as well as assisting in, facilitating, aiding or abetting a war crime. Responsibility may also fall on persons planning or instigating the commission of a war crime.<sup>87</sup>

Commanders and civilian leaders may be prosecuted for war crimes as a matter of command responsibility when they knew or should have known about the commission of war crimes or serious violations of human rights and took insufficient measures to prevent them or punish those responsible.<sup>88</sup>

States have an obligation under the Geneva Conventions and customary humanitarian law to investigate alleged war crimes committed by their nationals and members of their armed forces, or which were committed on territory that they control, and appropriately prosecute.<sup>89</sup>

### **Position of Peacekeepers under International Humanitarian Law**

The Sochi agreement of 1992 established the Joint Peacekeeping Forces in South Ossetia (see Chapter 1.1).<sup>90</sup>

Under international humanitarian law, as long as peacekeepers remain neutral and do not participate in hostilities they are to be treated as civilians who enjoy protection from attacks.<sup>91</sup> While peacekeepers may on occasion be required to resort to use of force, such force must be strictly limited to actions that are necessary for self defense or defense of any civilian objects that they have a mandate under the peacekeeping agreement to protect. Force used in this way must be strictly proportionate to that goal.

Attacks directed against peacekeepers who are not participating in hostilities would be a serious violation of international humanitarian law and a war crime.

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<sup>87</sup> See ICRC, *Customary International Humanitarian Law*, p. 554.

<sup>88</sup> See Protocol I, art. 86(2); see also ICRC, *Customary International Humanitarian Law*, rule 153.

<sup>89</sup> See ICRC, *Customary International Humanitarian Law*, rule 158; see also Rome Statute of the International Criminal Court (Rome Statute), A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, art. 21., preamble (noting “the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes”), <http://untreaty.un.org/cod/icc/index.html>.

<sup>90</sup> Agreement on the Principles of Settlement of the Georgian-Ossetian Conflict, June 24, 1992, [http://rrc.ge/law/shetanx\\_1992\\_06\\_24\\_r.htm?lawid=368&lng\\_3=ru](http://rrc.ge/law/shetanx_1992_06_24_r.htm?lawid=368&lng_3=ru) (in Russian).

<sup>91</sup> See ICRC, *Customary International Humanitarian Law*, rule 33. The scope of application of the rule is explicitly limited to peacekeeping forces, and not forces engaged in peace enforcement operations, who are to be considered combatants bound by international humanitarian law.

If peacekeepers act in a manner that is not neutral, for example by facilitating combat forces from one side, or engaging in hostile acts of firing, they lose the protection afforded them as civilians and may lawfully be subject to attack. The attacks, however, must also comply with the requirements of international humanitarian law regarding means and methods of warfare and the treatment of enemy combatants. Peacekeepers who use their protected status to carry out attacks are acting perfidiously, which is a serious violation of international humanitarian law.

During the conflict peacekeeping posts manned by Russian and/or Ossetian forces were targeted and Human Rights Watch witnessed the extensive damage caused to the peacekeepers' posts by Georgian attacks.<sup>92</sup> Both Russia and Georgia have made serious allegations with respect to attacks on or by peacekeeping forces, none of which Human Rights Watch was able to corroborate or refute. Georgian authorities claimed that South Ossetian forces fired artillery from peacekeeping posts, rendering them a legitimate target. Russian officials have claimed that Georgian troops deliberately and brutally killed members of peacekeeping troops, which would be a war crime whether the peacekeepers were entitled to civilian status or had participated in hostilities.<sup>93</sup>

## Law on Occupation and Effective Control

Under international humanitarian law territory is considered "occupied" when it is under the control or authority of foreign armed forces, whether partially or entirely, without the consent of the domestic government. This is a factual determination, and the reasons or motives that lead to the occupation or are the basis for continued occupation are irrelevant. Even should the foreign armed forces meet no armed resistance and there is no fighting, once territory comes under their effective control the laws on occupation become applicable.<sup>94</sup>

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<sup>92</sup> These posts were in Tskhinvali and near the village of Khetagurovo.

<sup>93</sup> A representative of the Russian prosecutor's office claimed that the Georgian troops "finished off wounded peacekeepers," and that an investigation found bodies of peacekeepers bearing execution-style wounds to the head, tied-up and burnt bodies, and bodies "crushed by heavy military vehicles." "Wounded Peacekeepers were Finished-off in Cold Blood," interview with Aleksandr Sorochkin, head of the military investigative department of the investigative committee of the Prosecutor's Office, *Izvestia*, September 11, 2008, [http://www.sledcomproc.ru/interview/652/?phrase\\_id=1401](http://www.sledcomproc.ru/interview/652/?phrase_id=1401) (accessed November 10, 2008).

<sup>94</sup> The primary treaty sources of the modern law of occupation are the Hague Regulations of 1907, the Fourth Geneva Convention of 1949, and certain provisions of Protocol I. Much of occupation law is also a matter of customary humanitarian law. According to the ICRC *Commentary to the Geneva Conventions*, the obligations of the Fourth Geneva Convention do not require a "state of occupation," but are in place for all relations between the civilian population of a territory and troops advancing into that territory, that is, at the soonest possible moment. ICRC, *Commentary, IV Geneva Convention*, p. 60. See also, Daniel Thürer, ICRC statement, "Current challenges to the law of occupation," November 21, 2005, <http://www.icrc.org/web/eng/siteengon.nsf/html/occupation-statement-211105> (accessed January 15, 2009).



International humanitarian law on occupation applies to Russia as an occupying power wherever Russian forces exercised effective control over an area of Georgian territory, including in South Ossetia or Abkhazia, without the consent or agreement of the Georgian government.<sup>95</sup> Russia also assumed the role of an occupying power in the Kareli and Gori districts of undisputed Georgian territory until the Russian withdrawal from these areas on October 10, 2008, because Russian presence prevented the Georgian authorities' full and free exercise of sovereignty in these regions.

Occupying powers are responsible for security and well-being of protected persons—those who find themselves in the hands of a party to the conflict or occupying power of which they are not a national.

Once an occupying power has assumed authority over a territory, it is obliged to restore and maintain, as far as possible, public order and safety.<sup>96</sup> Ensuring local security includes protecting individuals from reprisals and revenge attacks. Military commanders on the spot must take all measures in their power to prevent serious public order violations affecting the local population.<sup>97</sup> In practice this may mean that occupying forces should be deployed to secure public order until the time police personnel, whether local or international, can be mobilized for such responsibilities. An occupying power may take such measures of control and security as may be necessary as a result of the war.<sup>98</sup>

Under the Fourth Geneva Convention, the occupying power must also respect the fundamental human rights of the territory's inhabitants and ensure sufficient hygiene and public health standards, as well as the provision of food and medical care to the population under occupation.<sup>99</sup> Collective punishment and reprisals are prohibited.<sup>100</sup> Personnel of the International Red Cross/Red Crescent Movement must be allowed to carry out their humanitarian activities.<sup>101</sup> Everyone shall be treated with the same consideration by the occupying power without any adverse distinction based, in particular, on race, religion, or

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<sup>95</sup> Applying the law of occupation, or deeming Russia an occupying power for the purposes of international humanitarian law, does not in any way affect the sovereignty of the territory. Sovereignty is not transferred to the occupying power.

<sup>96</sup> Hague Regulations, art. 43.

<sup>97</sup> Protocol 1, art. 87. See also ICRC, *Commentary, First Additional Protocol*, p.1020, para. 3555.

<sup>98</sup> Fourth Geneva Convention, art. 27.

<sup>99</sup> *Ibid.*, arts. 29, 47, 55 and 56.

<sup>100</sup> Protocol I, art. 75.

<sup>101</sup> Fourth Geneva Convention, art. 63.

political opinion.<sup>102</sup>

A party has a duty to protect property in areas that its forces exercise control over or occupy. Private property may not be confiscated.<sup>103</sup> Pillage is prohibited, and the destruction of any real or personal property is only permitted where it is rendered absolutely necessary by military operations.<sup>104</sup>

The Fourth Geneva Convention requires an occupying power to investigate “grave breaches” of the convention.<sup>105</sup> Customary international law further obliges states to investigate and prosecute serious violations of international humanitarian law, including launching deliberate attacks against civilians, and attacks causing indiscriminate or disproportionate civilian loss.

Under international law, the law of occupation is no longer in effect when the hostile armed forces cease to control the occupied territory, either because of a voluntary or forced withdrawal, or as the result of a peace treaty or other agreement. The law of occupation also will no longer be in effect upon agreement between states that leaves the occupying government present or in control of the territory, but no longer as a belligerent force.<sup>106</sup> At this writing, Russia remains an occupying power in South Ossetia.

## Right to Return

As this report documents, as many as 20,000 ethnic Georgians displaced from their homes in South Ossetia by the fighting are currently not able to return to their homes. International law provides various protections to persons displaced from their homes, including the right to return.<sup>107</sup>

People who flee their homes as a result of war are entitled to return to their home areas and property, a right known as the “right to return.” The right to return to one's former place of residence is related to the right to return to one's home country, which is expressly

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<sup>102</sup> Ibid., art. 27.

<sup>103</sup> Hague Regulations, art. 46.

<sup>104</sup> Fourth Geneva Convention, arts. 33, 53.

<sup>105</sup> Ibid., art. 146.

<sup>106</sup> Ibid, art. 6; Protocol I, art. 3(b).

<sup>107</sup> See ICRC, *Customary International Humanitarian Law*, rule 132: “Displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist. This is a rule of customary international law in both international and non-international conflicts.”

recognized in the Universal Declaration of Human Rights and international human rights conventions.<sup>108</sup> The right to return to one's place of origin within one's country, or at least the obligation of states not to impede the return of people to their places of origin, is implied. For example, article 12 of the International Covenant on Civil and Political Rights recognizes the right to choose freely one's own place of residence, which incorporates the right to return to one's home area.<sup>109</sup> In some cases, the right to return to one's former place of residence is also supported by the right to family reunification and to protection for the family.

Of both direct and indirect relevance to the displacement of ethnic Georgians is article 49 of Geneva Convention IV, which maintains that civilians who have been evacuated during an occupation "shall be transferred back to their homes as soon as the hostilities in the area in question have ceased." This provision is directly relevant to persons evacuated as a result of international armed conflict; it is indirectly relevant to persons displaced as a result of internal armed conflict insofar as it reflects the principle that parties responsible for breaches of international humanitarian law (in those cases where evacuation or forced displacement did not occur for imperative military reasons or for the safety of the affected population) are responsible for redressing such violations.

Recognizing these various rights, the UN Sub-Commission on the Promotion and Protection of Human Rights has reaffirmed "the right of all refugees ... and internally displaced persons to return to their homes and places of habitual residence in their country and/or place of origin, should they so wish."<sup>110</sup> Numerous resolutions of the UN General Assembly and of the Security Council as well as several international peace agreements also recognize the right to return to one's home or property.<sup>111</sup>

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<sup>108</sup> Article 13(2) of the 1948 Universal Declaration of Human Rights states that "Everyone has the right to leave any country, including his own, and to return to his country." Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948). This language is reflected in article 5 of the 1965 International Convention on the Elimination of all Forms of Racial Discrimination, which guarantees "the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: . . ." These include in article 5 (d) (ii) "The right to leave any country, including one's own, and to return to one's country." International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, entered into force Jan. 4, 1969. This language is further reflected in article 3(2) of the Fourth Protocol to the European Convention on Human Rights, which states, "No one shall be deprived of the right to enter the territory of the State of which he is a national."

<sup>109</sup> ICCPR, art. 12.

<sup>110</sup> See Sub-Commission on the Promotion and Protection of Human Rights, *Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons*, Resolution 1998/26.

<sup>111</sup> With regard to Bosnia, see UN Security Council resolutions 947 (1994) and 859 (1993). See also Report of the Committee on the Elimination of Racial Discrimination, UN Doc. A/50/18 (1995) (requiring that "persons be given opportunity to safely return to the places they inhabited before the beginning of the conflict."). With regard to Kosovo, see UN Security Council resolutions 1199 (1998), 1203 (1998), 1239 (1999), and 1244 (1999). With regard to Israel, see UN General Assembly resolutions 3236 (1974), 3089(D) (1974). With regard to Cyprus, see UN General Assembly resolutions 253 (1983), 30 (1979), 3212 (1974), and UN Security Council resolutions 774 (1992), 361 (1974). With regard to Cambodia, see *Agreements on a Comprehensive Political Settlement of the Cambodia Conflict* (1991). With regard to Guatemala, see *Agreement on Identity and Rights of Indigenous*

In reference to previous displacement of civilians in Georgia, the UN Security Council passed Resolution 876 on October 19, 1993, in response to the situation in Abkhazia, which “affirmed the right of refugees and displaced persons to return to their homes.”<sup>112</sup>

The UN Guiding Principles on Internal Displacement, which reflect existing international human rights and humanitarian law, restate and clarify the rights of displaced persons.<sup>113</sup> This includes the rights to freedom of movement and to choose their place of residence,<sup>114</sup> as well as the responsibility of competent authorities to establish the conditions and provide the means for internally displaced persons to return voluntarily to their homes or places of habitual residence or to resettle voluntarily in another part of the country.<sup>115</sup> The Guiding Principles also set out the prohibition on arbitrary deprivation of property through pillage, direct or indiscriminate attacks or other acts of violence, using internally displaced persons as shield for military operations or objectives, as well as making them object of reprisal.<sup>116</sup> The property of displaced persons should not be destroyed or appropriated as a form of collective punishment. The Guiding Principles also clarify the obligation of the authorities to protect the property of internally displaced persons from such acts as well as from arbitrary and illegal appropriation, occupation or use,<sup>117</sup> to assist displaced persons with recovery, to the extent possible, of their lost properties and possessions or to ensure compensation or other just reparation.<sup>118</sup>

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Peoples (1995) and Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict (1994). With regard to Rwanda, see Arusha Peace Agreement (1993).

<sup>112</sup> United Nations Security Council Resolution 876 of October 19, 1993, reproduced at <http://se2.isn.ch/serviceengine/FileContent?serviceID=23&fileid=9868F720-BD13-E947-0C48-77F7888ECBFD&lng=en> (accessed January 15, 2009).

<sup>113</sup> See UN Guiding Principles on Internal Displacement, U.N. Doc. E/CN.4/1998/53/Add.2 (1998), noted in Comm. Hum. Rts.res. 1998/50, “Scope and Purpose.”

<sup>114</sup> *Ibid.*, principle, 14.

<sup>115</sup> *Ibid.*, principle 28.

<sup>116</sup> *Ibid.*, principle 21.

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*, principle 29.

## **PART 2: VIOLATIONS BY GEORGIAN FORCES**

### **2.1 Overview**

Human Rights Watch's investigation concluded that Georgian forces committed violations of the laws of war during their assault on South Ossetia. Our research shows that during the shelling of Tskhinvali and neighboring villages and the ground offensive that followed, Georgian forces frequently failed to abide by the obligation to distinguish between military targets that can be legitimately attacked, and civilians, who may not be targeted for attack. This was compounded by Georgia's failure to take all feasible measures to avoid or minimize civilian casualties. While we found no evidence that Georgian forces sought to deliberately target civilians, Human Rights Watch research concludes that Georgian forces demonstrated disregard for the protection of civilians during the shelling campaign, causing large-scale damage to civilian objects and property, and civilian casualties.

In the course of three missions to South Ossetia in August, September, and November 2008, Human Rights Watch interviewed more than 150 witnesses and survivors of the attacks on Tskhinvali and the ethnic Ossetian villages of Khetagurovo, Dmenisi, Sarabuki, Satikari, Gromi, Tbeti, Novyi Tbeti, Nizhnii Gudjabauri, Muguti, Monasteri, Batatykau, Kohat, Bikar, Tsinagari and Tsairi. Human Rights Watch researchers also examined the majority of sites where attacks took place, and gathered information from public officials, hospital personnel, and public activists.

The mere fact of civilian casualties or destruction of civilian objects does not mean that a violation of international humanitarian law occurred. Where civilian loss or damage occurred, what was important to seek to determine was whether there was evidence of a legitimate military target in the attack area, and how that target was attacked. In many cases Human Rights Watch researchers found no evidence of military objectives in the area under attack; other attacks did strike legitimate military targets, causing combatant and, in some cases, collateral civilian casualties.

In a number of cases, moreover, there were no direct witnesses and no reliable information regarding the circumstances of the attack. Also, since Georgian and Russian forces use some identical Soviet-era weapons systems including main battle tanks, Grad multiple-launch rockets, BMP infantry fighting vehicles, and tube artillery, Human Rights Watch could not always conclusively attribute specific battle damage to a particular belligerent, especially for

the attacks that happened on and after the evening hours of August 8 when both Russian and Georgian troops were present in Tskhinvali. Human Rights Watch did not include such incidents in this report.

Yet many of the attacks on South Ossetia during the brief conflict can be clearly attributed to Georgian forces—based on witness accounts, the direction of the attack, and the timing of the damage in light of the advance of Georgian forces. Human Rights Watch has concluded that a number of these attacks were indiscriminate.

The massive shelling of Tskhinvali was indiscriminate because, as will be described below, at the very least the Georgian military effectively treated a number of clearly separated and distinct military objectives as a single military objective in an area that contained a concentration of civilians and civilian objects.

In some of the attacks investigated by Human Rights Watch, evidence suggests that the Georgian forces targeted lawful military objectives (that is, objects or persons making effective contribution to the military action) but the attacks may have been disproportionate, because they could have been expected to cause loss of civilian life or destruction of civilian property that was excessive compared to the anticipated military gain. In others, Georgian forces carried out a number of artillery attacks in which they failed to take all feasible precautions to minimize the likely extent of loss or injury to civilians.<sup>119</sup>

Georgia's use of multiple rocket launching systems, such as BM-21s ("Grads") in civilian populated areas violated international humanitarian law's principle of distinction. These weapons cannot be targeted with sufficient precision to be accurate against military targets, and their broad area effect makes their use incompatible with the laws of war in areas where civilians or civilian objects (such as schools or hospitals) are located. The use of such weapons in populated areas is indiscriminate by nature and thus prohibited under international humanitarian law.

Several Ossetian civilians reported looting by Georgian ground forces but otherwise generally did not complain of other abusive treatment during the ground offensive by

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<sup>119</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), adopted June 8, 1977, 1125 U.N.T.S. 3, entered into force December 7, 1978, article 51(5)(a).

Georgian troops.<sup>120</sup> Those detained by Georgian forces, however, reported they were ill-treated when taken into custody (see Chapter 2.8).

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<sup>120</sup> They did repeat hearsay allegations of atrocities that Human Rights Watch investigated but did not corroborate. See Chapter 2.6.

## 2.2 Indiscriminate Shelling of Tskhinvali and Outlying Villages

On the night of August 7-8, Georgian forces subjected the city of Tskhinvali and several nearby Ossetian villages, including Nizhnii Gudjabauri and Khetagurovo, to heavy shelling. That night other villages were also shelled, though less heavily, including Tbeti, Novyi Tbeti, Sarabuki, Dmenisi, and Muguti. Tskhinvali was heavily shelled during daytime hours on August 8. Shelling resumed at a smaller scale on August 9, when Georgian forces were targeting Russian troops who by then had moved into Tskhinvali and other areas of South Ossetia.

Based on numerous interviews with survivors and witnesses, and on an examination of the scene of the attacks, Human Rights Watch concluded that Georgian forces used Grad rockets, self-propelled artillery, mortars, and Howitzer cannons.

### Tskhinvali

In Tskhinvali, the most affected areas were the city's south, southeast, southwest, and central parts. Georgian authorities later claimed that their military was targeting mostly administrative buildings in these areas.<sup>121</sup> The shells hit and often caused significant damage to multiple civilian objects, including the university, several schools and nursery schools, stores, and numerous apartment buildings and private houses. Such objects are presumed to be civilian objects and as such are protected from targeting under international law; but as described below, at least some of these buildings were used as defense positions or other posts by South Ossetian forces (including volunteer militias), which rendered them legitimate military targets.<sup>122</sup>

Human Rights Watch examined damage caused by shelling, including by Grad rockets, and interviewed witnesses from houses and apartment buildings located on numerous streets in different parts of the city.<sup>123</sup>

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<sup>121</sup> According to Zaza Gogava, chief of the Joint Staff of Georgian Armed Forces, there were Ossetian militias harboured in those administrative buildings. Stanogram of the Session of the Parliamentary ad hoc Commission on Military Aggression and Acts of Russia against the Territorial Integrity of Georgia, Session of October 28, 2008, [http://www.parliament.ge/index.php?lang\\_id=ENG&sec\\_id=1329&info\\_id=21212](http://www.parliament.ge/index.php?lang_id=ENG&sec_id=1329&info_id=21212) (accessed January 13, 2009).

<sup>122</sup> See ICRC, Customary International Humanitarian Law, rule 8.

<sup>123</sup> These include: Isak Kharebov Street, Abaev Street, Geroev Street, Telman Street, Shkolnaia Street, Zavodskaiia Street, Dzhabiev Street, Ustaev Street, Koblov Street, the Shankhai area (southwest part of the city— Tsereteli Street and Gertzin streets), Lenin Street, Mansurov Street, Luzhkov Street, Stalin Street, Molodezhnaya Street and the Tsarz area (southeast part of the city—Komarov Street).



### *Grad rocket attacks on Tskhinvali and outlying villages*

One of the civilian objects hit by the Grad rockets in Tskhinvali was the South Ossetian Central Republican Hospital (Tskhinvali hospital)—the only medical facility in the city that was assisting the wounded, both civilians and combatants, in the first days of the fighting.

One of the hospital's doctors told Human Rights Watch that the hospital came under fire for 18 hours, and that hospital staff had to take all of the wounded into the hospital basement because of this. Human Rights Watch documented the damage caused to the hospital building by a rocket believed to have been fired from a Grad multiple rocket launcher: the rocket had severely damaged treatment rooms on the second and third floors.

Aivar Bestaev, the chief of the surgery department in the hospital, told Human Rights Watch,

I came to work on August 7, and couldn't leave the hospital for almost a week. We treated all of the wounded in the basement, because they were shelling the hospital non-stop. We were very short-staffed, and I conducted surgery after surgery in terrible conditions, on the cold floor in the basement. Initially, we only had candlelight, then somebody brought a small generator... It's a miracle that all of the wounded (almost 280 people!) whom we treated there survived. The majority had shell wounds, some very serious, and some had bullet wounds as well.

On August 8, my neighbor rushed to the hospital and told me that my house was hit and was on fire—I knew my wife was there, but I couldn't do anything, I was in the middle of a surgery. I had to stay in the hospital. My wife survived—she and other women found shelter in a different house, but for several days I didn't know what happened to her. Everything we had burned in the fire—clothes, furniture, everything!<sup>124</sup>

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<sup>124</sup> Human Rights Watch interview with Aivar Bestaev, Tskhinvali, August 17, 2008.



A doctor in the basement of the Tskhinvali hospital where, despite poor lighting and inadequate equipment, medical personnel managed to save, during the fighting, all 273 of their wounded patients. © 2008 Human Rights Watch

Hospitals enjoy a status of special protection under humanitarian law beyond their immunity as civilian objects, and the presence of wounded combatants there does not turn them into legitimate targets.<sup>125</sup>

Vladimir, age 36, showed Human Rights Watch the ruins of his house on Abaev Street in Tskhinvali. He said that five Grad rockets hit his yard and his neighbor's yard on August 7, and he showed Human Rights Watch researchers fragments of the rockets that exploded in his yard. Vladimir and his family had already fled Tskhinvali, but friends were staying in his house on the night of August 7, who told him what happened. Vladimir told Human Rights Watch,

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<sup>125</sup> See in particular, Geneva IV, article 19 which states that the "fact that sick or wounded members of the armed forces are nursed in these hospitals, or the presence of small arms and ammunition taken from such combatants and not yet handed to the proper service, shall not be considered to be acts harmful to the enemy." Additionally, should the hospitals be used for committing acts harmful to the enemy outside their humanitarian duties, protection may cease "only after due warning has been given, naming, in all appropriate cases, a reasonable time limit, and after such warning has remained unheeded."

When the shelling started, [my friends] rushed to the basement, removed a water tank and hid in the pit where it used to stand. They spent two days and two nights there, in this pit, unable to get out. On August 10, when the shelling subsided a bit, they went out—and just in time, because the house totally collapsed on the same day!

As I was getting ready to return here, my kids were asking me, “Daddy, can you please check on our toys, see if they’re all right?” What am I going to tell them now? Sorry, children, not only your toys are gone but you don’t have a home any longer?<sup>126</sup>

Human Rights Watch saw several other houses on the same street destroyed or significantly damaged by Grad rockets or artillery shells.

Another area heavily hit by the Grad rockets was the southern part of Stalin Street. There, several apartment buildings in a row sustained multiple hits on their southern facades. One of the residents of 96 Stalin Street told Human Rights Watch that the building was hit by three Grad rockets almost simultaneously at around 4:20 a.m. on August 8. One of the rockets hit an apartment on the third floor. Two of the apartment’s residents, both women, survived with non-life-threatening injuries.<sup>127</sup> The residents of the neighboring house, No. 98, showed Human Rights Watch several large fragments of Grad rockets that they collected in and around the buildings.<sup>128</sup>

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<sup>126</sup> Human Rights Watch interview with Vladimir (real name withheld), Tskhinvali, August 16, 2008.

<sup>127</sup> Human Rights Watch interview with residents of 96 Stalin Street, Tskhinvali, August 15, 2008.

<sup>128</sup> Human Rights Watch interview with residents of 98 Stalin Street, Tskhinvali, August 15, 2008.



Components of BM-21 Grad rockets recovered in an apartment building in Tskhinvali. © 2008 Human Rights Watch

The above are only a few of the examples of damage caused to the South Ossetian capital by Grad attacks.

Several villages to the west and east of Tskhinvali were also subjected to Grad shelling and heavy artillery fire by the Georgian forces.

In the village of Khetagurovo—especially in its southern part, close to the Georgian artillery positions—Human Rights Watch saw many houses completely destroyed or significantly damaged by the shelling. For example, one house on Alanskaia Street on the southern outskirts of the village was hit by four Grad rockets and three mortar shells, and the neighboring house was hit by five mortar shells. Human Rights Watch saw the fragments of the rockets and the shell craters in the yards.

Madina Dzhioeva, age 32, one of the villagers who stayed in Khetagurovo during the attack, described the night of August 7-8 to Human Rights Watch:



At night the shelling started ... My mother is very ill and bedridden. So, I had to stay with her. When the shelling started, we spent that first night at home. It was absolutely horrifying. Very early in the morning we carried Mother to the house of our neighbors across the street because there is no basement in our house, and we knew we would have been killed within hours if we stayed at home any longer. We spent three days in our neighbors' basement—there was no food, nothing.<sup>129</sup>

According to Georgian authorities, and one Ossetian interviewee we spoke with, Ossetian forces had firing positions in Khetagurovo.<sup>130</sup> While these firing positions were legitimate targets, given the indiscriminate nature of Grad rockets, using them to hit such targets in an area populated by civilians may constitute an indiscriminate attack. Although the Ossetian forces bear responsibility for endangering civilians by locating military objectives near or among populated areas, Georgia is not relieved from its obligation to take into account the risk to civilians when it attacks the targets.

Human Rights Watch documented similar accounts by the residents of Nizhnii Gudjabauri, Sarabuki, Muguti, Dmenisi, and Novyi Tbeti. For example, in Dmenisi 12 houses were destroyed or severely damaged by the shelling. In Sarabuki a Human Rights Watch researcher saw five houses severely damaged by artillery hits, and others with lesser damage. In both villages Human Rights Watch saw ample evidence of the use of Grad rockets.

## Civilians Killed in Shelling

Georgian forces' indiscriminate use of force, using Grad and other weapons, led to civilian deaths and injuries.<sup>131</sup>

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<sup>129</sup> Human Rights Watch interview with Madina Dzhioeva, Khetagurovo, August 24, 2008.

<sup>130</sup> According to Vano Merabishvili, minister of interior of Georgia, Georgian police posts were often fired at from the villages of Khetagurovo and Ubaiti. Stanogram of the Session of the Parliamentary ad hoc Commission on Military Aggression and Acts of Russia against the Territorial Integrity of Georgia, Session of November 26, 2008, [http://www.parliament.ge/index.php?lang\\_id=ENG&sec\\_id=1329&info\\_id=21751](http://www.parliament.ge/index.php?lang_id=ENG&sec_id=1329&info_id=21751) (accessed January 13, 2009); Human Rights Watch interview with Ruslan B. who had been to this facility regularly, Dzara road, November 24, 2008.

<sup>131</sup> See above section, Tskhinvali, for a fuller discussion of this issue. The Public Commission for Investigation of War Crimes in South Ossetia, a group of public activists working with the prosecutor's office of the de facto South Ossetian government, has claimed that 34 people were killed by Grad rockets or other artillery, as included on its list of 365 people killed during the conflict. Another 65 deaths on the list are attributed to *obstreI*, which can mean shelling or simply "firing." See Public Commission for investigating war crimes in South Ossetia, "List of the Killed Residents of South Ossetia," <http://www.osetinfo.ru/spisok> (accessed November 8, 2008). As explained below, the list does not distinguish between civilians and combatants.

In one example, Anisim Dzhagaev, age 74, was killed by what witnesses believed to be a Grad rocket during the shelling of Tskhinvali. On the night of August 7-8 Dzhagaev was with his wife in the basement of their house on Kulaev Street in the southern part of the city. His daughter Dzarisa Dzhagaeva told Human Rights Watch,

He stepped out of the basement during the shelling to see what was happening and saw that the roof of the house had caught fire. He fetched some water and tried to put the fire out. And then he was hit in his right leg.

Mother could hear how those multiple rockets were flying at the same time—she described the sound of multiple explosions and everything.

He was bleeding very heavily and there was just no one to help. He was dying slowly from the loss of blood. Mother helped him make it back into the basement and spent the whole night sitting by his side while he was dying. She had nothing to properly bandage the wound with, soon she ran out of rags, and he was just bleeding away ... When he died we could not bury him properly. I made a grave for him right in the vegetable patch. I buried him myself—but only on August 10, when the fighting subsided and I could get out of the basement.<sup>132</sup>

Another interviewee told Human Rights Watch that his mother and aunt were killed on August 9, during one of the last rounds of Georgian shelling. Both women were in their home, located near School No. 6 in Tskhinvali, when a rocket hit their yard. The interviewee, Alan Sipols, age 38, was abroad at the time of the Georgian offensive, but reconstructed the sequence of events based on his telephone conversations with his mother just before her death and on accounts by neighbors. A shell landed in the middle of the garden, leaving a crater some 3.5 meters in diameter:

When it hit, all the sharp, scorching fragments flew into the house, penetrating the walls as if it was paper. When such a fragment hits a person, it just shreds you apart, and I cannot describe what they turned the people I loved most into.

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<sup>132</sup> Human Rights Watch interview with Dzarisa Dzhagaeva, Tskhinvali, August 14, 2008.

God save you from ever having to collect into a bag the fragments of your loved ones' bodies...

Sipols, who said he had had artillery training in the military, told Human Rights Watch he believed, judging by the fragment and the crater, that the shell had been “a large-caliber shell, some 122 mm or more,” fired from a howitzer.<sup>133</sup>

Telman Street, located in southern Tskhinvali, was almost completely destroyed by Georgian shelling, which Sonya Gagloeva said killed one of her neighbors and wounded another. Gagloeva, age 69, said that she was sheltering in a large basement along with many of her neighbors. When she ran out at one point to grab her identity papers from her house, she herself suffered a contusion and minor shrapnel wounds when a shell hit the ground right next to her.

She said the shelling was virtually incessant during the first day, and people in the basement had no food or water. The men tried to get out from time to time to fetch water. One of them was killed as he was on his way out of the basement. Gagloeva said,

Our neighbor, Vasily Bazaev, he was 53 or 54 years old, tried to step outside during that first night, close to dawn [August 8]. He made it halfway up the staircase when a shell hit ... When we came up he was still alive. We dragged him down the stairs and he died 10 minutes later. And then we stayed in the same basement next to his body till the afternoon of August 9, when some relatives came to pick up the body.

Another neighbor, Natela—she's 45 or so—got wounded. It was on August 8. She was staying somewhere further down the street and she knew our basement was safer, so she decided to risk it ... She almost made it to us but got hit by some fragments of shells just a few steps away from our basement. So, we dragged her into the basement and the poor woman was all covered in blood. We watched over her till the evening of August 9 when some of the guys [militias] finally picked her up and took her to the hospital.<sup>134</sup>

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<sup>133</sup> Human Rights Watch email correspondence with Alan Sipols, August 25-26, 2008.

<sup>134</sup> Human Rights Watch interview with Sonya Gagloeva, Tskhinvali, September 7, 2008.



Sonya Gagloeva in front of her destroyed house on Telman Street, in Tskhinvali. © 2008 Human Rights Watch

The number of civilians at risk—and thus the number of casualties—was significantly reduced because many residents of Tskhinvali and neighboring villages, especially women and children, were evacuated or managed to flee their homes before the fighting began, many of them on August 6 and 7. The majority of the remaining civilians spent several days in the basements of their houses to seek shelter from Georgian forces' heavy shelling and ground offensive.

This, however, by no means relieves the Georgian side of responsibility to minimize the risk to civilians when launching an attack and to abide by the principles of distinction.

In addition, warring parties have a responsibility where possible to give advance warning of an attack that might affect civilians.

No such warning was given by the Georgian side. On the contrary, before the shelling started on the night of August 7-8, President Saakashvili said in a televised statement that “Georgia has unilaterally ceased fire in the current fighting with separatist rebels in the region of



South Ossetia” and that his government would engage in direct negotiations to end the conflict.<sup>135</sup>

A number of witnesses told Human Rights Watch that this announcement influenced their decision to stay in the city, which put them at greater risk.

### *The positioning of Ossetian combatants*

The Georgian authorities have claimed that the strikes on Tskhinvali and neighboring villages were legitimate as they targeted Ossetian military positions and not at civilians. In his testimony to the parliamentary commission studying the August war, Zaza Gogava, chief of staff of the Georgian armed forces, said that “Georgian forces used precision targeting ground weapons only against several administrative buildings, where headquarters of militias were located; these strikes did not cause any destruction of civilians’ houses.”<sup>136</sup>

Alexander Lomaia, the secretary of the Georgian National Security Council, told the same commission that the goal of the attacks was only to “neutralize firing positions from where Georgian positions were being targeted,” and that Grad rockets were only used on “Verkhny Gorodok district of Tskhinvali, where [separatist] artillery was deployed,” while the city center was hit with “modern, precision targeting weapons.”<sup>137</sup>

Numerous witnesses interviewed by Human Rights Watch, including members of South Ossetian militias, indicated that South Ossetian forces were not only present in Tskhinvali and neighboring villages, but also actively participating in the fighting, including by launching artillery attacks against Georgian forces. The witnesses also made it clear that South Ossetian forces set up defensive positions or headquarters in civilian infrastructure, thus turning them into legitimate military targets.

These locations included some administrative buildings hit by the Georgian artillery, such as the Ossetian parliament building, as well as several schools and nursery schools. For example, witnesses told Human Rights Watch that militias had taken up positions in School No. 12 in the southern part of Tskhinvali, which was seriously damaged by the Georgian fire. Another witness said South Ossetian fighters were co-mingled with civilians in the basement

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<sup>135</sup> “President Orders Immediate Cease Fire, Says Russian Peacekeepers Acknowledge Having Lost Control Over Separatist Rebels,” *Georgia Update*, <http://georgiaupdate.gov.ge/doc/10003551/20080807,%20Cease%20Fire.pdf>.

<sup>136</sup> “Chief of Staff Testifies before War Commission,” *Civil Georgia*, <http://www.civil.ge/eng/article.php?id=19851>.

<sup>137</sup> National Security Council Chief Testifies before War Commission, *Civil Georgia*, October 29, 2008, <http://www.civil.ge/eng/article.php?id=19845> (accessed November 5, 2008).

of Tskhinvali School No 6, which drew Georgian tank fire. No civilian casualties resulted.<sup>138</sup>

Yet another witness, a 50-year-old kindergarten teacher who showed Human Rights Watch the fragments of Grad rockets that hit her kindergarten building on Isak Kharebov Street, also said that volunteer militias had been “hiding” in the building.<sup>139</sup> Several members of the Ossetian militia interviewed by Human Rights Watch confirmed that many of the school and nursery school buildings were used as gathering points and defense positions by the militias.

In some of the villages, such as Khetagurovo, Human Rights Watch was able to establish that the positions of Ossetian militias were in close proximity to the civilian homes hit by the Georgian artillery.<sup>140</sup> Georgian forces said they came under heavy fire from Khetagurovo.

However it is questionable whether the large-scale shelling carried out by Georgian forces against Tskhinvali and outlying villages could be considered a proportionate attack against Ossetian forces, including volunteer militias present in these areas. In some cases, as mentioned above, the very choice of indiscriminate weapons or weapons that cannot be targeted with precision (such as Grad launchers) would make attacks unlawful in populated areas. Even though the presence of the Ossetian forces may have made the area a prima facie legitimate target, the Georgian forces were still obliged to calculate whether the risk of harming civilians with the Grad rockets was too high to justify the military advantage sought.

It is also not clear to Human Rights Watch to what extent the Georgian command had the necessary intelligence to establish the exact location of the South Ossetian forces at any given moment, in part because the forces were very mobile. At the same time, Georgian military command was clearly aware of the presence of civilians in Tskhinvali and other areas subjected to artillery strikes.<sup>141</sup>

International humanitarian law places clear obligations on warring parties to take all possible steps to minimize harm to civilians and not to attack civilian objects. If any doubt exists as to whether a civilian object is being used for military purposes, “it shall be

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<sup>138</sup> Human Rights Watch interview with Nar N., Tskhinvali, September 7, 2008. Nar N. (real name withheld) said that the fighters in the basement peeked out of the basement but did not open fire at Georgian forces. If true, this would not change the status of the basement as a legitimate military target.

<sup>139</sup> Human Rights Watch interview with Marina M. (real name withheld), Tskhinvali, August 13, 2008.

<sup>140</sup> Human Rights Watch interviews with Anna A. and Ruslan B. (real names withheld), Dzara Road, November 24, 2008.

<sup>141</sup> The Georgian army chief of staff, Zaza Gogava, made this fact clear in his testimony to a parliamentary commission examining the conduct of the war. See “Chief of Staff Testifies before War Commission,” *Civil Georgia*, <http://www.civil.ge/eng/article.php?id=19851>.

presumed not to be so used.”<sup>142</sup> When a legitimate target exists within a building, the attacking party must still make a proportionality assessment, ensuring that the expected value of destroying the military object outweighs the likely impact of the attack on civilians and civilian infrastructure.

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<sup>142</sup> Protocol I, art. 52(3), states, “In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.”

## 2.3 Attacks by Georgian Forces on Civilians Fleeing the Conflict Zone

Many Ossetian civilians who did not manage to leave South Ossetia before the fighting attempted to flee to North Ossetia on August 8–10. Human Rights Watch received a number of disturbing reports of Georgian attacks on civilian vehicles fleeing the conflict zone, resulting in death and injuries. The cases described below indicate that—in these cases at least—the attacks caused excessive civilian loss and that precautions were not taken to protect civilian life.

### *Attack on the Dzhusoev family, August 8*

An elderly resident of Tskhinvali, Zaur Dzhusoev, lost his son, Mairbek, and two of his teenage grandchildren, Dina and Aslambek, in one such attack. Dzhusoev told Human Rights Watch that on the morning of August 8, when the shelling of the city subsided for a while, his son decided to take his family out of the city. The civilian car (a Zhiguli Semerka) was packed with civilians—in addition to Mairbek Dzhusoev, who was driving, there were five children (Mairbek’s two teenagers, a six-month-old baby, a two-year-old, and a seven-year-old), Mairbek’s wife, and another female relative. Mairbek Dzhusoev was wearing civilian clothes. Zaur Dzhusoev, who learned the details of the incident from eyewitnesses, told Human Rights Watch,

I didn’t want to let them go, but my son said, “Dad, not to worry, I’ll get through!” It was around 9 a.m. He promised to call when they got out of the city, and I was waiting and waiting for his call. I didn’t know that my children were no longer alive ...

I only found out around 4 p.m., but then I couldn’t do anything. Later I learned from our militias who were in the area that it happened at the intersection of Geroev and Isaaka streets. The militias noticed his car and tried to make signals for him to turn around because there was a Georgian tank. My son turned the car, but it was too late—the tank fired at the car, and that was it ...

Later, I saw the car—it was apparently hit by a very big shell. The two women managed to get out with the three younger kids, but my son and grandchildren couldn’t. Maybe they were killed instantly or maybe they died from the wounds—no one could approach the car to help them, because

Georgians were shooting all the time. They just burned in the car—the only remains I could retrieve and bury were just ashes! That’s all I have left from my family ....<sup>143</sup>

### *Attacks on civilian cars on the Dzara road*

A number of interviewees told Human Rights Watch that they tried to flee north out of Tskhinvali along the Dzara road, hoping to get to safety in North Ossetia, when they came under Georgian fire.<sup>144</sup>

Petr Petaev, a resident of Tskhinvali, was trying to flee the city with his wife and son on August 9. A grenade hit Petaev’s car, killing his wife and injuring Petaev and his son. Petaev told Human Rights Watch,

For two nights and one day I was hiding in the basement with my wife and son and then, on the 9th we could not take it anymore and decided to leave. We got into our car in the evening and drove out of the city. Some militias told us that a humanitarian corridor was opening up that evening and everyone should try to leave. So, there we were driving through Tbet [Tbeti] onto the Zar [Dzara] road.

And we were shot at right there. My wife was killed by the very first shot. My son and I just sat in the car next to her dead body for another half-hour or so. And they just continued shooting! My son got wounded in the head and I was wounded in my leg. Before we reached that place where we got shot at we saw 10 burning cars.<sup>145</sup>

Another civilian killed during evacuation along the Dzara road was 54-year-old Diana Kodjaeva, who tried to flee Tskhinvali with her neighbors on the night of August 7-8. Kodjaeva’s cousin, who learnt about her death the next day, told Human Rights Watch that

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<sup>143</sup> Human Rights Watch interview with Zaur Dzhusoev, Tskhinvali, August 17, 2008.

<sup>144</sup> The main road north out of Tskhinvali is the TransCam, which goes through ethnic Georgian villages administered by Tbilisi, and was closed by the de facto authorities in South Ossetia several years earlier. Since then and until the end of the August hostilities, Tskhinvali residents wishing to travel in the direction of Java had to take a detour through the village of Zar, along the Zarskaya road, known in Georgian as the Dzara road. Nearly one-seventh of the 365 deaths listed by the Public Commission for Investigation of War Crimes in South Ossetia allegedly occurred “on the Zarskaya [Dzara] road.” As noted elsewhere in this report, it is not known whether the deceased on this list were civilians or combatants, where they were killed, and under what circumstances. Public Commission for Investigating War Crimes in South Ossetia, “List of the Killed Residents of South Ossetia,” <http://www.osetinfo.ru/spisok> (accessed November 8, 2008).

<sup>145</sup> Human Rights Watch interview with Petr Petaev, Tskhinvali, September 8, 2008.

the car in which they had been traveling came under heavy fire on the Dzara road and “burnt to ashes.” He did not know the circumstances of how the car came under fire, and found only the burnt remains of his cousin and two of her neighbors. He said,

I immediately went there and found what remained of the car. It was a burnt wreck. And I could not even bury [my cousin] properly. I just picked up a few handfuls of dust from the car and pretended these were her ashes. But I don’t know whether they were really hers or [those of the two other people in the car]. I needed to bury something, right? And this just had to do.<sup>146</sup>

Another interviewee recounted to Human Rights Watch how his brother tried to evacuate his wife and eight-year-old son from Tskhinvali on the night of August 7. He said,

On the detour [Dzara] road, the car came under heavy fire from the Georgian troops. My brother first pushed his wife and son out of the car and they hid in a ditch on the side of the road. He drove further, trying to lead the fire away from his family. Then he jumped out of the car, and managed to crawl back to where he left his wife and child. Georgians continued to fire at the car, and it burnt almost completely. My brother and his family spent the night in the ditch, and in the morning managed to get to Java, where they got some help. The child was seriously traumatized and is now undergoing rehabilitation in Vladikavkaz.<sup>147</sup>

(An unverified claim that Georgian forces used cluster munitions in their attacks on the Dzara road is discussed in Chapter 2.4).

### **Attacks on vehicles and international humanitarian law**

Human Rights Watch was not able to conclude whether the civilian deaths that resulted from the attacks on the vehicles were the consequence of acts contrary to the laws of war, and believes that the circumstances of these killings warrant further investigation.

At least two factors suggest the presence of legitimate military targets. First, starting early on the evening of August 8, Russian forces and armaments were moving south from the Roki tunnel on the Dzara road: In a letter to Human Rights Watch, the Georgian government stated

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<sup>146</sup> Human Rights Watch interview with Diana Kodjaeva’s cousin (name withheld), Tskhinvali, September 8, 2008.

<sup>147</sup> Human Rights Watch email correspondence with Alan Sipols, August 25-26, 2008.

that its forces “fired on armor and other military equipment rolling from the Roki Tunnel along the Dzara Road, not at civilian vehicles.”<sup>148</sup> Second, as one witness recounted to Human Rights Watch, Ossetian forces had an artillery storage facility and firing position on a hill about one kilometer from the Dzara road.<sup>149</sup>

Both Russian forces moving south on the Dzara road and the Ossetian firing position were legitimate military targets. But in carrying out these attacks Georgian forces had a duty to take precautions to minimize civilian harm and to ensure these attacks conformed to the principle of proportionality.

The Georgian government has said that “during movement of military columns, particularly during combat, all movement of civilian vehicles was halted. Consequently, there were no civilian vehicles present during [Georgian armed forces] fire against the mouth of the Roki Tunnel and along the Dzara Road.”<sup>150</sup> It appears, however, that Russian columns moving south did not preclude civilian vehicles’ moving north. Indeed, Georgian forces should have been fully aware that in the first days of the conflict the Dzara road was the only way out of Tskhinvali that civilians could use.

Information collected by Human Rights Watch suggests that many of the cars were driven by South Ossetian militiamen who were trying to get their families, neighbors, and friends out of the conflict zone. A militia fighter is a combatant and a legitimate target when he or she is directly participating in hostilities.

It is not inconceivable that some of the militia fighters driving civilians to safety were wearing camouflage, were armed, or in other ways appeared to pose a legitimate threat to Georgian forces. But it was the responsibility of the Georgian troops to determine in each case whether the vehicle was a civilian object or not, and if it was believed to be a legitimate military target, whether the anticipated military advantage gained from an attack on such vehicles would outweigh the expected harm to civilians.

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<sup>148</sup> Letter from Alexander Lomaia, secretary of the Georgian National Security Council, to Human Rights Watch, December 3, 2008.

<sup>149</sup> Human Rights Watch interview with Ruslan B., November 24, 2008.

<sup>150</sup> Letter from Alexander Lomaia to Human Rights Watch, December 3, 2008.

## 2.4 Georgian Forces' Ground Offensive

In the early hours of August 8, Georgian ground troops, including tank columns and infantry, entered South Ossetian villages to the west of Tskhinvali and then proceeded into the city. While in some villages and in parts of Tskhinvali South Ossetian militias seemed to put up armed resistance and defend their positions, by the afternoon of August 8, Georgian authorities claimed to have complete control of the city. In Tskhinvali the exchange of fire between Georgian forces and South Ossetian forces supported by the Russian army and air force continued until August 10, when the Georgian command ordered withdrawal of troops from South Ossetia.

The presence of South Ossetian combatants throughout Tskhinvali and in some villages in many cases makes it difficult for Human Rights Watch to assess the legality of some of Georgia's attacks during the ground offensive. Armed with automatic weapons, the militias targeted Georgian military vehicles and infantry moving through the city. Numerous witnesses confirmed to Human Rights Watch that virtually all able-bodied males joined the volunteer militias, often after moving their families to safety in North Ossetia.<sup>151</sup>

Human Rights Watch believes that, particularly during the attempt to take Tskhinvali, on a number of occasions Georgian troops acted with disregard to the protection of civilians by launching attacks where militias were positioned that may have predictably caused excessive civilian loss compared to the anticipated military gain. Some of the Georgian soldiers interviewed by Human Rights Watch confirmed that while they were targeting Ossetian fighters who were shooting at them from apartment buildings, they were fully aware of the presence of civilians in these buildings. One soldier said,

We entered Tskhinvali in the morning of August 8. There was a street fight. Ossetians were mostly in the buildings, in apartments, and shot at us from the buildings. We could see civilians in the basements. Some would come up and peek out to see what was happening on the street level. Then they would go back down. The fighters were also in the basements and would fire at us from the basements.<sup>152</sup>

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<sup>151</sup> For example, Human Rights Watch interview with Alexander A. (real name withheld), Tskhinvali, August 14, 2008.

<sup>152</sup> Human Rights Watch interview with a soldier from the 4th brigade (name and battalion withheld), Tbilisi, date withheld.



Human Rights Watch researchers saw multiple apartment buildings in Tskhinvali hit by tank fire. In some cases, it was clear that the tanks and infantry fighting vehicles fired at close range into basements of buildings. Human Rights Watch interviewed several people who were sheltering in these basements at the time of the attack.



Human Rights Watch examining the basement of an apartment building on Luzhkov Street, in Tskhinvali, which was hit by Georgian tank fire. © 2008 Human Rights Watch

Giorgi G. took Human Rights Watch researchers to his apartment building at 50 Luzhkov Street, Tskhinvali, which he explained suffered severe damage during the Georgian ground offensive. The wall of the building had a gaping hole at the basement level, apparently from a shell fired at close range. Giorgi G. said,

When the fighting started, everyone who remained in the building rushed to the basement. We stayed there for the next two days, unable to step outside because the shelling was so heavy. On August 9 a BMP [infantry fighting vehicle] fired right into the basement, leaving a gaping hole in the wall. The noise was deafening and debris was flying all over the place. My neighbor's

elderly father-in-law was so scared that he started running away, slipped and broke his legs. No one was killed because everyone was in the adjacent room.<sup>153</sup>

Even when the presence of Ossetian militias meant that apartment buildings could be legitimate targets, it was not apparent from the evidence of the aftermath of the attack that the Georgian military had taken all feasible precautions to minimize the harm to civilians.<sup>154</sup> It is clear, however, that the military tactics they used caused civilian casualties and significant damage to civilian property.

For example, residents of Tselinnikov Street in Tskhinvali told Human Rights Watch that at around 3:30 p.m. on August 8 a Georgian tank opened fire at their apartment building, after a group of Ossetian militia started withdrawing through the neighborhood. Six tank shells hit the building, destroying five apartments, and killing an elderly man, Erdish Kulumbegov. Building residents told Human Rights Watch,

We all rushed to the basement, but an elderly man, some 80 years old, who lived on the fourth floor, didn't manage to make it to the basement in time. His apartment was hit by a shell and caught fire. When the attack was over, we went upstairs and saw that the old man burned to ashes. We ... buried [his] remains in the yard.<sup>155</sup>

Neighborhood residents told Human Rights Watch that the attack did not result in any casualties among the militia, with whom they were all acquainted.<sup>156</sup>

Similarly, in some villages, the Georgian offensive seemed to have been carried out with little regard to the safety of civilians. Ossetian militias fled their positions in villages as Georgian ground troops started their offensive. Human Rights Watch has no information about street fighting that ensued between these Ossetian fighters and Georgian forces.

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<sup>153</sup> Human Rights Watch interview with Giorgi G. (real name withheld), Tskhinvali, August 13, 2008.

<sup>154</sup> Parties are required to take all feasible precautions to avoid or to minimize incidental loss of civilian life, injury to civilians, and damage to civilian objects. Protocol I, art. 57 (2) (a) (ii).

<sup>155</sup> Human Rights Watch interviews with Tselinnikov Street residents, Tskhinvali, August 14, 2008.

<sup>156</sup> Ibid.

Ossetian forces left the village of Khetagurovo, where they had firing positions, just prior to Georgian ground forces' entry into the village on August 8. Human Rights Watch researchers learned that as the Georgian infantry entered the village they were spraying the gates and fences of homes with bullets, demanding that the militias surrender. Hundreds of bullet holes were clearly visible on fences and gates. According to witnesses, on August 8 one of the stray bullets killed an elderly woman, Anastasia Dzhioeva, as she went to feed the chickens in her yard.<sup>157</sup>

One villager, Mokhmed Maldigov, told Human Rights Watch,

At dawn, around 5 a.m. or so, the Georgians entered the village—first the tanks, and then the infantry. They were shooting in all directions. One [tank] shell hit my house. People were so frightened. Many started running, women and kids in particular. And they just continued shooting.<sup>158</sup>

Novyi Tbeti, a village of about nine houses on the outskirts of Tskhinvali, was almost completely destroyed by Georgian artillery and tank fire. One villager, 63-year-old Izolda Galieva, told Human Rights Watch that all of the young men, including her sons, had joined the militia and gone to the city, and only women and elderly stayed in the village when the Georgian army entered it on August 8. Galieva described the ordeal she and her neighbors suffered:

On Friday [August 8] at around 6:30 in the morning I saw two Georgian tanks on the street and one car full of gunmen. Then one of those tanks fired for the first time—right at my house, and I just dropped to the floor and crawled to the basement. The Georgians were shooting from machine guns and submachine guns, and screaming obscenities. When a tank [shell] hit my house directly the house just fell apart, and I got shrapnel wounds on my neck and arms. I was flat on the basement floor, bleeding and afraid to move ...

The neighboring house was also destroyed by tank fire on that day, and my neighbors, the Makaevs, husband and wife, both got shrapnel wounds. The tanks fired 15 times or so—and now, as you can see, the whole village is

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<sup>157</sup> Human Rights Watch interviews with residents, Khetagurovo, August 14, 2008.

<sup>158</sup> Human Rights Watch interview with Mokhmed Maldigov, Khetagurovo, August 14, 2008.

gone ... It all happened in one day ... I just stayed in the basement until Monday afternoon [August 11], when some neighbors looked into the basement and found me. They told me that the Georgians had all fled, and dragged me out. Then, an ambulance came for me and took me to the hospital.<sup>159</sup>

## The Conduct of Georgian Troops during the Ground Offensive

The majority of witnesses interviewed by Human Rights Watch did not complain about other types of violations against them by the Georgian forces. Judging by their statements, in most cases the troops entering the villages did not deliberately cause physical harm to civilians. Several Ossetian interviewees said that Georgian soldiers told them they were under orders to look for and pursue Ossetian militias, but to spare women, children and elderly during the ground offensive.

Zareta Z., from the village of Sarabuki, said that when Georgian soldiers entered the basement where she was hiding with her husband, they told them, “Now you’ll live with us, with Georgians, and we’ll live in peace. Misha [Saakashvili] told us not to touch women and children. We’re instructed to kill the young guys [fighters] only. And that’s what we’ll do. You are not to worry.”<sup>160</sup> Another woman from the same village, “Svetlana S.,” also said that the Georgian soldiers were telling the residents, “We have not killed any residents and we are not going to! Everyone is safe!”<sup>161</sup>

Madina M. from Khetagurovo said that she was terrified when Georgian troops entered the village, but to her surprise they were “polite” and did not harm her. She said,

They were going from yard to yard and looking for young guys. They did not know our guys weren’t around anymore. I was so frightened ... I thought they’d be doing cruel things to women and to the elderly, like during the first war, back in 1992. But they were ... polite, really. They kept saying that they had an order not to touch women, children, and old people, and we had nothing to fear from them. They were so young—seemed to be 19 or 20, no

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<sup>159</sup> Human Rights Watch interview with Izolda Galieva, Novyi Tbeti, September 4, 2008.

<sup>160</sup> Human Rights Watch interview with Zareta Z. (real name withheld), Sarabuki, September 6, 2008.

<sup>161</sup> Human Rights Watch interview with Svetlana S. (real name withheld), Sarabuki, September 6, 2008.

more than that. Those who came into our basement even told us, “We don’t want to die either.”<sup>162</sup>

Several women from five mountain villages in Akhagori district populated mainly by Ossetians also confirmed that the Georgian forces did not harm civilians when they entered the villages on the night of August 7-8.<sup>163</sup> A woman from Tsinagari told Human Rights Watch,

They told us not to be afraid and said that if our men wouldn’t shoot, they wouldn’t shoot either. They shot in the air—probably trying to frighten us. They entered the houses, checked identification documents, even some of our neighbors’ passports. They also looked for young guys and for the men. But all our men were already gone by then—they joined the militia and hid in the woods. The Georgians were also looking for firearms but our men had taken their weapons with them, so there was nothing much to find.<sup>164</sup>

A small number of witnesses from different villages complained, however, that the Georgian forces ransacked their houses as they were looking for Ossetian fighters, and in a few cases took money, valuables, Russian identification documents, or other things from the residents. For example, Slavik Gabuzov, age 71 and disabled, told Human Rights Watch that when Georgian ground forces arrived in Znauri on August 8 they came to his home looking for fighters and arms. They treated him roughly and stole money:

All my family left on the 7<sup>th</sup> but I stayed behind because I cannot walk properly and traveling is pretty much impossible. The Georgians came in the morning of the 8<sup>th</sup>. Their tanks were all over the place. Three of them came to my place and said, “Are you Georgian?” I said, “No, I’m Ossetian.” So they pointed their submachine guns at me and put me against the wall, with my crutches and all.

They demanded that I give my weapons to them. But what kinds of weapons were they thinking of finding, an old handicapped man like me? When I told them I had no weapons they ordered me to drop flat on the ground. They yelled all kinds of obscenities and mocked me. They searched my place and

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<sup>162</sup> Human Rights Watch interview with Madina M. (real name withheld), Khetagurovo, August 14, 2008.

<sup>163</sup> These were Tsinagari, Monasteri, Zakhori, Tsubeni, and Tsairi.

<sup>164</sup> Human Rights Watch interview with a group of displaced women from Akhagori district, Java, August 12, 2008.

found this cashbox where I keep all of the family savings. They forced me to open it for them and took all the money.<sup>165</sup>

A young woman from the village of Tsair told Human Rights Watch that Georgian soldiers stole whatever money she had at the house, as well as the passports of the residents, all of whom have Russian passports.<sup>166</sup> A resident of Muguti, 75-year-old Fenya Dzhioeva, said that when Georgian forces searched her home they “tore everything apart.” She managed to retrieve money she had hidden under her mattress, but as she was putting it into her pocket, “they still noticed and took [it] from me.”<sup>167</sup>

International humanitarian law applicable to the conflict prohibits looting or pillaging, and individuals and commanders involved in such acts may be responsible for war crimes.<sup>168</sup>

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<sup>165</sup> Human Rights Watch interview with Slavik Gabuzov, Znauri, November 23, 2008.

<sup>166</sup> Human Rights Watch interview with a group of displaced women from Akhagori district, August 12, 2008.

<sup>167</sup> Human Rights Watch interview with Fenya Dzhioeva, Muguti, September 4, 2008.

<sup>168</sup> Pillage is not limited to the acquisition of assets by force—it may also include the acquisition of property under threats, intimidation, pressure, or a position of power derived from the surrounding armed conflict.



## 2.5 Georgia's Use of Cluster Munitions

The Georgian military attacked Russian forces with cluster munitions to stop their forward advance into South Ossetia. Human Rights Watch has no information about the impact of these attacks on civilians in South Ossetia.

Human Rights Watch did find that M85 cluster munitions hit nine villages in undisputed Georgian territory, which killed at least four people and injured eight. In addition, unexploded M85s have prevented civilians from tending or harvesting their crops, causing them to lose a source of income and subsistence. Human Rights Watch has concluded that these cluster munitions were fired by Georgian forces. Several factors suggest that Georgian forces did not target these villages, but rather that the submunitions landed on these villages due to a massive failure of the weapons system (see below). Even though injuries that result from failure of a weapons system do not mean that there has been a violation of humanitarian law, the incidents demonstrate the excessive and indiscriminate harm that can be caused to civilians, and why therefore progress is being made to ban the use of cluster munitions as a means of warfare.<sup>169</sup>

Cluster munitions are large, ground-launched or air-dropped weapons that eject, depending on their type, dozens or hundreds of bomblets, or submunitions, and spread them over a large area. Because cluster munitions cannot be directed at specific fighters or weapons, civilian casualties are virtually guaranteed if cluster munitions are used in populated areas. Cluster munitions also threaten civilians after conflict: because many submunitions fail to explode on impact as designed, a cluster munitions strike often leaves a high number of hazardous unexploded submunitions—known as duds—that can easily be set off upon contact.

In a letter to Human Rights Watch on August 31, 2008, the Georgian Ministry of Defense acknowledged that it had used cluster munitions against Russian military equipment and armaments as they were moving south from the Roki tunnel. The ministry insisted, however,

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<sup>169</sup> In May 2008, 107 nations meeting in Dublin, Ireland, adopted a new international treaty, the Convention on Cluster Munitions, which comprehensively bans the use, production, trade, and stockpiling of the weapon. The new treaty opened for signing on December 3 and 4, 2008, and by the close of the signing conference in Oslo, Norway, 94 nations had done so. It will become binding international law six months after 30 signatories have ratified it. Even though neither Georgia nor Russia was part of the process developing the treaty, the use of cluster munitions is strictly limited by previously existing international humanitarian law on indiscriminate and disproportionate attacks.

that cluster rockets “were never used against civilians, civilian targets and civilian populated or nearby areas.”<sup>170</sup>

The Georgian Ministry of Defense identified the type of cluster munitions used as the GRAD-LAR 160 multiple launch rocket system with Mk-4 rockets with M85 submunitions: In a document sent to Human Rights Watch on November 18, the ministry reported, “Georgian Armed Forces used 24 packages (13 shots in each) of GRAD-LAR munitions during the Georgian-Russian August war.”<sup>171</sup> First Deputy Minister of Defense Batu Kutelia told Human Rights Watch that these weapons, bought from Israel, are the only cluster munitions in Georgia’s possession.<sup>172</sup> M85 submunitions are not reported to be part of Russia’s arsenal, and international deminers refer to the M85s they found in Gori and Karaleti districts as “Georgian.”<sup>173</sup> Notwithstanding the cluster munition hits in Gori district, Kutelia expressed satisfaction with how the munitions performed and said that they delayed Russian troop advances by several days.<sup>174</sup>

One witness interviewed by Human Rights Watch claimed that Georgian forces used cluster munitions in their attacks on the Dzara road in South Ossetia. The witness, a member of the Ossetian militia who had been assisting in the evacuation of civilians on that road, described seeing “a rocket which exploded in the air, and then small clusters started exploding.”<sup>175</sup> Human Rights Watch was not able to independently verify this claim, yet such allegations need to be further investigated.

The Russian authorities did not respond to a written request from Human Rights Watch for information about Georgian use of cluster munitions in South Ossetia (See letter in appendix).

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<sup>170</sup> Response to Human Rights Watch inquiry about use of M85 bomblets, also posted on the Georgian Ministry of Foreign Affairs’ website, <http://georgiamfa.blogspot.com/2008/09/response-to-human-rights-watch-inquiry.html> (accessed November 10, 2008).

<sup>171</sup> “Some Facts,” document from Georgian Ministry of Defense emailed to Human Rights Watch, November 18, 2008.

<sup>172</sup> Human Rights Watch interview with First Deputy Minister of Defense Batu Kutelia, Tbilisi, October 21, 2008.

<sup>173</sup> Human Rights Watch interviews with Joseph Huber, program manager, Norwegian People’s Aid, Tbilisi, October 13 and 16; and Mick McDonnell, operations manager, Information Management and Mine Action Planning, Tbilisi, October 17, 2008. Based on the timing and location of the M85 cluster strikes, the presence of Georgian troops in the area at the time of the strikes, and the fact that Russian troops entered the area contaminated with unexploded M85 submunitions only days after the M85 strike, Human Rights Watch initially attributed the strikes to Russian forces. On September 3, after the submunitions were conclusively identified as M85s by the Norwegian Defense Research Establishment (NDRE), Human Rights Watch issued a statement withdrawing that attribution.

<sup>174</sup> Human Rights Watch interview with Batu Kutelia, October 21, 2008.

<sup>175</sup> Human Rights Watch interview with Mokhar N., August 14, 2008.



## How Georgian Clusters Landed in Gori District

Human Rights Watch researchers found unexploded M85 submunitions, ribbons from detonated submunitions, and Mk-4 rockets in Gori district. They interviewed villagers who had fallen victim to M85 submunitions, deminers who work in the area, and senior government officials. Through these sources, researchers gathered evidence of M85s in a band of nine villages in the north of the Gori-Tskhinvali corridor: Brotsleti, Ditsi, Kvemo Khviti, Megvrekisi, Pkhvenisi, Shindisi, Tirdznisi, Zemo Khviti, and Zemo Nikozi.<sup>176</sup>

Georgian First Deputy Minister of Defense Batu Kutelia told Human Rights Watch that the presence of M85 submunitions in villages in the Gori district remained a mystery to the Georgian authorities. According to Kutelia, Georgia will conduct an investigation into the situation and seek the assistance of the company that sold it the M85s—presumably Israel Military Industries, the only Israeli manufacturer of M85s.<sup>177</sup> One theory is that the M85 submunitions landed in these villages because of a massive system failure. Based on Kutelia’s description of the incidents, the rockets fell short of their minimum range. The failure theory would explain why they landed where they did (witnesses did not report Russian troops in the area at the time of attack), and why the dud rate was so high.

## Civilian Casualties from M85s

M85 submunitions are Dual Purpose Improved Conventional Munitions (DPICM) whose purpose is to injure or kill persons and pierce armor. It is an unguided weapon that poses grave danger to civilians in part because of its inaccuracy and wide dispersal pattern. These submunitions are cylinder-shaped; civilians often describe them as resembling batteries or light sockets. Connected to the top of each of these submunitions is a white or red ribbon that unfurls when the submunition is released.

At least one civilian was killed and two wounded as the M85 submunitions landed in Gori district villages. On the afternoon of August 9, Vano Gogidze, age about 40, was killed and his brother, Ketino, 38, was injured when M85 submunitions exploded as they landed in the village of Shindisi.<sup>178</sup>

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<sup>176</sup> A villager also showed Human Rights Watch an Mk-4 rocket and red ribbon in Variani, but because the town is further south and does not fit the geographic pattern of the other findings, Human Rights Watch has not determined whether the rocket actually landed in Variani.

<sup>177</sup> Human Rights Watch interview with Batu Kutelia, October 21, 2008.

<sup>178</sup> Human Rights Watch interview with wife of Ketino Gogidze, Shindisi, October 18, 2008.

Alexander Zerekhidze told Human Rights Watch that he was injured in his village of Tirdznisi when M85 submunitions landed around 3:30 a.m. on August 9:

I heard some noise. I came out of my front door. There was a loud shooting noise and I came out to see what was happening. I heard screams and came out to see if someone was wounded. As soon as I came out, something exploded. I turned back and shrapnel hit my back, stomach, leg. I started bleeding. My kids were inside the house. I tried to cover them. My wife treated me first and stopped the bleeding. In the morning I went to ... Tbilisi. I was released [from the hospital] in a couple days.<sup>179</sup>

Zerekhidze showed Human Rights Watch three small craters and a fragmentation ring that he had found in front of his house. The craters were consistent with a submunition explosion, and Human Rights Watch identified the ring as belonging to an M85 submunition.

### *Casualties from unexploded duds*

There are at least two versions of the M85 submunition: one with a self-destruct device and one without.<sup>180</sup> The unexploded M85 submunitions that Human Rights Watch discovered in Gori district villages did not have a self-destruct device. First Deputy Minister Kutelia told Human Rights Watch that he was surprised about this finding and similar findings by his own engineers. According to Kutelia, Georgian authorities had been told that the munitions that they had bought had self-destruct devices.<sup>181</sup>

Human Rights Watch has documented that at least three people were killed and six wounded by M85 duds that exploded upon contact in Shindisi, Pkhvenisi, and Brotsleti.

On August 10, several men from Shindisi decided to inspect one of the sites where the strike had landed the previous day. They found a piece of unexploded ordnance with a red ribbon,

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<sup>179</sup> Human Rights Watch interview with Alexander Zerekhidze, Tirdznisi, October 17, 2008.

<sup>180</sup> Although the reported failure rate under test conditions for the M85 submunition with a self-destruct device is 1.3 to 2.3 percent, weapons experts and the UN Mine Action Coordination Centre South Lebanon (MACC SL), looking at strike locations where the self-destruct models landed during the 2006 war between Israel and Lebanon, estimated a failure rate of 10 percent. For a detailed discussion of the M85 with self-destruct device and its failure in Lebanon, see C. King Associates, Ltd., Norwegian Defence Research Establishment, and Norwegian People's Aid, *M85: An Analysis of Reliability* (Norway: Norwegian People's Aid, 2007). See also information provided by Ove Dullum, chief scientist, NDRE, April 19, 2007; Chris Clark, program manager, MACC SL, "Unexploded Cluster Bombs and Submunitions in South Lebanon: Reliability from a Field Perspective," paper presented at ICRC Expert Meeting, Montreux, Switzerland, April 18-20, 2007, <http://www.icrc.org/web/eng/siteeng.nsf/htmlall/cluster-munition-montreux-310507> (accessed April 30, 2007); and email communication from Dalya Farran, media and post clearance officer, MACC SL, to Human Rights Watch, January 16, 2008.

<sup>181</sup> Human Rights Watch interview with Batu Kutelia, October 21, 2008.

which they brought back to the village. When they tried to disassemble it the submunition exploded, killing Ramaz Arabashvili, age around 40, and wounding four others.<sup>182</sup>



An unexploded M85, an anti-personnel and anti-armor submunition found in Shindisi in October 2008. M85s caused civilian deaths and injuries in Shindisi both at the time of attack and afterwards. Bought from Israel and launched by Georgia, this submunition is carried in an Mk-4 160 mm rocket. © 2008 Human Rights Watch

On August 14, around 1-2 p.m., Alika Kikvilashvili, 48, was on his way to the fields in Brotsleti with Amiran Khaduri and Tero Surameli, 46. Surameli was holding in his hands two small items that to Kikvilashvili looked like light sockets. One had a white ribbon and one a red ribbon. When Kikvilashvili's cellphone rang and he stepped away, the cluster duds exploded, fatally wounding Surameli and injuring Kikvilashvili and Khaduri. Alika Kikvilashvili told us,

I had shrapnel all around and it is still inside—stomach, right and left arms, right and left legs. I felt it only later. For four days I got no help. In particular my left leg had a hole. I poured vodka inside so there would be no infection.

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<sup>182</sup> Human Rights Watch interview with Ilya Arabashvili, Shindisi, August 27, 2008.

Four days later the Russians came. They had a field hospital here. Someone told them I needed help and they took me to the field hospital. I was taken back and forth and treated.

Kikvilashvili was later told that Surameli died an hour after the explosion.<sup>183</sup>

On August 18 Veliko Bedianashvili, age 72, found an unexploded M85 submunition in a field close to his house in Pkhvenisi. As he was trying to remove the red ribbon from the dud, it exploded and killed him. His son, Durmiskhan Bedianashvili, told Human Rights Watch, “There are so many of those lying around. The fields are full of them.”<sup>184</sup>

In addition to posing a threat to civilian lives, unexploded M85 submunitions littering fields in the northern part of Gori district prevented many farmers from harvesting their crops, thereby throwing already struggling farmers into deep economic distress. Aliko Kikvilashvili told us, “I am not going to my fields. The harvest is now ready, but there is grass and it is hard to notice anything so I am not going there. I hope there will be some deminers. My harvest includes apples and corn, which I sell. That’s how we survive. That’s how people live here. My peaches were lost completely, now my apples are in danger as well.”<sup>185</sup>

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<sup>183</sup> Human Rights Watch interview with Aliko Kikvilashvili, Brotsleti, October 16, 2008.

<sup>184</sup> Human Rights Watch interview with Durmiskhan Bedianashvili, Pkhvenisi, August 20, 2008.

<sup>185</sup> Human Rights Watch interview with Aliko Kikvilashvili, October 16, 2008.

## 2.6 Russian Allegations against Georgia of Genocide and Other War Crimes

### Political Statements and Russian Criminal Investigation

From the very beginning of the conflict, Russian authorities put significant effort into documenting alleged violations by Georgian forces. An investigation is being conducted by the Investigative Committee of the Russian Federation Prosecutor's Office (Sledstvennyi Komitet Prokuratury, or SKP).

During his August 10, 2008 meeting with the head of the SKP, President Dmitry Medvedev stated that “the actions of the Georgian side cannot be called anything other than genocide,” and ordered the SKP to document the evidence of crimes committed by Georgian forces in South Ossetia in order to create a “necessary basis for the criminal prosecution of individuals responsible for these crimes.”<sup>186</sup> The SKP then opened a criminal investigation under article 357 of the Russian Criminal Code (“genocide”), having already initiated an investigation under article 105 (“premeditated murder of one or more persons”).<sup>187</sup> The SKP deployed over 200 investigators and 29 forensic experts to conduct an investigation in South Ossetia. On September 25 the head of the SKP reported that the evidence-gathering phase of the investigation had been completed and that “[t]he investigative work allowed us to come to an unequivocal conclusion that the goal of the aggressors was the total annihilation of the national group of Ossetians residing in South Ossetia.”<sup>188</sup>

Human Rights Watch does not have access to the SKP's investigative files and thus cannot assess the evidence gathered and the validity of these allegations. Human Rights Watch's written requests to the Russian government to meet with the prosecutor's office went unanswered.

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<sup>186</sup> “SKP RF Opened a Criminal Investigation into the Killings of Russian Citizens in South Ossetia,” Kommersant Online, August 14, 2008, <http://www.kommersant.ru/doc.aspx?DocsID=1011523&ThemesID=301> (accessed November 8, 2008).

<sup>187</sup> The Military-Investigative Committee of the Prosecutor's Office opened a separate criminal investigation into the killing of Russian peacekeepers in South Ossetia.

<sup>188</sup> Investigative Committee of the Prosecutor's Office of Russian Federation, “Investigative Evidence-Gathering Activities on the Territory of South Ossetia have been completed,” September 25, 2008, [http://www.sledcomproc.ru/news/762/?phrase\\_id=1401](http://www.sledcomproc.ru/news/762/?phrase_id=1401) (accessed November 8, 2008).

## Russia's Allegations Not Supported by Available Evidence

Information collected by Human Rights Watch suggests that while the actions by the Georgian forces clearly violated international humanitarian law, they did not amount to the crime of genocide.<sup>189</sup> This opinion seemed to be shared by the rapporteurs of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), who visited Georgia and Russia at the end of September and prepared a report to the Parliamentary Assembly of the Council of Europe (PACE). During the hearing, Rapporteur of the Committee on Legal Affairs and Human Rights Christos Pourgourides noted,

The facts do not seem to support the genocide allegations against Georgia: the number of Ossetian (civilian) victims of the Georgian assault (“thousands” according to early numbers cited by the Russian authorities relying on “provisional data”) seem to be much exaggerated; ... Individual atrocities such as those described in certain Russian media and submissions to the Committee of Ministers would be serious crimes in their own right, but not attempted genocide.<sup>190</sup>

Some statements attributed to SKP representatives also raise serious concerns about the accuracy and thoroughness of the investigation. For example, reporting on the findings of the SKP on August 21, *Rossiiskaya Gazeta* (the main official Russian newspaper) wrote,

In the village of Tsinagar[i], the aggressors executed all civilians in a church where they tried to find refuge. According to Archbishop Feofan of Stavropol and Vladikavkaz, Georgian soldiers were dragging pregnant women out of houses and beating and killing them for delectation of the crowd. One Tskhinvali resident was trying to protect her child from the Georgians, but the baby was shot dead right in her lap.<sup>191</sup>

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<sup>189</sup> Genocide is defined in international law as acts—such as killings, causing serious bodily or mental harm, deliberately inflicting on a group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group, or forcibly transferring children of the group to another group—committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group. See Convention on the Prevention and Punishment of the Crime of Genocide, adopted December 9, 1948, G.A. Res. 260 (III) A, entered into force January 12, 1951.

<sup>190</sup> Parliamentary Assembly of the Council of Europe (PACE), Committee on Legal Affairs and Human Rights, “The consequences of the war between Georgia and Russia,” Opinion by rapporteur Christos Pourgourides, Doc. 11732 rev, October 1, 2008.

<sup>191</sup> Vladimir Bogdanov, “The Investigation Has Established That...,” *Rossiiskaya Gazeta*, August 21, 2008, <http://www.rg.ru/2008/08/21/sledstvie.html> (accessed November 8, 2008). The article alleged another atrocity: “The investigators established that, having captured part of Tskhinvali, Georgian soldiers were committing unthinkable [crimes]



Human Rights Watch interviewed a resident of Tsinagari who said that no such thing happened in his village.<sup>192</sup> In a letter to Human Rights Watch, the Russian Foreign Ministry attributed the same incident to the village of Dmenisi instead.<sup>193</sup> However, numerous Ossetian villagers interviewed by Human Rights Watch in that village said they never heard about, let alone witnessed, such an incident.<sup>194</sup>

Human Rights Watch researchers were told similar hearsay accounts of atrocities allegedly committed by Georgian troops in other villages of South Ossetia, but our follow-up research did not confirm these allegations. For example, in August, right after the end of hostilities, several people told Human Rights Watch that civilians were burned to death in a church in Khetagurovo. When Human Rights Watch visited Khetagurovo, local residents vehemently denied such allegations. A staff member of the South Ossetia Committee for Press and Information told Human Rights Watch that the incident actually happened in Sarabuki.<sup>195</sup> Our researchers immediately traveled to Sarabuki, only to discover that local residents had not even heard that story.<sup>196</sup>

Similarly, hearsay allegations of rape circulated widely in South Ossetia, but no leads provided to Human Rights Watch produced credible results.

Accusations of atrocities and genocide allegedly committed by the Georgian troops were also widely publicized by the Public Commission for Investigating War Crimes in South Ossetia, a group of Russian and South Ossetian public activists working with the prosecutor's office of the de facto South Ossetian authorities.<sup>197</sup> The commission was created on August 12, 2008, and immediately went to Tskhinvali and started interviewing witnesses and collecting other evidence of violations committed by Georgia.

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there. For example, they annihilated a kindergarten. Witnesses were found who confirmed that these "warriors" raped several little girls." It is unclear what "annihilated" means in this context, and to Human Rights Watch's knowledge, no corroborating evidence of the rape allegations has come to light.

<sup>192</sup> Human Rights Watch interview with "Galina G." (real name withheld), Akhagori, November 21, 2008.

<sup>193</sup> Facsimile from Ilya Rogachev, deputy permanent representative of the Russian Federation to the United Nations, to Human Rights Watch regarding conduct of Georgian troops in South Ossetia, September 19, 2008.

<sup>194</sup> Human Rights Watch interviews with residents of Dmenisi, September 6, 2008.

<sup>195</sup> Human Rights Watch conversation with a staff member of the South Ossetia Committee for Press and Information (name withheld), Tskhinvali, September 5, 2008.

<sup>196</sup> Human Rights Watch interviews with residents of Sarabuki, September 6, 2008.

<sup>197</sup> Public Commission for investigation of war crimes in South Ossetia and assistance to civilian population, "Aleksandr Bastrykin: The Goal of the Aggressors was the Total Annihilation of Ossetians as a National Group," September 25, 2008, <http://www.osetinfo.ru/comments/59/page/8> (accessed November 8, 2008).

A report published by the commission shortly thereafter contained numerous statements by survivors and witnesses of Georgia's assault against South Ossetia. However, in many cases, especially the ones describing deaths or injuries, the necessary details and analysis were missing that would have allowed determination of whether the victims were civilians or combatants (especially in the cases of male victims), and whether the circumstances of their death suggested violations of the laws of war by Georgian forces.<sup>198</sup>

Human Rights Watch asked the Public Commission for the names of witnesses who could confirm the stories of specific egregious acts by the Georgian forces, including the burning of civilians in a village church (the alleged Khetagurovo/Sarabuki incident mentioned above). Commission representatives promised to provide this information, but at this writing they have not done so.<sup>199</sup>

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<sup>198</sup> See "South Ossetia: A Chronicle of Assassination," 2008, <http://www.osetinfo.ru/book> (accessed January 13, 2009).

<sup>199</sup> The Commission representatives mentioned the church incident during two meetings with Human Rights Watch—on November 6, 2008, in New York, and November 11, 2008, in Moscow. At both meetings they said they would provide more information on the incident as well as the names of witnesses in South Ossetia.



## 2.7 The Issue of Civilian Casualties in South Ossetia

From the very beginning of the conflict, controversy has surrounded the issue of the numbers of civilian casualties resulting from the Georgian forces' assault.

### Early Figures from Russian and South Ossetian Officials not Borne out

From August 8, 2008, the day after the conflict started, Russian and South Ossetian officials repeatedly cited figures of civilian deaths ranging from 1,400 to more than 2,000. For example:

- On August 8 President of South Ossetia Eduard Kokoity said that “slightly more than 1,400 people have been killed,” claiming that the figure was based on reports from relatives;
- On August 9 Russian Ambassador to Georgia Vyacheslav Kovalenko said that “at least 2,000 residents of Tskhinvali have died”;
- On August 10 Russian Deputy Minister of Foreign Affairs Grigory Karasin said that “according to the latest data, as a result of Georgia’s assault against South Ossetia at least 2,000 people, most of them Ossetians, have died”;
- On August 11 Russian Foreign Ministry official Boris Malakhov said that “as a result of Georgia’s armed assault on South Ossetia about 1,600 civilians were killed”;
- On August 20 Irina Gagloeva, a spokesperson for the de facto South Ossetian authorities, said that “according to refined data, 1,492 residents of South Ossetia died as a result of Georgia’s assault.”<sup>200</sup>

These early, high casualty figures grounded the genocide claims Russia adduced to justify its military intervention. They also significantly influenced public sentiment in South Ossetia. For example, some of the local residents interviewed by Human Rights Watch justified the torching and looting of the ethnic Georgian enclave villages by referring to “thousands of civilian casualties in South Ossetia,” as reported by Russian federal TV channels.

To date, neither Russian nor South Ossetian officials have made clear how these figures were compiled and what evidence supports them. Nor have they acknowledged that later

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<sup>200</sup> The first four quoted statements were reported by Interfax news agency. The fifth is cited in “South Ossetian Authorities Reported that 1,492 People Have Been Killed as a Result of Georgia’s Assault,” *Kavkazskii Uzel*, August 20, 2008.

assessments by Russian officials and international monitors are far lower than these early estimates. The various later figures include the following:

- The Investigative Committee of the Russian Federation Prosecutor's Office (SKP) announced on August 21 that it had documented the deaths of 133 individuals,<sup>201</sup> increased the figure to 159 as of October 12,<sup>202</sup> and to 162 as of December 23, 2008.<sup>203</sup>
- Following his visit to the region, Luc Van den Brande, the chairperson of the Ad Hoc Committee established by PACE to study the situation in Russia and Georgia, stated on September 29, 2008 that "independent reports put the total number of deaths at between 300 and 400, including the military," adding that "these figures are far lower than those initially advanced in particular by Russia," and suggested that "all sides agree that the initial high numbers were inflated."<sup>204</sup>
- Christos Pourgourides, the rapporteur of the PACE's Committee on Legal Affairs and Human Rights, also reported on October 1, 2008 that "the number of Ossetian (civilian) victims of the Georgian assault ('thousands' according to early numbers cited by the Russian authorities relying on 'provisional data') seem to be much exaggerated."<sup>205</sup>
- The Public Commission for Investigating War Crimes in South Ossetia maintains a list of people killed in the conflict that, as of November 8, contained the names of 365 individuals.<sup>206</sup>

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<sup>201</sup> Bogdanov, "The Investigation Has Established That....," *Rossiiskaya Gazeta*. For unclarity as to whether these are all civilians, see the next section of this chapter.

<sup>202</sup> Sonja Zekri, "Im Auftrag des Kreml," *Sueddeutsche Zeitung*, October 12, 2008, <http://www.sueddeutsche.de/politik/746/313652/text/> (accessed December 4, 2008).

<sup>203</sup> "Identities of 162 People Killed in South Ossetia have been established," *RIA Novosti*, December 23, 2008, <http://www.rian.ru/society/20081223/157895855.html> (accessed January 12, 2009).

<sup>204</sup> PACE, Ad hoc Committee of the Bureau of the Assembly, "The situation on the ground in Russia and Georgia in the context of the war between those countries," Memorandum by Luc Van den Brande, chairperson of the Ad Hoc Committee of the Bureau of the Assembly, Doc. 11720 Addendum II, September 29, 2008.

<sup>205</sup> PACE, Committee on Legal Affairs and Human Rights, "The consequences of the war between Georgia and Russia."

<sup>206</sup> Public Commission for investigating war crimes in South Ossetia, "List of the Killed Residents of South Ossetia," <http://www.osetinfo.ru/spisok> (accessed November 8, 2008). The commission uses figures and names provided by the prosecutor's office of the de facto South Ossetian government. According to a leading member of the public commission who met with Human Rights Watch, the prosecutor's office received information from individuals about 1,692 "missing people" who may have been killed in hostilities. As of November 8, the prosecutor's office had verified that 365 of these 1,692 were deaths. The public commission member noted that the figure could be expected to change as more information gradually became available about the remaining 1,327. The commission also receives information updating its list through calls to its hotline. Human Rights Watch interview with Olga Kostina, representative of the Public Commission for investigating war crimes in South Ossetia and member of the Public Chamber of the Russian Federation, Moscow, November 11, 2008.

### *Civilian versus combatant unclear in Russian figures*

It is not clear whether the SKP's investigation is distinguishing between civilians and volunteer Ossetian militias, and if so, how (Ossetian peacekeepers and servicemen of the South Ossetian Ministry of Internal Affairs, Ministry of Defense and Emergencies, and Committee for State Security are explicitly excluded). According to Olga Kostina, the key spokesperson for the Public Investigation Commission on War Crimes in South Ossetia, the commission list does not distinguish between civilian and combatant casualties.<sup>207</sup>

During our research in South Ossetia, Human Rights Watch found that witnesses often referred to the members of the militias as "civilians," meaning that they were volunteer fighters, as opposed to servicemen of the South Ossetian Ministry of Internal Affairs, Ministry for Defense and Emergencies, and other agencies. However, under international humanitarian law, they are combatants and not civilians.

The Public Commission's list contains 74 women (including elderly women), 37 elderly men (age 60 or over), and seven minors (under age 18). One can reasonably conclude that many of these individuals were individuals who did not take part in the hostilities. The status of the remaining 247 needs to be verified. The list does not contain dates and times of death, place (in most cases), and includes very limited information regarding the cause of death (for example, "killed during hostilities," or "killed by shrapnel").

### **Erroneous Georgian Figures for South Ossetian Civilian Casualties**

The Georgian government, for its part, inaccurately and repeatedly stated that a total of 44 civilians had been killed during Georgia's military assault. Georgian officials, including President Saakashvili, incorrectly attributed this figure to a Human Rights Watch press release (see below). These attributions ceased after Human Rights Watch sent letters to the *Washington Post* (where one such attribution appeared) and to President Saakashvili explaining that we had made no such assessment.<sup>208</sup>

### **Human Rights Watch and Casualty Figures**

Human Rights Watch does not have the capacity to make a definitive estimate as to the number of civilian casualties. Moreover, though the number of civilian dead and injured in a

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<sup>207</sup> Human Rights Watch interview with Olga Kostina, November 11, 2008.

<sup>208</sup> Mikheil Saakashvili, "Answering Russian Aggression," *Washington Post*, September 23, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/09/22/AR2008092202581.html> (accessed December 21, 2008). Saakashvili also inaccurately stated in a television interview that Tskhinvali had been "flattened" by Russian forces, incorrectly citing Human Rights Watch as a source.

conflict is an issue of great importance, Human Rights Watch's major concern in any conflict setting is to establish whether and how civilians have been killed or injured and, more particularly, whether this was the result of violations of international humanitarian law.

During our first investigation in South Ossetia Human Rights Watch collected some figures on individuals killed and wounded as a result of the conflict—both through interviews with relatives of the victims and by obtaining data from hospitals and local officials.

For example, in August Human Rights Watch interviewed a doctor at Tskhinvali hospital who said that the hospital received 44 bodies, of fighters and civilians, between August 6 and 11, all from Tskhinvali. The hospital had the only morgue in the city.<sup>209</sup> The doctor told us that between August 6 to 12 the hospital treated 273 wounded, both militias and civilians, brought from the city and some neighboring villages. She said her hospital was the only medical facility treating the wounded in Tskhinvali. The doctor said there were more South Ossetian forces than civilians among the wounded, and added that all of the wounded were later transferred (to North Ossetia). As of August 13, there were no wounded left in Tskhinvali hospital.<sup>210</sup>

The 44 figure became the subject of controversy as some mistakenly characterized this as Human Rights Watch's definitive figure on civilian casualties, and others used this as evidence of bias. We were fully aware and noted in media statements that the figures provided from Tskhinvali hospital were not a comprehensive tally. Some of the residents killed in Tskhinvali and especially in the outlying villages were never brought to the hospital; instead, a number of people were buried beside their homes.<sup>211</sup>

At the same time, Human Rights Watch continues to question the initial 1,400-2,000 figures and the methodology used to arrive at them. We have emphasized that these were not reliable figures because it was not clear how such figures were compiled so quickly, as early as August 8 and 9, under chaotic circumstances. We also expressed concerns about the effect these announcements had on public sentiment in South Ossetia.

Finally, and most importantly, Human Rights Watch believes that this issue requires further research, as new information might reasonably come to light about whether deaths were the

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<sup>209</sup> Human Rights Watch interview with a doctor (name withheld) in Tskhinvali hospital, August 13, 2008.

<sup>210</sup> Ibid.

<sup>211</sup> Human Rights Watch documented a number of such cases. For example, the relatives of Alan Sipols and the father of Dzarisa Dzhagaeva, whose interviews are quoted in Chapter 2.2, were initially buried in their respective yards.

result of humanitarian law violations, about deaths not reported previously (including deaths in the intervening period from wounds inflicted during the conflict), and might also identify people who were assumed dead but were in fact missing and resurfaced, and people who were inadvertently counted twice.

It is the obligation of the Russian investigative authorities to ensure transparency on this matter and provide both the Russian public and the international community with the latest accurate information—if necessary, by correcting the statements made by government officials at the beginning of the conflict.

## 2.8 Georgian Detentions and Ill-Treatment of Ossetians

The Georgian military during active combat in South Ossetia detained at least 32 Ossetians. These 32 were released between August 21 and 27, in exchange for Georgian civilian detainees. At the request of the South Ossetian authorities, nine Ossetians previously convicted of crimes and held in Georgian prisons were also exchanged for Georgian civilians.<sup>212</sup>

Human Rights Watch interviewed five of the 32, whom the Georgian military had detained on August 8 and 9.<sup>213</sup> All five detainees reported having been beaten by Georgian soldiers at the moment of their detention, and receiving poor and inadequate food while in detention.

The Georgian government maintains that all 32 Ossetians were militia fighters and were detained for their participation in hostilities.<sup>214</sup> Human Rights Watch cannot definitively determine whether the Ossetians detained by the Georgian military were civilians or were participating in hostilities. The Georgian authorities have not presented evidence that all of the Ossetians whom they detained were in fact combatants. At least one case investigated by Human Rights Watch, that of an elderly man who said he was a pacifist on religious grounds, calls into question the Georgian government's blanket determination about those whom its forces detained. One interviewee, however, made no effort to conceal that he was a combatant—he told Human Rights Watch that he was from North Ossetia and traveled to South Ossetia to join the militia forces as a volunteer immediately before the Georgian military attacked Tskhinvali.

Under the Fourth Geneva Convention, civilians are considered to be protected persons. The Convention requires that “persons taking no active part in the hostilities, ... shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.”<sup>215</sup> During hostilities and occupation, the Fourth Geneva Convention permits the internment or assigned residence of

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<sup>212</sup> Human Rights Watch interview with Mamuka Mujiri, deputy minister of defense, Tbilisi, September 15, 2008.

<sup>213</sup> Several other Ossetians Human Rights Watch interviewed told us they believed they were detained or held hostage by Georgian forces, whereas they had actually been evacuated by Georgian military for medical assistance. By the interviewees' own account there were no indications that their liberty was restricted.

<sup>214</sup> Human Rights Watch interview with Mamuka Mujiri, deputy minister of defense, Tbilisi, September 15, 2008.

<sup>215</sup> Fourth Geneva Convention, art. 3.

protected persons for “imperative reasons of security.”<sup>216</sup> In the case of detention of civilians on reasonable security grounds, detentions must be carried out in accordance with a regular procedure permissible under international humanitarian law. Those detained have a right to appeal their internment and have their case reviewed every six months. The Fourth Geneva Convention provides detailed regulations for the humane treatment of internees. The International Committee of the Red Cross (ICRC) must be given access to all protected persons, wherever they are, whether or not they are deprived of their liberty.<sup>217</sup>

Under international humanitarian law Ossetians who were not members of any regular forces, but members of militias or otherwise took up arms against the Georgian military, are not entitled to POW status, but are detained as non-privileged combatants, and should be treated in accordance with the protections guaranteed to civilians under the Fourth Geneva Convention.

In its detentions of Ossetians, regardless of combatant or civilian status, Georgia had the obligation to guarantee protections set out in the International Covenant on Civil and Political Rights and the European Convention on Human Rights. Both the ICCPR and ECHR provide an absolute prohibition on torture and other degrading or inhuman treatment.<sup>218</sup> In cases documented by Human Rights Watch, the Georgian authorities’ ill-treatment of Ossetian detainees violated this prohibition. The provisions of the ICCPR and ECHR banning arbitrary detention are also applicable, as during the conflict Georgia did not derogate from those convention obligations, although limited derogations in times of war are permitted.<sup>219</sup>

Human Rights Watch has received allegations from both Ossetian and Georgian authorities about instances of hostage-taking during the conflict and since the end of hostilities.<sup>220</sup> International humanitarian law strictly forbids hostage-taking, which is defined as holding or threatening someone to compel another party to do or not do something.<sup>221</sup> Hostage-taking is a crime of a self-perpetuating nature, which makes it a serious concern for some time to

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<sup>216</sup> Fourth Geneva Convention.

<sup>217</sup> *Ibid.*, arts. 78, 76.

<sup>218</sup> ICCPR, art. 7, and ECHR, art. 3.

<sup>219</sup> ICCPR, art. 4 (on derogations in a time of public emergency) and art. 9 (right to liberty and security of person); and ECHR, art. 5 (right to liberty and security of person) and art. 15 (on derogations in a time of emergency).

<sup>220</sup> Human Rights Watch interview with David Sanakoev, ombudsman of South Ossetia, Tskhinvali, November 24, 2008. Human Rights Watch interview with Mamuka Mujiri, September 15; and National Security Council of Georgia letter to Human Rights Watch, December 3, 2008.

<sup>221</sup> Fourth Geneva Convention, art. 34; Article 3 common to the Geneva Conventions; Protocol I, art. 75(2c); and Protocol II, art. 75(2c).

come. Human Rights Watch documented extensive hostage-taking following the 1991-92 conflict in South Ossetia.<sup>222</sup>

### III-Treatment at the Time of Arrest

#### *Detentions in Khetagurovo*

Oleg Tikaev, age 51, the deputy head of the South Ossetia traffic police, told Human Rights Watch that Georgian military forces detained him on August 9 at approximately 9 a.m. in the village of Khetagurovo. He described his detention:

They surprised me in the street, threatened to kill me, shot in the air several times, and pointed their guns at me. I had no other choice but to surrender. They took my car, two cellphones, and all the cash that I had on me: 10,320 [Russian] roubles [US\$380]. I was armed and in my police uniform ... but I tried to explain that ... I had nothing to do with the armed fighting.... They just started beating me.<sup>223</sup>

The Ministry of Defense of Georgia maintains that Tikaev was one of three Ossetian field commanders detained by the Georgian military.<sup>224</sup>

When a Russian military convoy began to approach Khetagurovo, the Georgian military forced Tikaev and several other detainees to walk to Avnevi. Tikaev described to us his transfer from Avnevi to Gori and Tbilisi:

In Avnevi they put me and [another detainee] Leonid Dzhioev into a truck, tied us to the seat and handcuffed us to a side rail. The truck took us to Gori, where we were handed over to the military police. From there we were transported to Tbilisi. They were beating me over and over before the [military] police claimed us. They were really beating me all the time in Avnevi, in Karteli, on the way to Gori. My right hand is still all numb and does not work properly [as a result of the beating].<sup>225</sup>

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<sup>222</sup> Helsinki Watch (now Human Rights Watch, Europe and Central Asia Division), *Bloodshed in the Caucasus*.

<sup>223</sup> Human Rights Watch interview with Oleg Tikaev, Khetagurovo, September 4, 2008.

<sup>224</sup> Human Rights Watch interview with Mamuka Mujiri, September 15, 2008.

<sup>225</sup> Human Rights Watch interview with Oleg Tikaev, September 4, 2008.



Sergei Lokhov told Human Rights Watch that he was detained on August 9 in Khetagurovo. He said that he was unarmed, but Georgian soldiers ignored his efforts to explain that he was a civilian. Lokhov said Georgian soldiers beat him at the moment of his detention, and described the beating to Human Rights Watch:

They asked me, “Why are the Russians bombing us?” ... [and], “Who’s your president?” I said, “Kokoity?” They hit me and asked again. And I said, “Do you mean Putin?” So they hit me again. It’s only later that I realized they wanted me to say “Saakashvili.”<sup>226</sup>

Tikaev confirmed that when he saw Lokhov in detention at the Vasiani military base, Lokhov bore signs of beating. Tikaev told Human Rights Watch, “There was another man from Khetagurovo held with me, Sergei Lokhov. He is in his late forties ... Sergei was treated worst of all. When I saw him [in detention] ... I was so scared. His jaw was dislocated from the beating, and he was in a very bad state.”<sup>227</sup>

Diana Dzhabieva, interviewed by Human Rights Watch in the village of Muguti, stated that one of her neighbors, Nodar Butlotaev, also reported having been beaten by Georgian soldiers when they detained him in Khetagurovo on August 8 (Dzhabieva spoke with Butlotaev following his release on August 22). Butlotaev told Dzhabieva that Georgian forces beat him, including in the head with the butt of an automatic weapon, resulting in an open head wound.<sup>228</sup>

### *Detention near Tskhinvali*

Ivan Bosikov told Human Rights Watch that Georgian forces detained him near Tskhinvali on August 8. Bosikov identified himself as a volunteer fighter from North Ossetia. Bosikov stated that he and other detainees were held in the prosecutor’s office in Gori on August 8-9 and beaten. Bosikov was eventually transferred to a temporary detention facility in Borjomi.<sup>229</sup>

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<sup>226</sup> Human Rights Watch interview with Sergei Lokhov, Khetagurovo, September 4, 2008.

<sup>227</sup> Human Rights Watch interview with Oleg Tikaev, September 4, 2008.

<sup>228</sup> Human Rights Watch interview with Diana Dzhabieva, Muguti, September 5, 2008.

<sup>229</sup> Human Rights Watch telephone interview with Ivan Bosikov, November 23, 2008.

### *Detentions in the Znauri district*

Human Rights Watch interviewed two individuals who were detained on August 8 in the Znauri district, west of Khetagurovo. Tengiz Bakaev, age 66, from Batatykau, stated that Georgians entered the village in the early morning, shooting and entering houses searching for fighters and weapons. The village was nearly deserted except for Bakaev and his wife. Both Bakaev and his wife stressed that he did not take part in the hostilities because of his age and religious convictions. Bakaev described his detention to Human Rights Watch:

When the Georgians entered the house ... my wife hid somewhere in the yard.... I told them weapons were wrong and fighting was wrong. I am a Christian, a Pentecostal, and we abhor fighting. And they asked what kind of passport I have, and I told them, "A Russian one and an Ossetian one." They said, "You'll be coming with us." I said, "I won't go," and they hit me in the head and dragged me off... On the way to Kareli I was beaten, but not as badly as the other guys who were ... with me. Probably because I was older ... But they did beat me on my face and on my back with their fists and gun butts.<sup>230</sup>

Georgian forces detained Zaza Lakhtilashvili, who is half Georgian, in Znauri on August 8. Those who know him told Human Rights Watch that Lakhtilashvili is mentally disabled, and although Human Rights Watch is not qualified to make assessments about an individual's medical state, our impression of him was consistent with what his acquaintances said.<sup>231</sup>

When Georgian forces asked for his name, Lakhtilashvili became confused and, thinking the soldiers were Russian, gave the name Gobofov, his Ossetian mother's maiden name, rather than his Georgian last name. After Lakhtilashvili told the soldiers that he had killed four Georgians, the soldiers beat and detained him. He described his ill-treatment to Human Rights Watch: "[The Georgian soldiers] beat me up first and took me away with them. They hit me and hit me again.... They took me away and held me someplace."<sup>232</sup>

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<sup>230</sup> Human Rights Watch interview with Tengiz Bakaev, Batatykau village, Znauri district, November 26, 2008.

<sup>231</sup> Human Rights Watch interview with Slavik Gabuzov, Znauri, November 24, 2008.

<sup>232</sup> Human Rights Watch interview with Zaza Lakhtilashvili, Znauri, November 23, 2008. Human Rights Watch has no way of knowing whether the killings Lakhtilashvili claimed to have committed ever took place.

## Conditions of Detention

The Georgian authorities held Tikaev and Lokhov together with other detainees at the Vasiani military base, near Tbilisi. Other Ossetian detainees were held in facilities under the jurisdiction of the Ministry of Justice, including four pretrial detention facilities, Prison No. 8 in Tbilisi, and the central prison hospital.<sup>233</sup> The Georgian government maintains that persons detained in the context of the conflict were placed separately from other prisoners in newly constructed or newly renovated facilities. It has stated that detainees had three meals daily, which met “accepted nutritional requirements,” unlimited access to water, and access to medical services when needed or requested.<sup>234</sup> The government also told Human Rights Watch that the ICRC had unimpeded access to the facilities in which Ossetian detainees were kept, and visited two: the Vaziani base and Prison No. 8.<sup>235</sup> The government stated on December 3, 2008, that to date it had received no complaints of abuse from Ossetian detainees.<sup>236</sup>

In interviews with Human Rights Watch, former detainees complained chiefly about inadequate food in detention. Tikaev briefly described to us his detention at the Vasiani military base:

I was held in ... Vasiani on their military base. They have a sort of a guardhouse there and that is where they held [us]. There were 18 of us altogether. They fed us very poorly. We were hungry all the time. They only gave us a piece of bread, a quarter of a chicken or a piece of sausage a day, plus water and dried crusts.<sup>237</sup>

Bakaev similarly told Human Rights Watch that Georgian authorities provided little to eat during his two-week detention, stating that he received only bread. He did not know the

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<sup>233</sup> Human Rights Watch interview with Mamuka Mujiri, September 15; and National Security Council of Georgia letter to Human Rights Watch, December 3, 2008.

<sup>234</sup> National Security Council of Georgia letter to Human Rights Watch, December 3, 2008.

<sup>235</sup> Ibid.

<sup>236</sup> Ibid.

<sup>237</sup> Human Rights Watch interview with Oleg Tikaev, September 4, 2008.

specific location of his detention, which he described only as a “prison.”<sup>238</sup> None of the detainees complained of ill-treatment while in detention facilities.<sup>239</sup>

Tengiz Bakaev and Zaza Lakhtilashvili were exchanged by the Georgian authorities for Georgian detainees held by Ossetians on August 21. Sergei Lokhov was exchanged on August 24. Oleg Tikaev was one of three Ossetians released to Ossetian authorities on August 25, although not in exchange for any Georgian detainees still held by Ossetians.<sup>240</sup>

## Possible Enforced Disappearance

Human Rights Watch received allegations that at least one Ossetian detainee in Georgian custody “disappeared.”<sup>241</sup> The Georgian government denies that any Ossetians detained during and immediately after the conflict remain in Georgian custody.<sup>242</sup>

According to Zoya Kabisova, her son, 29-year-old Tomaz Kabisov, was last seen in the village of Tbeti on August 8, as Georgian tanks entered the village from nearby Khetagurovo. Kabisov’s family had no information about his whereabouts until August 21, when they received a phone call from Ivan Bosikov,<sup>243</sup> the fighter from North Ossetia whose detention is described above.

Bosikov told Human Rights Watch that he first saw Tomaz Kabisov when Kabisov was brought on August 8 to the prosecutor’s office in Gori, where several Ossetian detainees were held overnight. Bosikov said that the next day he and several other detainees, including Kabisov, were taken to a detention facility in Khashuri, a town west of Gori. He told Human Rights Watch that he last saw Kabisov on the evening of August 10 in Khashuri, when Bosikov served as an interpreter during Georgian authorities’ interrogation of Kabisov, who

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<sup>238</sup> Human Rights Watch interview with Tengiz Bakaev, November 26, 2008. Human Rights Watch has documented poor conditions as a generalized problem in Georgian prisons and places of detention, and has called on the government to ensure conditions meet international standards. See Human Rights Watch, *Undue Punishment: Abuses against Prisoners in Georgia*, vol. 18, no. 8(D), September 2006, <http://www.hrw.org/reports/2006/georgia0906/>.

<sup>239</sup> Human Rights Watch interviews with Oleg Tikaev, September 4; Sergei Lokhov, September 4; Zaza Lakhtilashvili, November 23; and Tengiz Bakaev, November 26, 2008.

<sup>240</sup> Human Rights Watch interviews with Oleg Tikaev, September 4, and Mamuka Mujiri, September 15, 2008.

<sup>241</sup> David Sanakoev, the ombudsman of South Ossetia, told Human Rights there were four such individuals. Human Rights Watch received corroborating information about one of these cases, that of Tomaz Kabisov, described in this section. Human Rights Watch interview with David Sanakoev, Tskhinvali, November 24, 2008.

<sup>242</sup> Human Rights Watch interview with Mamuka Mujiri, September 15; and National Security Council of Georgia letter to Human Rights Watch, December 3, 2008.

<sup>243</sup> Human Rights Watch interview with Zoya Kabisova, Tbeti, November 23, 2008.

said he did not speak sufficient Russian or Georgian. Bosikov stated that Kabisov managed to give him his sister's phone number and asked Bosikov to call her upon his release.<sup>244</sup>

Kabisov was not among the Ossetian detainees exchanged for Georgian detainees in August 2008, and his whereabouts remain unknown.<sup>245</sup> South Ossetian Ombudsman David Sanakoev told Human Rights Watch that Georgian authorities deny that Kabisov is in their custody.<sup>246</sup>

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<sup>244</sup> Human Rights Watch telephone interview with Ivan Bosikov, November 23, 2008.

<sup>245</sup> Human Rights Watch interview with David Sanakoev, November 24, 2008.

<sup>246</sup> Ibid.

## **PART 3: VIOLATIONS BY RUSSIAN FORCES**

### **3.1 Overview**

Human Rights Watch has concluded that Russian forces committed violations of international humanitarian law during their attacks and hostilities in South Ossetia and in undisputed Georgian territory. Russian forces attacked areas in undisputed Georgian territory and South Ossetia with aerial, artillery, and tank fire strikes, some of which were indiscriminate, killing and injuring civilians. All Russian strikes using cluster munitions were indiscriminate. With regard to many aerial and artillery attacks, Russian forces failed to observe the obligations to do everything feasible to verify that the objects to be attacked were military objectives (and not civilians or civilian objects) and to take all feasible precautions to minimize harm to civilians. In one case, Russia attacked medical personnel, a grave breach of the Geneva Conventions which is a war crime.

In several incidents involving military force against civilian vehicles, Russian forces may have intentionally targeted civilians. Deliberate attacks on civilians amount to war crimes.

In many of the incidents of aerial and artillery attacks documented in the next chapter Human Rights Watch found evidence of violations of humanitarian law. The mere fact of civilian casualties or destruction of civilian objects does not mean that a humanitarian law violation occurred. In each case, Human Rights Watch sought to determine whether there was evidence of a legitimate military target in the attack area, and if so how that target was attacked. In many cases Human Rights Watch researchers found no evidence of military objectives in the area under attack; other attacks did strike legitimate military targets, causing combatant and, in some cases, collateral civilian casualties.

With regard to attacks on ethnic Georgian villages in South Ossetia, since Georgian and Russian forces use some identical Soviet-era weapons systems including main battle tanks, Grad rockets, BMP infantry fighting vehicles, and tube artillery, Human Rights Watch could not always definitively attribute specific battle damage to a particular belligerent, especially for the attacks that happened on and after the late afternoon of August 8, when both Russian and Georgian troops were present in Tskhinvali. Human Rights Watch did not include such incidents in this report.

Several local residents told Human Rights Watch that many of the Russian servicemen who occupied Georgia behaved in a disciplined manner and in some cases even protected the civilian population from Ossetian forces, militia members, or looters. Nevertheless, Human Rights Watch documented four incidents in which Russian servicemen committed such violations as pillaging, destruction of civilian property, and using violence against civilians; we documented four cases where they did so jointly with Ossetian forces.

Russia failed in its duty as an occupying power to ensure as far as possible public safety and order in areas under its effective control in South Ossetia.<sup>247</sup> This allowed South Ossetian forces, including volunteer militias, to engage in wanton and widescale pillage and burning of Georgian homes and to kill, beat, rape, and threaten civilians. This violence is documented in Chapter 4.

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<sup>247</sup> For a discussion of the obligations of the law of occupation, see Chapter 3.7, Russia's responsibility as occupying power.

### **3.2 Aerial Bombardments, Shelling, and Artillery Attacks**

Between August 8 and 12, Russian forces attacked Georgian military targets in Gori city and in ethnic Georgian villages in both South Ossetia and undisputed Georgian territory, often causing civilian casualties and damage to civilian objects such as houses or apartment blocks. The proximity of these targets to civilian objects varied. In several cases, the military targets that were within meters of civilians and civilian homes, and the attacks against them resulted in significant civilian casualties. In other cases the apparent military targets were located as far as a kilometer away from civilian objects, and yet civilian casualties also resulted. In attacking any of these targets the Russian forces had an obligation to strictly observe the principle of proportionality, and to do everything feasible to assess whether the expected civilian damage from the attack would likely be excessive in relation to the direct and concrete military advantage to be gained. In many cases the attacks appear to have violated the principle of proportionality. In yet other cases, Human Rights Watch investigated but was not able to identify any legitimate military targets in the immediate vicinity. The absence of a military target in the vicinity of an attack raises the possibility that Russian forces either failed in their obligation to do everything feasible to verify that the targets were military and not civilian; that they were reckless toward the presence of civilians in their target zone, or that Russian forces deliberately targeted civilian objects.





A man stands in front of an apartment building on Sukhishvili Street in Gori, bombed by Russian forces prior to their advance into Gori district. © 2008 Marcus Bleasdale/VII

In some cases in South Ossetia, civilian casualties and damage to civilian property in Georgian villages were caused by artillery shelling. Because both Russian and South Ossetian forces possessed artillery capacity, Human Rights Watch was not always able to establish with certainty whether responsibility for indiscriminate artillery attacks lay with Russian or South Ossetian forces. In these cases further investigation is required to determine specific responsibility for violations of international humanitarian law.

### **Attacks on Ethnic Georgian Villages in South Ossetia**

Residents of several ethnic Georgian villages in South Ossetia said their villages had been shelled intermittently by South Ossetian forces in the days leading up to the conflict. From August 8 (after the Georgian assault started) until August 10, the villages were subjected to more intense artillery shelling—by either Russian or South Ossetian forces—and to Russian aerial bombardments. Because of the attacks, many villagers fled in the early stages of the conflict. In most villages, however, some elderly and infirm people remained. Even though Georgian military forces reportedly remained deployed in some of these villages until August 9, the attacks warrant further investigation to determine whether the attacks were indiscriminate and therefore in violation of international humanitarian law.

## *Kekhvi*

Four Kekhvi residents described a mix of artillery shelling and aerial bombing of the village lasting from August 7 to 9.<sup>248</sup> Tamara Mamagulashvili, 41, told Human Rights Watch,

The shelling started on August 7, at 11:30 p.m. There were no gunshots, just the blast. It was from artillery and it blew out the windows. My husband and I lay down on the floor. Then we went with six others to our neighbor's basement [to hide]. The shelling lasted the entire night; it was only artillery. There was about 10-30 minutes between each blast. It came from different directions.

At 6 a.m. the aerial bombing started. These bombs made more noise and you could hear them as they were coming in. There was aerial bombing until 3 p.m. Then it stopped until 6 p.m., but the artillery shelling continued. At about 6 p.m. on August 8 we decided to leave the village.<sup>249</sup>

Three other residents of Kekhvi interviewed by Human Rights Watch also described heavy bombing and shelling of the village.<sup>250</sup> One of them, Slava Melanashvili, 32, a construction worker, told Human Rights Watch,

On August 9 massive bombing started and the village administration and hospital buildings were destroyed. Bombing took place day and night. It seemed like they were targeting a local school and other large buildings; maybe they thought there were troops hiding there. My house was hit and completely destroyed during the bombing in the afternoon of August 9. My house was next to the village school.<sup>251</sup>

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<sup>248</sup> The Georgian government pointed to the shelling of Kekhvi in the days prior to August 7 to explain its military intervention in South Ossetia. See, Conclusion of the Parliamentary Ad Hoc Commission on Military Aggression and Acts of Russia Against The Territorial Integrity of Georgia, December 18, 2008, [http://www.parliament.ge/index.php?lang\\_id=GEO&sec\\_id=1329&info\\_id=22127](http://www.parliament.ge/index.php?lang_id=GEO&sec_id=1329&info_id=22127) (accessed January 14, 2009).

<sup>249</sup> Human Rights Watch interview with Tamara Mamagulashvili, Tbilisi, August 15, 2008.

<sup>250</sup> Human Rights Watch separate interviews with Slava Melanashvili, Givi Melanashvili, and Otar Kakhniashvili, Tbilisi, August 14-15, 2008.

<sup>251</sup> Human Rights Watch interview with Slava Melanashvili, August 14, 2008.

The village school was destroyed. Kekhvi residents named at least three villagers killed by shrapnel during the attacks.<sup>252</sup>

### *Kvemo Achabeti and Kheiti*

The village of Kvemo Achabeti was shelled on August 8 and 9. Vazha Lazagashvili, 58, told Human Rights Watch that four houses were hit:

On August 8 our house was bombed, it left a very big crater. The bomb fell into the yard, about two to three meters away from the house. The windows, doors blew in and the wall partly collapsed. There were shrapnel holes in the house. The pressure blew everything in the house against the back wall. We were hiding in the basement, which is concrete. The concrete on top of the basement protected us. My son was in the yard when the bomb hit. Shrapnel hit him on the back.<sup>253</sup>

In the village of Kheiti, Nugzar Bugianishvili died during a Russian aerial attack on August 9. His brother, Omar Bugianishvili, 65, told Human Rights Watch,

It was about 10 a.m. We put food on the table to eat together. That's when the first bomb exploded. It fell on our neighbor's house. I got up from the table and went to the basement. That's when a bomb hit [our house] and shrapnel hit my brother in the neck and in the head. My 92-year-old mother-in-law stood next to him. She was not injured.

When I checked on my brother, he was already dead. His head was fractured and his eyeballs dropped out. I buried him myself in the yard.

Georgian military units were not present in the village at that time. I could see planes flying, dropping the bombs.<sup>254</sup>

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<sup>252</sup> Human Rights Watch interviews with Ketii Otinashvili, Tbilisi, August 15; and Otar Meranashvili, Tbilisi, August 29, 2008. They named the dead as Grisha Kakhniashvili, age about 65, Vaso Kakhniashvili, about 80, and Murman Khetereli.

<sup>253</sup> Human Rights Watch interview with Vazha Lazagashvili, Tbilisi, September 12, 2008.

<sup>254</sup> Human Rights Watch interview with Omar Bugianishvili, Tbilisi, August 29, 2008.

## Attacks in Undisputed Georgian Territory

### *Gori city*

Gori city is the administrative center for the Gori district. Gori's military base and Georgian military reservists located in one part of the city became targets of Russian air strikes. Also, as noted in Chapter 1.1, in mid-July 2008 Georgia concentrated its entire artillery brigade in Gori city.<sup>255</sup> As a result of the airstrikes and advancing Russian and Ossetian forces, civilians began to flee Gori around August 11.

### Attack on Apartment Buildings on Sukhishvili Street

On the morning on August 9, Russian aircraft targeted and destroyed a military base located on Sukhishvili Street on the outskirts of Gori city.

However, in the attack the forces also hit three five-story apartment buildings also on Sukhishvili Street near the base, killing 14 and wounding dozens.<sup>256</sup> Each of the three apartment buildings was hit directly in the center of the building, suggesting that the Russian aircraft specifically targeted these buildings in addition to the military base.<sup>257</sup> Georgian authorities had a duty to the extent feasible not to place a military base in close proximity to civilian areas. However, Russian forces still had a duty to take into account the effect on the civilian population of their attack and to observe the laws of war in relation to targeting and proportionality. Russian forces therefore had an obligation to do everything feasible to verify whether the apartment buildings, which should be presumed to be civilian objects, were in fact military targets. The circumstances of the attack raise doubts as to whether this determination was made.

Elene Zerekidze, age 85, told Human Rights Watch that the first bomb hit one apartment building at approximately 11:30 a.m:

I was walking down the stairs when I heard a loud explosion. I live in the third entryway [in Russian, *podezd*] and the bomb hit the first one. I cried,

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<sup>255</sup> "The Chronicle of a Caucasian Tragedy Part 2: Practicing for War," *Spiegel Online International*, <http://www.spiegel.de/international/world/0,1518,574812-2,00.html>.

<sup>256</sup> Human Rights Watch interview with Nukri Jokhadze, chief physician, Gori Military Hospital, August 19, 2008. A list of those killed and wounded is on file with Human Rights Watch.

<sup>257</sup> For media reports, see for example: "Eyewitness: Scenes of Panic in Gori," *BBC News Online*, August 9, 2008, <http://news.bbc.co.uk/2/hi/europe/7550965.stm> (accessed November 20, 2008); "Russian bombs spread panic in Georgia," Reuters, August 9, 2008, <http://www.reuters.com/article/GCA-Georgia/idUSL934889020080809> (accessed November 20, 2008).

“They are bombing us!” and ran outside. There was a lot of debris, destruction, and blood. People were screaming for help.<sup>258</sup>

A couple identified to us as Zviad, age 28, and his pregnant wife Manana, 27, were killed as they were trying to flee the bombing. Tina Khanishvili, 75, who lived in one of the Sukhishvili Street apartment buildings, and witnessed the incident, told Human Rights Watch,

A young couple was getting into a car to run away after the first bomb hit the apartment. But as they were preparing to flee a second bomb fell and they were hit by shrapnel and died. She was pregnant. Their six-year-old-son was badly wounded, but survived.<sup>259</sup>

Lia Kobesashvili, 45, worked as a nurse for an ambulance dispatch service that was located in one of the apartment buildings. She told Human Rights Watch, “People were thrown out of the windows. There was complete panic. Many people were wounded. One nurse who lived at 10 Sukhishvili Street, Maia Vazagashvili, was killed when the pressure threw her out of the window.”<sup>260</sup>

### **Attack on School No. 7**

At about 11 a.m. on August 9, Russian aircraft made several strikes on and near School No. 7 in Gori city. According to one eyewitness, Givi Melanashvili, 60, who was at the school when the bombing took place, about one hundred Georgian military reservists were in the yard of the school when it was attacked. To his knowledge none of the reservists was injured.<sup>261</sup> The reservists as combatants were a legitimate target, and it is possible that the school was deemed as being used for military purposes. In such circumstances, it would lose its status as a protected civilian object. In the attack, one strike hit an apartment building next to the school, killing at least five civilians and wounding at least 18, and another hit a second building adjacent to the school causing damage, but no civilian casualties.

There were civilians also taking shelter in the school, as Melanashvili, who was looking for temporary shelter in Gori having had fled South Ossetia a day earlier, told Human Rights Watch,

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<sup>258</sup> Human Rights Watch interview with Elene Zerekidze, Gori, August 19, 2008. At the time of the interview Zerekidze lived in a garage behind the apartment building together with her 75-year-old neighbor Tina Khanishvili.

<sup>259</sup> Human Rights Watch interview with Tina Khanishvili, Gori, August 19, 2008.

<sup>260</sup> Human Rights Watch interview with Lia Kobesashvili, Tbilisi, August 18, 2008.

<sup>261</sup> Human Rights Watch interview with Givi Melanashvili, IDP shelter in Tbilisi, August 15, 2008.

I was told that I could find shelter in School No. 7. My wife and I went there in the morning. I got there around 11 a.m. and saw that there were Georgian reservist forces in the yard. Suddenly a bomb hit the building next to the school. There was a loud explosion and complete chaos. A large part of the building was destroyed. The school building was damaged.<sup>262</sup>

While the reservists' presence in the school yard rendered it a legitimate target for the Russian forces, questions may be raised as to the proportionality of the attack. Where an object, which is by its nature normally civilian, becomes used for military purposes, it can be attacked, but only by means that will avoid or minimize harm to civilians and damage to civilian objects. All feasible measures should be taken to cancel or suspend an attack if it becomes apparent that the expected civilian casualties would outweigh the importance of the military objective.<sup>263</sup>

### **Attack on Gori Military Hospital**

By August 12, many of Gori's inhabitants had fled the city. Staff at the Gori Military Hospital remained in the city to take care of the hospital's remaining patients.<sup>264</sup>

At around 2 a.m. on August 13 a Russian military helicopter fired a rocket toward a group of hospital staff members who were on break in the hospital yard. The rocket hit Giorgi Abramishvili, an emergency room physician in his forties. Abramishvili, who had spent the previous four days operating on people wounded during the war, died from head injuries.

Human Rights Watch researchers saw that the roof of the hospital building is clearly marked with a red cross, the "distinctive emblem" indicating medical personnel or facilities and entitled to specific protection under the Geneva Conventions.

This attack was a serious violation of international humanitarian law. Hospitals, even military hospitals such as the one in Gori, are not legitimate military targets. The wounded and sick, and medical personnel, even if they are members of the armed forces, are protected persons and attacks directed against them are war crimes.<sup>265</sup>

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<sup>262</sup> Ibid.

<sup>263</sup> This principle of customary law is codified in article 57 of Protocol 1.

<sup>264</sup> Although the majority of patients in Gori Military Hospital are members of the Georgian armed forces, about 25 percent of the patients being treated at the hospital at any one time are civilians. Most of the civilians injured in Gori city or the Gori district were initially taken to Gori Military Hospital for treatment.

<sup>265</sup> Fourth Geneva Convention, art. 19.



## *Karbi*

On the morning of August 9 Russian air and artillery attacks struck the village of Karbi. At about 7 a.m. an airstrike killed one villager.<sup>266</sup> Two hours later, as residents started gathering in one part of the village in preparation to flee, another round of aerial-burst artillery shells killed at least seven and injured at least 10.<sup>267</sup>

Avto Unapkoshvili, 48, was wounded during the first attack, when a bomb struck his house. The bomb killed Unapkoshvili's relative, Dodo Unapkoshvili, age 60, who was asleep in the house. Avto Unapkoshvili told Human Rights Watch, "My brother and I were standing outside the gates [to our house], smoking, around 6:30 a.m. It was completely quiet; then I heard an explosion and saw yellow smoke. The pressure from the explosion was so strong that it lifted me up, and then I fell to the ground."<sup>268</sup>

Tsiala Bidzinashvili, 50, was killed by shrapnel from the artillery attack two hours later. Her husband, Gaioz Bidzinashvili, who was wounded during the attack, told Human Rights Watch,

I was sitting near my house, together with several other villagers. Some residents were gathering [there] to flee. Someone had a small radio and we were trying to listen to the news. We knew that one person died as a result of the morning aerial bombing and we wanted to know what to expect.

All of a sudden I heard numerous large explosions. I was wounded in the stomach. It all happened in a flash. Four people died around me. I ran into the yard, shouting for my wife to help me, but she was already dead in the yard.

Bidzinashvili was treated in hospital for multiple shrapnel wounds.<sup>269</sup>

Tengiz Tevdorashvili, 69, was also wounded during the second attack and corroborated Gaioz Bidzinashvili's story.<sup>270</sup> Eighty-year-old Rusiko Rcheulishvili and her son were also

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<sup>266</sup> Human Rights Watch interviews with Vasiko Tevdorashvili, village administrator, Tbilisi, August 16; Levan Bidzinashvili, Tbilisi, August 17; and Lado Bidzinashvili, Karbi, October 17, 2008.

<sup>267</sup> Human Rights Watch interviews with Lado Bidzinashvili and Gaioz Bidzinashvili, Karbi, October 17, 2008. A list of village residents killed in Karbi on August 9 is on file with Human Rights Watch.

<sup>268</sup> Human Rights Watch interview with Avto Unapkoshvili, Karbi, October 17, 2008.

<sup>269</sup> Human Rights Watch interview with Gaioz Bidzinashvili, Karbi, October 17, 2008.

wounded during the attack. She told Human Rights Watch, “I went to buy bread. On the way, I saw men gathered in the neighborhood center, listening to the radio. My son was also there. When I approached them, I heard loud explosions and I was wounded. My arms, stomach and leg were bleeding. My son was also wounded.”<sup>271</sup>

Vasiko Tevdorashvili, the village administrator, described to Human Rights Watch the aftermath of the second attack: “There were many wounded. I had to decide who had better chances of survival and stuff them into the ambulance. We buried the dead in the yards of houses and fled the village.”<sup>272</sup>

According to Vasiko Tevdorashvili and two other villagers, there was no Georgian military base in the village and there were no Georgian military forces present at the time of the attack. Two other villagers, interviewed separately, told Human Rights Watch that while there were no Georgian troops in the village itself, there was Georgian artillery in fields about three kilometers from the village.<sup>273</sup>

The distance of the village from the Georgian artillery, combined with the fact that the village was hit twice in two separate attacks, suggests that the village may have been deliberately targeted, or at a minimum that the village was hit as part of an indiscriminate attack on the area, and the Russian forces failed to direct the attack solely at the military targets located at some distance from the populated areas. In either event the civilian casualties in Karbi appear to be the result of serious violations of humanitarian law.

### *Tortiza*

Tortiza is a small village situated several kilometers from a main road connecting Gori and Tskhinvali (see map on page 1). Many civilians fleeing bombing and shelling in other villages in the area went to Tortiza. Both Tortiza residents and those arriving from other villages reported to Human Rights Watch that they believed the village’s location away from the main road meant that it was of no strategic importance and that it therefore would not be targeted.<sup>274</sup> However, on August 12, at around 9:45 a.m. Russian aircraft fired S-8 rockets at

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<sup>270</sup> Human Rights Watch interview with Tengiz Tevdorashvili, Karbi, October 17, 2008.

<sup>271</sup> Human Rights Watch interview with Rusiko Rcheulishvili, Karbi, October 17, 2008.

<sup>272</sup> Human Rights Watch interview with Vasiko Tevdorashvili, August 16, 2008.

<sup>273</sup> Human Rights Watch separate interviews with two villagers (names withheld), Karbi, August 16 and October 17, 2008.

<sup>274</sup> According to one witness, “We felt the territory was very safe. We are not on the main road. We are in the middle of nowhere. On some maps of Gori district you might not even find Tortiza. Displaced people from other conflict zone villages came to this village [for safety].” Human Rights Watch interview with Lali Maisuradze, Tortiza, October 19, 2008.



Tortiza, killing three civilians, injuring dozens, and damaging nearly every house in the village.<sup>275</sup>

Among those killed was 15-year-old Nugzar Akhalkatsi, who was at home with his family when the attack started. His grandmother, Natia, told Human Rights Watch,

There were loud explosions from other parts of town. We were sitting in the house, but we ran out when the windows broke. It felt like the house would fall apart so we wanted to get out and get to shelter. A bomb hit the house. He [Nugzar] turned around and shrapnel hit him. He said, “I think I’m wounded,” and that’s it. He lost consciousness.

We took him to Gori, but Gori was also bombed that day. No one was in the hospital there either. He was taken to Tbilisi but on the way he died.<sup>276</sup>

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<sup>275</sup> An S-8 rocket is a Russian-produced 80 mm aerial-launched rocket used by fighter aircraft and helicopters.

<sup>276</sup> Human Rights Watch interview with Natia Akhalkatsi, Tortiza, October 19, 2008.



Natia Akhalkatsi clutching the photo of her grandson, who was killed by a Russian S-8 rocket attack on Tortiza. © 2008 Human Rights Watch

Kristina Merabashvili, 47, was taking her calf to a field when the attack started. Afterwards her son found her unconscious in the field and took her to a hospital in Gori city. She was later taken to Gudushauri hospital in Tbilisi where she underwent a series of operations. She described how the bombing injured her:

It happened in a second. It became dark all of a sudden. Apparently bombs fell somewhere else and it was very smoky. It was like a wave lifted me up and threw me down again. I fell, was not feeling my right leg and it was all torn apart. I had small bits of shrapnel in my arm. I still can't feel my leg. My right thigh is entirely shattered.

Maxim Akopian, 74, was walking nearby and was also hit and wounded.<sup>277</sup>

Raisa Ketiladze's 43-year-old son Zaza was wounded during the bombing. She recounted,

I was sitting in the yard of my house eating ice cream when I heard noise from flying jets. We did not expect them to bomb us as our village is located far from the conflict zone and away from the main road. But rockets started flying, hitting one house after another. I heard my son screaming for help, shouting that he was wounded. I could not see him as the air was full of debris.

When we found him he was wounded in the leg. My neighbors helped me carry him first to the fields to hide. When the bombing stopped we took him to the hospital in Rustavi where they operated on him.<sup>278</sup>

While it has not been possible to establish the total number of rockets Russian forces fired in their attack, villagers told Human Rights Watch that a demining organization had cleared 148 S-8 rockets, many of them unexploded, in Tortiza during the first weeks of October. Lali Masuradze, 45, told Human Rights Watch, "In every house, they cleared stuff."<sup>279</sup> Zina Ketiladze, 72, told Human Rights Watch that four rockets fell in her house alone. She showed Human Rights Watch researchers the remaining craters and described the attack:

I heard jets flying over. I was alone at home and decided to run away, and that's when the first one fell in my yard. It broke the windows and doors. The debris was so thick in the air that nothing was visible. I started screaming for help and ran to the fields. Later I found out that four rockets fell in my yard.<sup>280</sup>

Villagers told Human Rights Watch that there were no Georgian military or police forces in the area. Human Rights Watch examined the damage to many houses in the village which, together with witness accounts, provided compelling evidence that Russian aircraft fired at civilian houses.

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<sup>277</sup> Human Rights Watch interview with Kristina Merabashvili, Tortiza, October 19, 2008.

<sup>278</sup> Human Rights Watch interview with Raisa Ketiladze, Tortiza, October 19, 2008. Zaza Ketiladze still had problems walking when Human Rights Watch visited him in October.

<sup>279</sup> Human Rights Watch interview with Lali Masuradze, Tortiza, October 19, 2008.

<sup>280</sup> Human Rights Watch interview with Zina Ketiladze, Tortiza, October 19, 2008.

This direct attack on what appears to have been a purely civilian target constitutes a serious violation of humanitarian law and a war crime.

### *Tkviavi and Akhaldaba*

On August 11, at approximately 4 p.m., a Russian aircraft bombed a neighborhood in the village of Tkviavi, destroying several homes and wounding two civilians. Residents told Human Rights Watch that the Georgian military had not been in the vicinity, but only in a neighboring village close to the Liakhvi River, approximately two kilometers away. It is not known whether Russian strikes hit these troops.

Zina Merabashvili, 66, was in the village at the time of the bombing and told Human Rights Watch,

Jets had been flying over the village for some time that day. At about 4 p.m. I went out to the kiosk on the corner to buy some beer. Then one jet flew over and dropped four bombs. One bomb fell on a [nearby] house and a fire started. Some debris fell on me, and I ran home to see my house damaged and my neighbor's house almost completely destroyed.<sup>281</sup>

The top floor of Merabashvili's house was damaged.

Roza Okruashvili, a 58-year-old grandmother of six, was at home alone when a Russian bomb struck her house. Okruashvili told Human Rights Watch what she could remember of the bombing: "I had finished washing the dishes and I went upstairs to turn on the television. The picture hadn't even come up yet, when I heard a jet fly over. Then I felt pain, and I was screaming and I lost consciousness."<sup>282</sup> Okruashvili suffered shrapnel wounds to her left leg and hip, her right foot, and her abdomen. She spent over a month in hospital being treated for her wounds. The bomb completely destroyed Okruashvili's house.

Akhaldaba is a village on one of the two main roads between Gori and Tskhinvali, about six kilometers west of Tortiza. Russian aircraft fired S-8 rockets on Akhaldaba on August 12 at around 10 a.m., injuring five people, at approximately the same time as the attacks on Tortiza took place. The attack on Akhaldaba lasted for about 10 minutes before the aircraft flew towards the river and the fields where Georgian forces were present at the time. Human

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<sup>281</sup> Human Rights Watch interview with Zina Merabashvili, Tkviavi, September 14, 2008.

<sup>282</sup> Human Rights Watch interview with Roza Okruashvili, Tkviavi, September 14, 2008.

Rights Watch does not have information about whether Russian airstrikes hit these forces. Villagers told Human Rights Watch that there were no Georgian military forces in the village at the time of the attack.

Ketevan Tanderashvili, 56, was at home when the attack started. She told Human Rights Watch,

I was near my house, in the yard, when one rocket hit the house. Several others fell in my yard. Other houses in the southern part of the village were also hit. Nobody understands how I survived. They were firing from planes, and there were also helicopters near the village, above the river.<sup>283</sup>

As in Tortiza, these attacks on Tkviavi and Akhaldaba may have been a direct attack on what were purely civilian targets. If so, these would be war crimes. At a minimum they appear to have been indiscriminate attacks in that if the attacks were directed at forces outside of either village all feasible measures were not taken so as to target only the military objects, and the attacks were not carried out in such a way as to avoid or minimize civilian casualties.

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<sup>283</sup> Human Rights Watch interview with Ketevan Tanderashvili, Akhaldaba, August 24, 2008.

### 3.3 Russia's Use of Cluster Munitions

In the course of three missions to Georgia in August, September, and October 2008, Human Rights Watch researchers found that Russian forces used cluster munitions against targets in populated areas in the Gori and Kareli districts just south of the South Ossetian administrative border, killing at least 12 civilians and injuring at least 46 at the time of attack. Unexploded cluster submunitions in the contaminated areas have prevented many farmers from harvesting, throwing already struggling farmers into deep economic distress.

Because cluster munitions cannot be directed at specific fighters or weapons and because cluster duds will likely injure or kill whoever disturbs them, combatant or civilian, using cluster munitions in populated areas, as Russia did, should be presumed to be indiscriminate attack, which is a violation of international humanitarian law.<sup>284</sup>

The lawfulness of a military strike may also be determined by whether the effects on civilians are excessive in relation to any direct military advantage gained. As noted elsewhere in this report, a cluster strike will be an unlawfully disproportionate attack if the expected civilian harm outweighs anticipated military advantage. The expected civilian harm is not limited to immediate civilian losses, but also encompasses casualties over time. There is greatly increased likelihood that the loss will be excessive in relation to the military advantage when taking into account both strike and post-strike civilian harm, especially if an attack occurred in a populated area or an area to which people might return. Based on its field research in the former Yugoslavia, Afghanistan, Iraq, and Lebanon, as well as in Georgia, Human Rights Watch believes that when cluster munitions are used in any type of populated area, there should be a strong, if rebuttable, presumption that the attack is disproportionate.

Finally, parties to a conflict are under the obligation to take “all feasible precautions in the choice of means and methods” of warfare so as to avoid and in any event minimize “incidental loss of civilian life, injury to civilians and damage to civilian objects.” The indiscriminate nature of cluster munitions makes it impossible for a party using cluster munitions in populated areas to observe this principle.

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<sup>284</sup> For a description of cluster munitions, see Chapter 2.5, “Georgia’s Use of Cluster Munitions”.

## Evidence of Russian Cluster Use

Russian authorities have not acknowledged using cluster munitions during the August war with Georgia. On August 15 the deputy chief of the General Staff of the Armed Forces of the Russian Federation, Anatoly Novogitsyn, stated that Russia had not used cluster munitions “in the area of the Georgian-Ossetian conflict.”<sup>285</sup> Responding to a question from a journalist in October, a spokesman for the Russian Ministry of Foreign Affairs did not deny that Russian forces had used cluster munitions, but instead pointed out that “the Georgian side has cluster warheads in service.”<sup>286</sup>

However, Human Rights Watch researchers gathered overwhelming evidence that several villages in Gori and Kareli districts had been hit by air-dropped RBK-500s and RBK-250s carrying AO-2.5 RTM submunitions and by Hurricane missiles carrying 9N210 submunitions. Human Rights Watch also found that Gori city had been struck by an Iskander SS-26 ballistic missile carrying submunitions.

Human Rights Watch has concluded that these strikes were Russian. The weapons systems in question are produced in Russia and are known to be in Russia’s arsenal. Even though Georgia possesses cluster munitions (see Chapter 2.5, Georgia’s Use of Cluster Munitions), there have been no reports that Georgia possesses these particular weapons systems. While the Georgian authorities admit to possessing the GRAD-LAR 160 multiple launch rocket system with Mk4 rockets with M85 submunitions, they deny that they are in possession of any other cluster munitions.<sup>287</sup> Finally, witnesses told Human Rights Watch that Georgian troops, likely targets for a Russian cluster munitions strike, were or had been passing through the area of the strike, although they were not in the immediate vicinity of the strike. Conversely, no Russian troops, likely targets for a Georgian strike, were reported in the area. International deminers working in the area concurred with Human Rights Watch’s conclusion that the cluster munitions strikes in question were Russian.<sup>288</sup>

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<sup>285</sup> “Russia did not use cluster bombs in the zone of the Georgian-South Ossetian conflict zone” (“Россия не использовала кассетные бомбы в зоне грузино-осетинского конфликта”), Ministry of Defense of the Russian Federation news release, August 15, 2008, <http://www.mil.ru/info/1069/details/index.shtml?id=49501> (accessed November 14, 2008). Notably, the ministry statement does not explain what is included in the Georgian-South Ossetian conflict zone and whether this includes undisputed Georgian territory.

<sup>286</sup> “Response by the Russian Foreign Ministry’s Spokesman to a Media Question About the Death in Gori, Georgia, of a Netherlands Citizen in August 2008,” Ministry of Foreign Affairs of the Russian Federation, 1663-23-10-2008, October 23, 2008, [http://www.mid.ru/brp\\_4.nsf/e78a4807of128a7b43256999005bcbb3/e3a99a770e271085c32574ec003fe5e5?OpenDocument](http://www.mid.ru/brp_4.nsf/e78a4807of128a7b43256999005bcbb3/e3a99a770e271085c32574ec003fe5e5?OpenDocument) (accessed November 14, 2008).

<sup>287</sup> Human Rights Watch interview with First Deputy Minister of Defense Batu Kutelia, Tbilisi, October 21, 2008.

<sup>288</sup> Human Rights Watch interviews with Joseph Huber, program manager, Norwegian People’s Aid, Tbilisi, October 13 and 16; and Mick McDonnell, operations manager, Information Management and Mine Action Planning, Tbilisi, October 17, 2008.

Human Rights Watch documented three cluster munition strikes that resulted in civilian casualties. In two cases (Gori city and Variani), the cluster munition strikes were directed against public squares where numerous civilians had gathered. In a third case (Ruisi), the strike was directed against the center of a town. In these three cases, the cluster munition strikes killed at least 12 civilians and injured at least 46.

Even though Georgian troops were moving through the general area, Human Rights Watch has not been able to identify any potentially legitimate military targets in the immediate vicinity of these strikes. All witnesses interviewed by Human Rights Watch insisted that there were no Georgian troops in the immediate vicinity at the time of the strikes. In the absence of military targets in the immediate vicinity, Human Rights Watch has concluded that the use of cluster munitions against targets in these populated areas constitutes at best indiscriminate use of force.

The military advantage achieved by the strikes is also questionable because Georgian military troops were already retreating at the time of the strikes. As a result, Russian use of cluster munitions was likely disproportionate and therefore illegal under international humanitarian law.

Although Human Rights Watch has not documented any casualties from unexploded Russian cluster submunitions, using such a weapon indiscriminately against troops in populated areas posed—and because of the presence of unexploded submunitions, continues to pose—foreseeable threats to civilian lives.

#### *Variani—RBK-500 cluster munitions with AO-2.5 RTM submunitions*

At least two cluster munition strikes hit the village of Variani during the conflict, killing three people and injuring 16. Variani is situated along one of the two main roads between Tskhinvali and Gori city. Based on statements from victims and witnesses and physical evidence gathered on the ground in the form of unexploded submunitions, remnants of delivery rockets, and numerous fragments from the weapons system (including the submunitions' signature ring of "fins"), Human Rights Watch has concluded that Variani was struck by RBK-500 cluster munitions loaded with AO-2.5 RTM submunitions.<sup>289</sup>

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<sup>289</sup> RBK-500 is an air-dropped cluster munition that carries 108 AO-2.5 RTM anti-personnel and anti-materiel submunitions. The AO-2.5 RTM submunition is roughly oval in shape and has a distinctive ring of "fins" around its middle. Human Rights Watch cannot exclude that other air-dropped munitions may also have been dropped in Variani.



The first attack struck in the center of Variani around 10:30 a.m. on August 8. Teimuraz Khizanishvili, 70, was one of more than a dozen civilians who were in the public square for a daily gathering when the attack occurred. He told Human Rights Watch that Malkhaz Bedoshvili, age about 31, who was standing a few meters away from him, died immediately while his father, Omar Bedoshvili, about 65, was wounded and died several hours later in hospital. Khizanishvili was himself injured during the attack: “The bomb fell from the air and it exploded. It happened in seconds and we all fell down. Both my legs were broken. There was shrapnel everywhere in my body—my forehead, hand, legs, torso, back.”<sup>290</sup> When he spoke to Human Rights Watch Khizanishvili was sitting in a wheelchair with his legs in large casts.

Three children were also among the wounded. Beka Giorgishvili, 13, was playing with his friend Valiko Urjumelashvili, 12, when the attack occurred. They were both injured together with Urjumelashvili’s nine-year-old sister Tsira. Valiko Urjumelashvili lost part of his skull in the explosion, and when Human Rights Watch spoke with his mother in October she said he still had shrapnel in his head and had difficulties speaking.<sup>291</sup>

In all, 14 people were injured in the first strike.

The second strike occurred on the morning of August 12. Suliko Zubashvili, 59, was outside chatting with his friends Gaioz Keadze, 78, and Zakro Buzaladze when the strike occurred. Zubashvili and Buzaladze were injured and Keadze killed. Zubashvili said,

I heard a jet. The bomb fell and exploded. I was wounded in the leg, chest, back, fingers. I don’t remember how many explosions there were. I fell down and got up. I was bleeding and when I looked back, Gaioz was dead. Nobody was here to help, so I went home and tried to stop the bleeding. I couldn’t stop it myself so went to my brother’s wife. She called the nurse who somehow bandaged me. The next day I walked to Gori because there was no ambulance. I was transferred to Tbilisi. I spent about 10 to 12 days in the hospital in Tbilisi.<sup>292</sup>

Several villagers showed Human Rights Watch unexploded submunitions and other physical remnants of the attack. In August, 79-year-old Galaktion Zubashvili showed Human Rights

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<sup>290</sup> Human Rights Watch interview with Teimuraz Khizanishvili, Variani, October 18, 2008.

<sup>291</sup> Human Rights Watch interview with Khatuna Giorgishvili, Variani, October 18, 2008.

<sup>292</sup> Human Rights Watch interview with Suliko Zubashvili, Variani, October 18, 2008.

Watch researchers in Variani two unexploded AO-2.5 RTM submunitions that had landed in his house, and which he had carried outside and placed under a tree in his garden. Several villagers also showed Human Rights Watch the AO-2.5 RTM signature ring of “fins” that they had discovered after the strikes. During Human Rights Watch’s October 2008 visit, Lia Kereselidze, 48, showed Human Rights Watch a canister with the inscription RBK-500/AO-2.5 RTM in Cyrillic. Kereselidze had seen two more canisters nearby, but they had been removed by the time of Human Rights Watch’s visit. Kereselidze also found four unexploded AO-2.5 RTM submunitions in her garden. Also on that visit we found three unexploded AO-2.5 RTMs and the separation rings of two more. We heard reports of an additional 50 individual submunitions that had exploded on impact or had been destroyed by deminers in Variani and the fields just outside it.<sup>293</sup>

Georgian ground troops had just entered Tskhinvali when the first cluster munition attack occurred in Variani on August 8. On August 12, at the time of the second attack, Georgian troops had retreated from Tskhinvali and reportedly had left Gori city, located several kilometers south of Variani, already the night before. While some villagers with whom Human Rights Watch spoke said Georgian troops might have been in the fields surrounding Variani, they said there were none in the town at the time of the attacks.<sup>294</sup>

Unexploded submunitions from Russian cluster attacks have prevented farmers from harvesting their crops, the only or primary livelihood for many residents of Gori and Kareli districts. Tamar Eremov, a 68-year-old farmer in Variani, was looking for walnuts on her land when she found an unexploded AO-2.5 RTM. “[Contamination] has interfered with my harvest. I couldn’t collect because I couldn’t get into my fields because they were occupied [by troops]. Now I’m afraid to go in because of the ordnance.”<sup>295</sup> Eremov worried that the submunitions would soon prevent her from harvesting her tomatoes, beans, and corn.

Russian forces also hit Akhaldaba and Varianis Meurneoba, just outside Variani, with AO-2.5 RTMs. Human Rights Watch heard statements about AO-2.5 RTM submunitions in the

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<sup>293</sup> Human Rights Watch interviews with Tenggo Keadze (reporting deminers cleared 27 submunitions from his cherry orchard), Lia Kereselidze (reporting deminers had cleared four submunitions from her garden), Teimuraz Khizanishvili (reporting deminers had cleared two submunitions from his home), Nukri Stepanishvili (reporting two submunitions had been removed from his home), Anzor Zubashvili (who reported two explosions and six duds in his yard), and Galaktion Zubashvili (who reported four explosions and three duds in his and his neighbor’s yard), Variani, October 18, 2008.

<sup>294</sup> Human Rights Watch interviews with Archil Khizanishvili (saying there were troops in town at other times, but not at the time of this incident), Teimuraz Khizanishvili (saying that Georgian troops were not in town at the time of this attack, but could have been outside it), and Galaktion Zubashvili (saying that Georgian troops were by a river outside town), Variani, October 18, 2008.

<sup>295</sup> Human Rights Watch interview with Tamar Eremov, farmer, Variani, October 18, 2008.

former<sup>296</sup> and found physical evidence of RBK-250 canisters that carry AO-2.5 RTMs in the latter.

### *Ruisi—Uragan (Hurricane) rockets with 9N210 submunitions*

Russian forces struck the villages of Ruisi on August 12 using Uragan rockets carrying 9N210 submunitions.<sup>297</sup> This conclusion by Human Rights Watch is based on numerous interviews with witnesses and victims, as well as physical examination of the contaminated areas by Human Rights Watch researchers who found remnants of delivery rockets, unexploded 9N210 submunitions, and numerous fragments from exploded 9N210 submunitions. We made the same conclusion about the villages of Dzlevijvari (struck on August 11, around 11 a.m.)<sup>298</sup> and Pkhvenisi,<sup>299</sup> based on a witness account from the former and physical evidence of 9N210s we found in both.

In Ruisi, the cluster munition strike occurred between 11 a.m. and 2 p.m. on August 12, killing three civilians and injuring six others.

On the morning of August 12, Suliko Goginashvili, 65, took his cattle to the field to graze. His wife, Iza Goginashvili, 57, who found Suliko in the field after the cluster strike, told Human Rights Watch, “When we found him he had numerous wounds. His head was broken. His brains were out. His legs and hand were sliced off.”<sup>300</sup> Kvicha Saatashvili, a 45-year-old carpenter who lives in Ruisi, showed Human Rights Watch a canister for 9N210 that he found about 100 meters from the place where Goginashvili died. He also found identical small cylindrical fragments in his home.<sup>301</sup> Natela Guraspashvili, about 75, died in the same field as Goginashvili.<sup>302</sup>

That morning, Ushangi Beruashvili, 68, had just left Ruisi to go to Kareli. When the bombing started Beruashvili decided to return to Ruisi to seek cover in a house about 300 meters from the place where Goginashvili died. He recounted,

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<sup>296</sup> Human Rights Watch interview with Amiran Natsvlshvili, Akhaldaba, October 18, 2008.

<sup>297</sup> The Hurricane MRLS contains 16 220 mm rockets that are fired from a ground-based vehicle. Each warhead contains 30 9N210 submunitions. The 9N210 is an anti-personnel and anti-materiel submunition consisting of a cylindrical core with “tail fins” at the base. Its core is surrounded by identical, small cylindrical metal fragments, encased in rubber, that shoot out in every direction.

<sup>298</sup> Human Rights Watch interviews with Ilia Chagalishvili, Dzlevijvari, October 21, 2008.

<sup>299</sup> In Pkhvenisi Human Rights Watch found remnants of 9N210 submunitions, but no witness to the strike.

<sup>300</sup> Human Rights Watch interview with Iza Goginashvili, Ruisi, October 15, 2008.

<sup>301</sup> Human Rights Watch interview with Kvicha Saatashvili, Ruisi, October 15, 2008.

<sup>302</sup> Human Rights Watch interviews with Iza Goginashvili and Shota Chkhikvadze, Ruisi, October 15, 2008.

I saw the rocket was shot and fell not far away from where I was. I was going down to a basement to hide. Something hit me in the stomach.... I didn't lose consciousness. When it started, something exploded in the air and spread like hail. It was white. It hit the ground and sprung up.<sup>303</sup>

Beruashvili spent several days in hospital with other cluster munition victims from Ruisi.<sup>304</sup>

On the other side of Ruisi, not far from the village church, Amiran Vardzelashvili, 79, father of seven, was also killed in the cluster strike. His daughter Marine was at home when the strike occurred:

Planes were flying around and dropping bombs, like that: “boom, boom, boom”—we heard bombs exploding in different places. People were screaming and crying. We could feel the blast waves from the explosions—it was right near our house. There weren't any troops in the village at that moment, they were just bombing the village. Suddenly, we heard our father screaming, “Gela!”—he was calling for his son. We ran out and saw him—my father was on the ground, all covered in blood. He died on the spot from shrapnel wounds.<sup>305</sup>

The same attack injured four women who had moved toward the church and the cemetery, in the belief that the church would not be targeted. All four women were injured. The injured women and neighbors showed Human Rights Watch an Uragan rocket and 9N210 fragments that they had found in or near the cemetery.<sup>306</sup>

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<sup>303</sup> Human Rights Watch interview with Ushangi Beruashvili, Ruisi, October 15, 2008.

<sup>304</sup> *Ibid.*

<sup>305</sup> Human Rights Watch interview with Marine Vardzelashvili, Ruisi, August 22, 2008.

<sup>306</sup> Human Rights Watch interview with Tinatin Beruashvili, Tsiori Khanishvili, Tsiala Beruashvili, and Maya Beruashvili, Ruisi, October 15, 2008.



Marine Vardzelashvili holds pieces of the same shrapnel that killed her father Amiran, 79, in the village of Ruisi on August 12, 2008. © 2008 Human Rights Watch

Most villagers who spoke to Human Rights Watch said that Georgian troops had moved through the village the previous day, and that they in some cases had stayed in people's yards or houses, but that on the day of the attack all Georgian troops had left the village and were deployed a few kilometers outside it. One villager did say that Georgian troops were in the village at the time of the attack.<sup>307</sup>

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<sup>307</sup> Human Rights Watch interview with Ruisi villager (identity withheld), October 15, 2008.

### *Gori city—Iskander SS-26 missile with submunitions*

On the morning of August 12 several dozen civilians gathered on the main square in Gori city, anticipating food distribution from local officials in the Gori municipal administration building located on the square.<sup>308</sup> A car accident on the square attracted even more civilian onlookers, and a group of journalists had stopped on the square to ask for directions. One victim estimates that there were at least 40 civilians on the square when the cluster munitions attack took place.<sup>309</sup>

According to Paata Kharabadze, chief doctor of the Gori civilian hospital, six people were killed during the attack.<sup>310</sup> The injured were initially taken to the Gori civilian hospital but were evacuated to Tbilisi due to the deteriorating security situation in Gori. The Gudushauri National Medical Center of Tbilisi admitted 24 civilians from Gori that day, many of them injured in the morning's attack.

Victims of the attack described to Human Rights Watch how they saw numerous small explosions within seconds before they fell to the ground. Ketiv Javakhishvili, 25, told Human Rights Watch that she went with her neighbors to get bread and was injured in the attack: "There was a big explosion above us and the next moment there were many smaller explosions everywhere."<sup>311</sup> Dr. Merab Kiladze, head of the surgery department of the Gudushauri National Medical Center, told Human Rights Watch that Javakhishvili suffered massive trauma to her liver, stomach, and intestines, as well as hemorrhagic shock.<sup>312</sup>

Nodar Mchedlishvili, 54, told Human Rights Watch that he went to the municipality building to get food to feed eight people displaced from South Ossetian villages: "In a couple of seconds from everywhere I heard what sounded like massive gunfire. We fell on the ground and some people never got up." Mchedlishvili sustained shrapnel wounds to his left leg and knee. Giorgi Malkhaziani, 59, whose right leg was shredded as a result of the attack, corroborated Mchedlishvili's account of the events.<sup>313</sup>

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<sup>308</sup> This was to assist people who had been displaced from South Ossetia.

<sup>309</sup> Human Rights Watch interviews with Nodar Mchedlishvili and Giorgi Malkhaziani, Gudushauri National Medical Center, Tbilisi, August 13, 2008.

<sup>310</sup> Human Rights Watch telephone interview with Paata Kharabadze, November 4, 2008.

<sup>311</sup> Human Rights Watch interview with Ketiv Javakhishvili, Gudushauri National Medical Center, August 13, 2008.

<sup>312</sup> Human Rights Watch interview with Dr. Merab Kiladze, Gudushauri National Medical Center, August 13, 2008.

<sup>313</sup> Human Rights Watch interviews with Nodar Mchedlishvili and Giorgi Malkhaziani, August 13, 2008.



The Gori city square is a large open space with a statue of Stalin (who was born in Gori) at the center. On one side of the square is the municipal administration building, and on the other sides are apartment buildings with shops on the ground floor. Even though the main command center for the Georgian military operation in South Ossetia was located in Gori, all Georgian troops had left the city by the evening of August 11, according to witnesses. All witnesses said that there were no military forces on the square when it was attacked.

One of those killed in the August 12 cluster munitions strike on Gori's main square was Stan Storimans, a cameraman for the Dutch television station RTL. On August 29 the Dutch Ministry of Foreign Affairs dispatched an investigative commission consisting of military and diplomatic experts to Gori to investigate Storimans's death. The commission writes in its report,

During the on-site investigation, the mission was able to establish that the entire square and several nearby streets had been hit in the same manner. An area of about 300 by 500 metres was struck by small metal bullets [fragments] measuring about 5 mm. It was deduced from the entry holes that the bullets were from multiple explosions, both on the ground and in the air.<sup>314</sup>

Having analyzed video material taken by Reuters and security cameras at two banks by the square, the commission concluded that "the square and surrounding area were hit by about 20 explosions at around 10:45 a.m., and that each explosion scattered a large number of bullets. The explosions can be seen to occur both in the air and on the ground."<sup>315</sup> Based on visual characteristics, the serial numbers found on the missile pieces and the nature of the strike, the commission concluded that Russian forces had hit the square with an Iskander SS-26 missile carrying cluster munitions.<sup>316</sup>

The information gathered by Human Rights Watch researchers on the ground supports the Dutch investigation's conclusions. In addition to the victims' and witnesses' descriptions of the strike, Human Rights Watch discovered and documented missile remnants that had

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<sup>314</sup> "Report of the Storimans investigative mission," October 20, 2008, <http://www.minbuza.nl/binaries/en-pdf/scannen0001.pdf> (accessed November 14, 2008).

<sup>315</sup> Ibid.

<sup>316</sup> Ibid. The Iskander is a short-range, solid fuel propelled, theater quasiballistic missile system produced in Russia. The missile is designed for mobile, autonomous operation and is capable of striking point and area targets at ranges of 50–280 kilometers. It can be loaded with cluster, blast-fragmentation, or penetration warheads.

landed in a backyard nearby, and damage we saw to the square and the surrounding area is consistent with the conclusion that Russian forces used cluster munitions.

The Russian Ministry of Defense has denied that it used the missile system Iskander in South Ossetia, though this would not preclude that it had been used against a target in another part of Georgia, such as Gori.<sup>317</sup> Presented with the findings of the Dutch investigative commission, the Russian authorities asserted that there was not enough evidence to conclude that Storimans had been killed as a result of the use of weapons by the Russian side.<sup>318</sup>

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<sup>317</sup> “Russian forces did not use the “Iskander”-system in South Ossetia” (“Российские войска не применяли комплекс “Искандер” в Южной Осетии”), Ministry of Defense of the Russian Federation news release, August 16, 2008, <http://www.mil.ru/info/1069/details/index.shtml?id=49537> (accessed November 14, 2008).

<sup>318</sup> “Response by the Russian Foreign Ministry’s Spokesman to a Media Question About the Death in Gori, Georgia, of a Netherlands Citizen in August 2008,” Ministry of Foreign Affairs of the Russian Federation.



### 3.4 Tank Attacks on Civilian Homes

Villagers from Tamarasheni (in South Ossetia) described how Russian tanks fired on villagers' homes.<sup>319</sup> Witnesses told Human Rights Watch that there were no Georgian military personnel in their houses at the time that the tank fire took place.<sup>320</sup>

One witness described an incident in which tanks methodically moved through the streets, firing on numerous houses in a row, suggesting that the fire was not directed at specific military targets and that such attacks were indiscriminate.

According to Manana Gogidze, 48, of Tamarasheni, on August 9 at around 10 a.m. Russian soldiers entered the house where she and nine others were hiding, checked for armed men and left. Soon after, she saw Russian tanks roll down the street. "Three tanks would stand one after another, point their barrels in different directions and start shooting at houses," Gogidze told Human Rights Watch. "They would shoot at houses ... and then would move on down the street, doing the same."<sup>321</sup>

Around the same time that day, 65-year-old Luiza Nasuashvili was in her home in Tamarasheni when a Russian tank fired on it. Nasuashvili told Human Rights Watch that soon after Russian troops had entered Tamarasheni, "All of a sudden I heard a big explosion and a big hole appeared in my house. I think it was tank fire. Debris fell on my head as I lay down on the floor."<sup>322</sup> Nasuashvili fled her house and was immediately detained by a member of the Ossetian forces.

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<sup>319</sup> Human Rights Watch separate interviews with Zhuzhuna Chulukhadze and Nunu Gogidze, Tbilisi, August 26, 2008.

<sup>320</sup> If there were such forces present, their presence would render civilian objects such as houses legitimate military targets. But even in such circumstances, the presence of any Georgian military would not relieve Russia of its obligation under international humanitarian law to take all feasible precautions to minimize the harm to civilians, and to verify that the particular objects were legitimate military targets. This principle of customary international law is codified in Protocol I of the Geneva Conventions, art. 57 (2). Russia also had an obligation to do everything feasible to assess whether the expected incidental loss of civilian life or damage to civilian property of an attack would be excessive with respect to the direct and concrete military advantaged to be gained.

<sup>321</sup> Human Rights Watch interview with Manana Gogidze, Rustavi, August 23, 2008.

<sup>322</sup> Human Rights Watch interview with Luiza Nasuashvili, Tbilisi, August 26, 2008.

### 3.5 Attacks by Russian Forces on Civilians Fleeing the Conflict Zone

Several attacks by Russian forces on civilians fleeing the conflict zone or from areas under bombardment showed a failure to verify whether the target was military, and perhaps even intentional firing on civilian vehicles that posed no apparent military threat.

#### *Aerial attacks on civilian convoys near Eredvi, South Ossetia*

Human Rights Watch interviewed several civilians who fled from different villages in South Ossetia on August 8 in convoys of civilian cars traveling south in the direction of undisputed Georgian territory. The convoys came under aerial bombardment by military aircraft that was possibly Russian near the village of Eredvi, along a road that bypasses Tskhinvali.

Witnesses traveling in one convoy of several dozen cars told Human Rights Watch that on August 8, around 4 p.m., five Russian aircraft flew over the convoy, then returned and opened fire. According to witnesses, there were no military objects, military personnel, or military vehicles on the road at the time of the attack.

Temo Kasradze, from the village of Kemerti, who was fleeing with his grandson, described the attack: “There were five people in our car. Suddenly [there was an] explosion. Perhaps four or five cars were hit... I saw that people were injured and killed. There was blood.”<sup>323</sup> Jemal Maisuradze, 45, travelling in the same convoy, described the attack similarly: “It was an aerial attack. There were five [Russian] planes. They first flew over once, then came back and opened fire, before they left... There were no military troops around. All the vehicles were civilian.”<sup>324</sup>

Maisuradze, Kasradze, and one other witness described seeing two women killed in the attack, traveling in a white Niva car.<sup>325</sup> According to Maisuradze, the women were Tina and Marika Kakhniashvili, from Kekhvi.<sup>326</sup>

Several hours later, at around 7 p.m., Tengiz Magaldadze, 41, also from Kemerti, was driving the same route in a minivan with 20 other people. Just after they had turned onto the main

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<sup>323</sup> Human rights Watch interview with Temo Kasradze, Tbilisi, August 17, 2008.

<sup>324</sup> Human Rights Watch interview with Jemal Maisuradze, Tbilisi, August 17, 2008.

<sup>325</sup> Human rights Watch separate interviews with Temo Kasradze, Jemal Maisuradze, and Nodar Kakhniashvili, Tbilisi, August 17, 2008.

<sup>326</sup> Human Rights Watch interview with Jemal Maisuradze, August 17, 2008.

road in Eredvi, Magaldadze saw three explosions about 20 to 25 meters in front of the vehicle. Magaldadze did not remember hearing any aircraft, but, because there were three explosions shortly after each other, he concluded the explosives had been fired from a jet.<sup>327</sup>

At the time of these attacks Georgian forces were deployed in South Ossetia and Georgian military aircraft had not yet been grounded. Russian forces have not acknowledged carrying out these attacks. However, Human Rights Watch has concluded that these attacks were more than likely carried out by Russian forces. The attacks occurred on cars moving south towards undisputed Georgian territory along a road bypassing Tskhinvali and running through Eredvi, an ethnic Georgian village, and in the area of several other ethnic Georgian villages (prior to the conflict, ethnic Georgians regularly utilized this road in order to avoid Ossetian villages and checkpoints around Tskhinvali, and continued to do so during the conflict). Witnesses stated that there were no Ossetian or Russian military positions in that area that would have been targeted by the Georgian military.

There can also be little doubt that the attacks on the civilian convoys near Eredvi violated international humanitarian law. Human Rights Watch is not aware of further information that would indicate the presence of legitimate Georgian military targets in the vicinity of the attacks described above, making them indiscriminate. It also cannot be excluded that the attacking forces deliberately targeted civilians, which would constitute a war crime.

### *Ground force attacks in undisputed Georgian territory*

#### **Unlawful shooting of neighbors from Pkhvenisi, August 11**

On August 11 Nunu Chlaidze, a schoolteacher, fled Pkhvenisi with her husband, Amiran Razmadze, 56, and their neighbor, Durmishkhan Bedianashvili, after Russian forces attacked military targets in and around the village earlier that day, causing collateral damage to civilian homes. They decided to turn back, however, after seeing television news reports that civilians in Gori district were not being attacked.

As they approached a Russian military roadblock at an intersection near the gas station in Variani, their car, with Amiran Razmadze at the wheel, came under fire. Bedianashvili told Human Rights Watch,

When we entered Variani I told Amiran to be careful because there were tanks in front. Then they started shooting at us. There was massive gunfire.

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<sup>327</sup> Human Rights Watch interview with Tengiz Magaldadze, Tbilisi, August 15, 2008.

[Amiran] was wounded and he ran into the tank. I was hiding behind the seat. They thought that I was dead. Then I ran away.<sup>328</sup>

Chlaidze was shot twice in the back, and Russian soldiers took her to a field hospital where she was treated. She felt unsafe at the hospital and ran away. When Human Rights Watch spoke to her in hospital in Tbilisi she had no information about her husband's fate.<sup>329</sup>

### **Attack on taxi in Tedotsminda, August 12**

On August 12 two women, Dodo Garsevanishvili and Nino Arabashvili, were killed when Russian forces fired on the taxi in which they were riding. Mamuka Berkatsishvili, the taxi driver, was driving the two women in his blue Opel from Gori city north toward Shindisi so that Garsevanishvili could check on her house (she had fled several days earlier). Berkatsishvili later told Nino Garsevanishvili, Dodo's daughter, what happened:

They got to Tedotsminda, and started going up the hill when they saw Russians coming the other way. Mamuka told me that Russians fired without any kind of warning. Mamuka fell from the car. The car turned over, but Russians still shot anti-tank missiles on it. The car was almost completely destroyed.

Then Mamuka was beaten, he was begging for his life. The Russians ... left him there. He crawled all the way to the village of Ortasheni. And then he was taken to hospital ... in Tbilisi. I saw him on August 17 or 18. He was still very ill.<sup>330</sup>

An eyewitness to the attack confirmed Berkatsishvili's account. Vakhtang Gagnidze, 20, was walking from Gori city to Tedotsminda with two others to check on Gagnidze's grandmother when they witnessed the incident:

We were walking to the railway stop when we saw an Opel taxi pass by, heading in the direction of at least one and perhaps a few more Russian

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<sup>328</sup> Human Rights Watch interview with Durmishkhan Bedianashvili, August 20, 2008. Chlaidze, interviewed separately, also said her husband was shot and lost control of the car, which then hit the Russian tank. Human Rights Watch interview with Nunu Chlaidze, Gudushauri National Medical Center, Tbilisi, August 15, 2008.

<sup>329</sup> Human Rights Watch interview with Nunu Chlaidze, August 15, 2008.

<sup>330</sup> Human Rights Watch interview with Nino Garsevanishvili, August 30, 2008.

tanks on the hill. The tank apparently fired on the car, and the car went off the road, exploded and caught fire. We ran away...

We could hear shooting, something firing and passing us in our direction so we again ran away ... [A] week later [the car] was still sitting there and it was beginning to smell because of the decomposing bodies.<sup>331</sup>

According to Nino Garsevanishvili, Russian troops denied an ambulance access to the area to collect the two women's remains. Russian troops later informed a priest who was passing through the village about the dead bodies, and they were eventually buried.

### **Attack on civilian car in Akhaldaba, August 12**

Around 9 a.m. on August 12 Merab Khekhelashvili, 41, and Moris Papuashvili, 33, were working their shift at the television tower near the village of Akhaldaba when Russian aircraft started attacking the Karaleti and Shindisi areas.

As the aircraft started attacking the tower as well, the director of the television tower, Vakhtang Shavdatuashvili, and a relative decided to drive Khekhelashvili and Papuashvili back to the village. As recounted by Khekhelashvili, on the way the car (a white Zhiguli) came upon three tanks—each with about eight soldiers sitting on top—driving toward them:

When we reached parallel with one of the tanks, without any warning a soldier sitting on the tank opened fire on us with his gun. I felt a bullet skim the top of my head. Someone shouted, "Get down!" and we all bent over and put our heads down.

The first tank passed us by and then a second tank approached us and they were also shooting. I felt something hit me in my right hip. I wanted to get out of the car. I was sitting on the side closest to the tanks. I shouted at Moris to open the door and jump out, but he didn't react. So I reached across and opened the door, pushed him out and I followed. The others got out as well as the third tank passed by, also shooting at us.

When the third tank had passed by, Khekhelashvili tried to get Papuashvili to run with him to seek cover:

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<sup>331</sup> Human Rights Watch interview with Vakhtang Gagnidze, Tedotsminda, September 14, 2008.

I said to Moris, “Let’s go and hide.” I saw that he was bleeding heavily from the neck. There was so much blood and gushing out like a fountain. There was no sign of life in him. Vakhtang [the driver] was wounded in the hand. His relative, like me, also took a bullet in the buttocks. I had lost feeling in my right leg.

The three wounded men eventually managed to get to Akhaldaba, which was occupied by Russian forces. Some of the villagers went back to collect Papuashvili’s body. Khekhelashvili told Human Rights Watch, “When they brought the body back we saw that there was a bullet wound to his forehead that had not been there when we left him—apparently a control shot.”<sup>332</sup>

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<sup>332</sup> Human Rights Watch interview with Merab Khekhelashvili, Gori civilian hospital, September 13, 2008.

### 3.6 Pillaging, Destruction, Violence, and Threats against Civilians

As described in Chapter 4, Ossetian militias would in some cases arrive in villages together with Russian forces, and the latter at the very least provided cover for the burning and looting of homes. While some civilians described the conduct of Russian ground forces as disciplined, Human Rights Watch documented several cases in which Russian forces, together with Ossetian militias, used or threatened violence against civilians or looted and destroyed civilian property. Some of these cases are described in Chapter 4.2; several additional cases are highlighted here because of the active and discernable role played by Russian forces. Acts of pillage are prohibited under customary international law and violate article 33 of the Fourth Geneva Convention relating to the protection of civilians in armed conflict. Pillaging is a grave breach of the Geneva Conventions and a war crime. The cases involve villages in South Ossetia and in undisputed Georgian territory.

Ilia Chulukidze, 84, a resident of Kvemo Achabeti north of Tskhinvali, told Human Rights Watch about how Russian forces, acting alone, beat him:

Around 6:30 a.m. on August 11 I was home alone when three Russian soldiers burst into my house. They broke the door and one put a weapon in my face; others ran upstairs looking for something. They broke all the doors and turned everything upside down, asking for weapons and rifles. I did not have any and could not give them any. Because of that they started beating me.

They were beating me with the butts of their automatics, particularly on the head. My entire head was swollen. One of them hit me on the chest so hard that I fell down and I could hardly stand up again. They demanded guns. I've never had one. I was beaten until I lost consciousness. Then two of them picked me up and put me on a bed and poured some water on me to bring me round. They could not find anything and left.<sup>333</sup>

Ossetian forces came later, looted and burned Chulukidze's house, and took him to the detention center in Tskhinvali (see Chapters 4.2 and 4.4).

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<sup>333</sup> Human Rights Watch interview with Ilia Chulukidze, Tbilisi, August 26, 2008.

Tamaz Sukhitashvili, 51, told Human Rights Watch about how on August 13, men in camouflage—presumably Ossetian militia fighters—arrived on Russian tanks in his village, Karaleti (in Gori district), and torched his house:

I was hiding in my backyard ... when I saw people from the tanks entering my yard. They wore military camouflage uniforms. They entered my yard and started shooting in the air. They had some kind of weapon that they aimed at the house and it set the house on fire.<sup>334</sup>

On August 15, armed Ossetians together with Russian forces looted and torched the homes of Marine Tetunashvili, 73, and her neighbor, Teimuraz Tetunashvili, 78. Teimuraz Tetunashvili described how, at around noon that day, he heard gunshots:

I was in the street. Five men, Ossetians and Russians, came on a BMP [infantry fighting vehicle]. They jumped off and started shooting at the house. They said, “Give us your cow and money.” I said, “Here is one cow, take it!” They said, “That’s it?! Just one? And why don’t you have more?” They hit me and pushed me to the ground, and started kicking me. They did not find anything in the house, just burnt it. And they took the cow.<sup>335</sup>

Marine Tetunashvili was sleeping in a small cottage in the yard next to her main house when she heard shooting from the street.<sup>336</sup> She told Human Rights Watch,

Three Ossetians then entered the yard, armed, in camouflage fatigues. They went into the house, and pointed their guns at me, asking, “Where is your son? Get out or we will burn you alive!” I told them, “I am alone, everyone is in Tbilisi, what do you want from me?!” And I was just begging them, “Don’t kill me, take whatever you want, but don’t kill me!”

When I got out of the little house in the yard, our house was already on fire. I ran into the pigsty, and watched my house being burnt to ashes. When I tried

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<sup>334</sup> Human Rights Watch interview with Tamaz Sukhitashvili, Gori, September 13, 2008.

<sup>335</sup> Human Rights Watch interview with Teimuraz Tetunashvili, Tirdznisi, August 24, 2008.

<sup>336</sup> On the property of many rural homes in the Caucasus there is a main house, a garden, a courtyard, and often a shed or a small cottage for members of the extended family.



to come out, they pointed their guns at me and yelled, “Go back, or we’ll kill you!”<sup>337</sup>

The soldiers carried things out of the house and stole a car and two cows. Both Marine’s and Teimuraz’s houses were burnt to the ground. Human Rights Watch saw the remains of both houses.



Marine Tetunashvili in the remains of her house, which armed Ossetians, together with Russian forces, looted and burned on August 15, 2008. © 2008 Human Rights Watch

Arkadi A., a resident of Koshka (in Gori district, just outside the South Ossetia administrative border), told Human Rights Watch that looters, both Russian and Ossetian, entered the village on August 9 and 10 after the village had been shelled. According to Arkadi A., they moved around in groups of 15 and stole everything from a number of houses before setting fire to them. He witnessed some of them.<sup>338</sup>

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<sup>337</sup> Human Rights Watch interview with Marine Tetunashvili, Tirdznisi, August 24, 2008.

<sup>338</sup> Human Rights Watch interview with Arkadi A. (real name withheld), Tkviavi, August 26, 2008.

### 3.7 Russia's Responsibility as Occupying Power

When Russian forces entered Georgia, including South Ossetia and Abkhazia, which are *de jure* parts of Georgia, they did so without the consent or agreement of Georgia. International humanitarian law on occupation therefore applied to Russia as an occupying power as it gained effective control over areas of Georgian territory (see above, Chapter 1.2). Tskhinvali and the rest of South Ossetia must be considered under Russian control from August 10, when Georgian forces officially retreated, through the present. Villages in Gori district fell under Russian control as Russian forces moved through them on August 12. Gori city must be considered under effective Russian control at least from August 12 or 13 until August 22, when Russian troops pulled back further north toward South Ossetia.<sup>339</sup> Russia's occupation of the area adjacent to South Ossetia ended when its forces withdrew to the South Ossetia administrative border on October 10.<sup>340</sup>

Human Rights Watch documented one occasion when Russian forces intervened to help a civilian who was the victim of a crime in progress, and two distinct occasions when Russian forces temporarily set up roadblocks to prevent looting. Yet overall, Russian authorities did not take measures to stop the widespread campaign of destruction and violence against civilians in villages in South Ossetia (see below, Chapters 4.2 and 4.3) and in the buffer zone in undisputed Georgian territory. They allowed these areas to become a virtual no-man's land where individuals were able to commit war crimes—to kill, loot, and burn homes—with impunity. This deliberate violence against civilians started in the immediate aftermath of Georgian forces' withdrawal from South Ossetia and continued in waves in the weeks that followed; concomitantly, Russian forces' failure to ensure protection of civilians in territories under their control was persistent. Russian forces therefore violated their obligation as an occupying power to "ensure public order and safety" and to provide security to the civilian population in the territory under its control. This is a serious violation of international humanitarian law.<sup>341</sup>

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<sup>339</sup> "Russian troops withdraw from Gori," *Washington Post*, August 23, 2008. Russian forces withdrew from the western Georgian towns of Poti, Zugdidi, and Senaki on September 13. "Russian troops withdraw in western Georgia," Agence France-Presse, September 13, 2008, <http://afp.google.com/article/ALeqM5ibFa1Sf1kjjfn6YITWrbZMyx3bw> (accessed January 14, 2009).

<sup>340</sup> At this writing Russian troops have continued to occupy at least one village right on the border that Georgia argues are not on the South Ossetian side.

<sup>341</sup> Hague Conventions, art. 43.

Russia bore responsibility but took no discernable measures on behalf of protected individuals, including prisoners of war, at least several of whom were executed or tortured, ill-treated, or subjected to degrading treatment by South Ossetian forces, at times with the participation of Russian forces.

The Russian Ministry of Defense has not responded to Human Rights Watch's request for information about the Russian military's mandate, measures taken, and instructions issued to protect civilians in areas of Georgia under Russia's effective control. In October an official from the Council of Europe who requested anonymity told Human Rights Watch that a senior member of the Russian military in the region said that the military was given no mandate for protection of civilians.<sup>342</sup>

Russian authorities have also not responded to Human Rights Watch's request for information about any measures taken to hold responsible perpetrators of the grave breaches of the Geneva Conventions by Russian forces described in the chapters above.

## In South Ossetia

On August 13, following several media reports about the massive looting and burning in ethnic Georgian villages in South Ossetia, Russian Minister of Internal Affairs Rashid Nurgaliev stated that looting in South Ossetia "shall be decisively stopped."<sup>343</sup> That day Russian forces established checkpoints at both ends of a key road connecting the town of Java to Tskhinvali, thus preventing access to five ethnic Georgian villages along that road. At the checkpoint near the village of Kekhvi the commanding officer, a Russian lieutenant colonel, told Human Rights Watch: "We're now trying to stop the looters. They steal and set fire to things ... I see no end to this."<sup>344</sup>

Human Rights Watch observed that the checkpoints significantly reduced the pillaging and destruction in the villages and that Russian servicemen at the roadblocks approached their duties conscientiously despite the evident and, at times, aggressive resentment of Ossetian militias.<sup>345</sup> About a week later, however, without any explanation, the checkpoints were

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<sup>342</sup> Human Rights Watch interview with Council of Europe official who requested anonymity, Strasbourg, October 1, 2008.

<sup>343</sup> "Looting in South Ossetia will be Decisively Stopped" ("Мародерство в Южной Осетии будет жестко пресекаться"), *Rosbalt*, August 13, 2008, <http://www.rosbalt.ru/2008/08/13/513055.html> (accessed December 15, 2008).

<sup>344</sup> Human Rights Watch anonymous interview with Russian lieutenant colonel responsible for a roadblock near Kekhvi, August 13, 2008.

<sup>345</sup> Human Rights Watch researchers witnessed numerous confrontations between Russian servicemen and Ossetian militias at the roadblocks, including an incident when a South Ossetian militia fighter attempted to strangle a Russian commanding officer near Tamarasheni.

removed and the pillaging and destruction resumed, as described below in Chapters 4.2 and 4.3. Russian authorities have not responded to Human Rights Watch's request for information about why the roadblocks were removed.

In an interview with the BBC in October, Russian Minister of Foreign Affairs Sergei Lavrov at first denied and then attempted to explain away the destruction of ethnic Georgian villages: "No, this is not ethnic cleansing. This was also the area of the war. When I say that the Georgians were moving their artillery and tanks closer to Tskhinvali, this also included the Georgian enclaves in South Ossetia, where they secretly organized strongholds."<sup>346</sup> The correspondent stressed to Lavrov that Ossetian militias told the BBC directly that they were burning civilian houses, and suggested that Russia should have "prevented that from happening."<sup>347</sup> Lavrov notably did not respond to this point about Russia's duty and capacity to prevent the destruction. He acknowledged that the destruction was regrettable, but offered a dismissive explanation: "Well, of course, when your city is attacked, when your loved ones, when your relatives, when your children, when your parents, brothers and sisters are being killed, brutally, you can go emotional and you can go really [emotional] in a very unwanted way."<sup>348</sup>

Several people told Human Rights Watch that Russian ground forces in general did not attack local residents and in some cases tried to protect the civilian population from Ossetian forces, militia members, or criminal elements.

For example, late in the evening on August 11, Gocha Demetrashvili, 44, drove to South Ossetia to evacuate his parents. After he passed through Eredvi, two UAZ military vehicles started following him. The vehicle's occupants, whom Demetrashvili described as Ossetians in camouflage, fired at his car, shooting out the two rear tires. Demetrashvili continued on, hoping to get to the Russian military checkpoint in Dmenisi. As he approached Dmenisi, he got out and began to run towards the Russian checkpoint, shouting, "I am a civilian. I need help!" Several of the Ossetians got out of their cars and chased Demetrashvili. He described to Human Rights Watch what happened next:

The Ossetians caught up to me and began beating me their fists and their gun butts and kicking me.... They had me at gunpoint, and I thought they

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<sup>346</sup> Tim Whewell, "What really happened in South Ossetia?" "Newsnight," *BBC2 television*, October 28, 2008, <http://news.bbc.co.uk/2/hi/programmes/newsnight/review/7695956.stm> (accessed October 28, 2008).

<sup>347</sup> *Ibid.*

<sup>348</sup> *Ibid.*

wanted to shoot me. That's when some of the Russian soldiers came up to us and took me away from the Ossetians.

The Ossetians drove off with Demetrashvili's car, and the Russian soldiers kept Demetrashvili at their checkpoint for three nights, apparently reluctant to let him go for fear that Ossetians might again attack him. On the third day, Russian troops escorted Demetrashvili through the nearby Ossetian villages from where he walked on his own approximately 30 kilometers back to Gori.<sup>349</sup> (It bears noting, however, that Russian forces did not apprehend the assailants, and allowed them to drive off with Demetrashvili's car.)

### **In Gori District**

As Russian forces established control in portions of Gori district, they set up checkpoints in the south of the district and strictly limited entry and exit from the south. While in most cases Russian forces permitted civilians to pass through the checkpoints after checking identification documents and inspecting vehicles for weapons, they refused access to Georgian police, preventing them from maintaining law and order in these areas.

Two residents of Tkviavi, a village 12 kilometers south of Tskhinvali that was particularly hard hit by looters from South Ossetia, told Human Rights Watch that the looting decreased when the Russian forces maintained a checkpoint in the village, although the marauders kept coming during the night.<sup>350</sup>

Several Tkviavi villagers told Human Rights Watch that they believed that more frequent patrolling by the Russian forces or Georgian police would have improved security in the area. One told Human Rights Watch that looters "seemed to be afraid to encounter the Russians, and were hiding from them," suggesting that had Russian forces taken more preventive measures to stop violence against civilians these measures would have been effective.<sup>351</sup>

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<sup>349</sup> Human Rights Watch interview with Gocha Demetrashvili, Gori, September 10, 2008.

<sup>350</sup> Human Rights Watch interview with Salome S and Sofiko S., Tkviavi, August 22, 2008. Both names are pseudonyms.

<sup>351</sup> Human Rights Watch interview with Toma (full name withheld), Tkviavi, August 22, 2008.

## PART 4. VIOLATIONS BY SOUTH OSSETIAN FORCES

### 4.1 Overview

Human Rights Watch found that South Ossetian forces and militias committed serious violations of international humanitarian law, including war crimes, in South Ossetia and undisputed Georgian territory controlled by Russian forces.

South Ossetian forces and militias embarked on a campaign of deliberate and systematic destruction of the Tbilisi-backed villages in South Ossetia, which involved the widespread and systematic pillage and torching of houses, and beatings and threats against civilians. In undisputed parts of Georgian territory they conducted a campaign of deliberate violence against civilians, burning and looting their homes, and committing execution-style killings, rape, abductions, and countless beatings. They rounded up at least 159 ethnic Georgians, killing at least one and subjecting nearly all of them to inhuman and degrading treatment and inhuman conditions of detention. They also tortured at least four Georgian prisoners of war and executed at least three.

In engaging in the violence summarized above, South Ossetian forces and militias egregiously violated multiple obligations under humanitarian law with respect to treatment of protected persons, including civilians and others *hors de combat*. Murder, rape, acts of torture, inhuman or degrading treatment, and wanton destruction of homes and property are all strictly prohibited under both humanitarian law and human rights law, and the perpetrators of such acts should be held criminally responsible for them. To the extent that any of these prohibited acts was committed as part of a widespread or systematic attack directed against any civilian population, they may be prosecuted as a crime against humanity. Where any of these acts, as well as acts such as imprisonment, unlawful detention of civilians, pillaging, and comprehensive destruction of homes and property, were carried out with discriminatory intent against a particular group, in this case ethnic Georgians, they also constitute the crime of persecution, a crime against humanity, prosecutable under the statute of the International Criminal Court.<sup>352</sup>

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<sup>352</sup> Article 7(2)(g) of the Rome Statute, defines "persecution" as "the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity." UN Doc. A/CONF. 183/9; 37 ILM 1002 (1998); 2187 UNTS 90.



South Ossetian forces include South Ossetian Ministry of Defense and Emergencies servicemen, riot police (known by the Russian acronym OMON), and several police companies, working under the South Ossetian Ministry of Internal Affairs, and servicemen of the South Ossetian State Committee for Security (KGB).<sup>353</sup> Many interviewees told Human Rights Watch that most able-bodied men in South Ossetia took up arms to protect their homes.<sup>354</sup> As South Ossetia has no regular army its residents tend to refer to the members of South Ossetian forces as militias (*opolchentsy*) unless they can be distinctly identified as policemen or servicemen of the Ministry of Defense and Emergencies. Credible sources also spoke about numerous men from North Ossetia and several other parts of Russia who fought in the conflict in support of South Ossetia and who were involved in the crimes against civilians that followed.

In some cases, it is difficult to establish the exact identity and status of the Ossetian perpetrators because witnesses' common description of their clothing (camouflage uniform, often with a white armband) could apply to South Ossetian Ministry of Defense and Emergencies, South Ossetian Ministry of Internal affairs, volunteer fighters, or even common criminal looters. Several factors, however, indicate that in many cases the perpetrators belonged to South Ossetian forces operating in close cooperation with Russian forces. The perpetrators often arrived in villages together with or shortly after Russian forces passed through them; the perpetrators sometimes arrived on military vehicles; and the perpetrators seem to have freely passed through checkpoints manned by Russian or South Ossetian forces.

Witnesses sometimes also referred to the perpetrators as Chechens and Cossacks; whether this was an accurate identification is not clear, although there were media reports of Chechens and Cossacks participating in the conflict.<sup>355</sup> In some cases, witnesses claimed that the groups of perpetrators consisted of both Ossetians and Russians. These incidents

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<sup>353</sup> Human Rights Watch interviews with Alexander X. (real name withheld), Tskhinvali, September 4; and Kazbek Z (real name withheld), Tskhinvali, September 6, 2008.

<sup>354</sup> Many of those volunteer fighters who took up arms in the August 2008 conflict were offered to and joined the forces of the Ministry of Defense and Emergencies and Ministry of Internal Affairs.

<sup>355</sup> Chechens and Cossacks fought against Georgian troops during the war in Abkhazia in the early 1990s. The Chechen Vostok (East) battalion sent one company to South Ossetia during the 2008 conflict. See Milana Shaikhaeva, "Sulim Yamadaev is waiting for a summons in South Ossetia" ("Сулим Ямадаев ждет повестки в Южной Осетии"), *Gazeta* (Moscow), August 11, 2008, <http://www.gzt.ru/incident/2008/08/11/223022.html> (accessed November 24, 2008). Cossacks—the descendants of Tsarist-era runaway serfs and outlaws who in the past were employed to protect the country's southern border—and other volunteers from Russia also reportedly participated. See Tom Parfitt, "Armed Cossacks pour in to fight Georgians," *The Guardian* (London), August 9, 2008, <http://www.guardian.co.uk/world/2008/aug/09/russia.georgia1> (accessed November 24, 2008).

also demonstrate Russia's failure to protect civilians in areas under its effective control (as discussed in Chapter 3.7).



## 4.2 Attacks on Georgian Civilians and Their Villages in South Ossetia

### Looting and Burning of Villages

#### *Basic chronology*

As tensions mounted in the first week of August 2008, some inhabitants of ethnic Georgian villages that had Tbilisi-backed administrations fled to undisputed Georgian territory.<sup>356</sup> Most of the others fled on the first day of the hostilities. Ethnic Georgians who remained did so either because they were infirm, because they wanted to protect their homes, or simply because they could not bring themselves to leave their homes.

Beginning August 10, after Russian ground forces had begun to fully occupy South Ossetia and were moving onward into undisputed Georgian territory, Ossetian forces followed closely behind them and entered the ethnic Georgian villages. Upon entering these villages, Ossetian forces immediately began going into houses, searching for Georgian military personnel, looting property, and burning homes. They also physically attacked many of the remaining residents of these villages, and detained dozens of them. Human Rights Watch received uncorroborated reports of at least two extrajudicial killings of ethnic Georgians in South Ossetia that took place amidst the pillaging. In most cases, Russian forces had moved through the Georgian villages by the time South Ossetian forces arrived. In other cases, Russian forces appeared to give cover to South Ossetian forces while they were committing these offenses.

By August 11, the attacks intensified and became widespread.<sup>357</sup> Looting and torching of most of these villages continued intermittently through September, and in some through October and November.

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<sup>356</sup> The Tbilisi-backed administration of at least one village, Avnevi, suggested that residents leave in light of the rising tensions. Human Rights Watch interview with Zalina Bestaeva, Avnevi villager, September 8, 2008. Villages in the Akhlagori district did not flee prior to the August conflict. See “Situation in Akhlagori district” in this chapter of the report.

<sup>357</sup> This conclusion is based on interviews with numerous civilians whose accounts feature in this chapter. It is also based on comment from several Russian military servicemen and members of Ossetian militias whose names we have withheld: Human Rights Watch interviews with Alan N. (August 13, Transcam road), Russian lieutenant colonel X. (August 13, Transcam road), Russian major Y. (August 13, Transcam road), Russian soldier Z. (August 13, Transcam road), Mokhar N. (August 14, Tskhinvali), Alexander X. (September 3, Tskhinvali), Ruslan G., (September 4, Tskhinvali), Boris B., (“Boris B.” is a pseudonym and location of interview withheld, September 4), and Andrei B. (September 7, Tskhinvali).

### **Extent and deliberate nature of the destruction as investigated by Human Rights Watch**

When Human Rights Watch visited Tamarasheni, Zemo Achabeti, Kvemo Achabeti, Kurta, and Kekhvi in August, our researchers saw first-hand these villages being looted and torched. When our researchers returned in September, the villages had been almost fully destroyed; in Kekhvi the debris of some houses along the road appeared to have been bulldozed. Also in September Human Rights Watch visited Eredvi, Vanati, Avnevi, and Nuli, which by that time had been almost completely destroyed by burning. In November Human Rights Watch visited Beloti, Satskheneti, Atsriskhevi, and Disevi, also almost fully destroyed.

Human Rights Watch researchers conducted a total of 57 interviews with people from the villages mentioned above and from Dzartsemi, Kheiti, Prisi, and Kemerti; these 17 villages account for most of the areas in South Ossetia that had been controlled by Tbilisi prior to the war. Our researchers also interviewed members of Ossetian militias and the Russian military. Human Rights Watch's observations on the ground and from these interviews have led us to conclude that the South Ossetian forces sought to ethnically cleanse these villages: that is, the destruction of the homes in these villages was deliberate, systematic, and carried out on the basis of the ethnic and imputed political affiliations of the residents of these villages, with the express purpose of forcing those who remained to leave and ensuring that no former residents would return.

International humanitarian law prohibits collective punishment,<sup>358</sup> acts of reprisal against civilians,<sup>359</sup> pillage,<sup>360</sup> and deliberate destruction of civilian property.<sup>361</sup> Violations of these prohibitions are grave breaches of the Fourth Geneva Convention, or war crimes.

The interviews and ground observations by Human Rights Watch indicate that these villages were looted and burned by Ossetian militias and common criminals. With a few exceptions of looting and beatings of civilians, Russian forces did not participate directly in the destruction of villages and attacks on civilians but, aside from a brief period in mid-August, did not interfere to stop them (see Chapter 3.7, Russia's Responsibility as Occupying Power).

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<sup>358</sup> See ICRC, Customary International Humanitarian Law, rule 103; Fourth Geneva Convention, art. 33.

<sup>359</sup> Fourth Geneva Convention, art. 33.

<sup>360</sup> Ibid.

<sup>361</sup> Ibid., art. 53. Also article 147 of the Fourth Convention holds that "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" is a grave breach.

### *Didi Liakhvi valley*

On August 12, Human Rights Watch researchers traveling on the TransCam road from Java to Tskhinvali witnessed terrifying scenes of destruction in Kekhvi, Kurta, Zemo Achabeti, Kvemo Achabeti, and Tamarasheni. Dozens of houses had been freshly burned down and remnants of houses and household items were still smoldering. Many other houses were aflame and appeared to have been just torched. Human Rights Watch also saw and photographed Ossetian militias as they moved along the road next to Russian tanks and armored personnel carriers, entered the houses that remained intact, and loaded furniture, rugs, televisions, and other valuables onto their vehicles. Attempting to justify the looters' actions, an Ossetian man traveling on the same road told Human Rights Watch, "Of course, they are entitled to take things from Georgians now—because they lost their own property in Tskhinvali and other places."<sup>362</sup>



Armed looters take household items from the ethnic Georgian village of Kvemo Achabeti. © 2008 Human Rights Watch

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<sup>362</sup> Human Rights Watch interview with Kazbek K. (real name withheld), Zemo Achabeti, August 12, 2008.

The villages were virtually deserted, with the exception of a few elderly and incapacitated people who stayed behind either because they were unable to flee or because they were trying to save their property and livestock.

### **Zemo and Kvemo Achabeti**

According to witnesses, Russian forces moved into Zemo Achabeti on August 9 and were followed on August 10 by Ossetian militias, who acted under the cover of Russian soldiers with tanks who remained in the village.<sup>363</sup> Ilia Chulukidze, an 84-year-old resident, told Human Rights Watch that on August 11

Russians and Ossetians and other irregulars ... took carpets, televisions, clothes, everything ... The next day they took wine, vodka, jams, canned food, two cows, and a calf. They were taking everything from everyone. The entire village was looted and emptied.

After they took everything from my house, the Ossetians brought petrol. They put me into a car and [made me] watch them ... pour petrol everywhere in the rooms and outside and then set the house on fire. I saw them torch my neighbors' houses. They did not even allow me to get some clothes out and change. I was begging them for it, but in vain.<sup>364</sup>

Chulukidze also said that before this, Russian soldiers beat him (as described in Chapter 3.6).

Armed Ossetians entered the neighboring village, Kvemo Achabeti, on August 11, following Russian tanks, and started looting immediately. Mamuka N., a 74-year-old villager, told Human Rights Watch that several members of the militia came to his house on August 11, and tried to steal some household items. When he protested, they set the house on fire and left. When Human Rights Watch spoke to Mamuka N. he was trying to put out the fire, still burning a day later; his hands were burned, his hair was singed, and he appeared to be in shock. Mamuka N. told Human Rights Watch that the vast majority of local villagers, including his family, had fled Kvemo Achabeti when active fighting broke out on August 8, but he had decided to stay to look after the cattle. He said that roughly five to 10 elderly and sick people remained in the village, all in a similarly desperate condition, and that many of

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<sup>363</sup> Human Rights Watch separate interviews with Ilo Khabareli and Salimat Bagaeva, Tbilisi, September 12, 2008.

<sup>364</sup> Human Rights Watch interview with Ilia Chulukidze, Tbilisi, August 26, 2008.

the houses were burned.<sup>365</sup> The ICRC evacuated Mamuka N. to undisputed Georgian territory soon thereafter.

Another resident of Kvemo Achabeti, 80-year-old Rezo Babutsidze, told Human Rights Watch that after the Russian tanks entered the village,

[they] were followed by Ossetians who were looting and then burning houses. They came several times to my house, taking everything they liked. Once they looted everything they liked they poured petrol and set the house on fire. I watched how they burned my house and neighbors' houses. They warned me to leave or they would shoot me.<sup>366</sup>

Babutsidze eventually fled to Tbilisi.

### **Kekhvi**

In Kekhvi about a dozen houses were set ablaze between 6:30 and 7:30 p.m. on August 12.<sup>367</sup> Two elderly women from Kekhvi wept as two days later they told Human Rights Watch about what had happened. One of them explained that South Ossetian militias passed through the village, stopped at her house, and “threw something” that set it on fire.<sup>368</sup> The house was still burning as Human Rights Watch spoke to her.

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<sup>365</sup> Human Rights Watch interview with Mamuka N. (real name withheld), Kvemo Achabeti, August 12, 2008.

<sup>366</sup> Human Rights Watch interview with Rezo Babutsidze, Tbilisi, August 26, 2008.

<sup>367</sup> The houses were intact when Human Rights Watch drove by the village at 6:30 p.m. and were on fire when we drove by again one hour later.

<sup>368</sup> Human Rights Watch interview with Manana X. (real name withheld), Kekhvi, August 14, 2008.



A torched house ablaze in Kekhvi, August 12, 2008. © 2008 Human Rights Watch

Another Kekhvi resident, 71-year-old Shermadin Nebieridze, told Human Rights Watch that on August 11, five Ossetian men entered and looted his house, taking a cellphone, clothing, and other items. He and other villagers fled to nearby Dzartsemi, where for several hours they sought shelter from intense gunfire and shelling. Later in the evening Nebieridze could see, from a hill in Dzartsemi overlooking Kekhvi, at least a dozen houses on fire in Kekhvi, including his own. Nebieridze began to weep as he described to Human Rights Watch returning to his burning home to try to save his cattle:

When I got to my house I saw that it was already half burned. The roof and second floor were on fire; the bed, the windows, the door were already destroyed. The house was still burning. I didn't go in. I couldn't stop it. There was nothing I could do.<sup>369</sup>

Nebieridze saw Ossetian forces preparing to burn his neighbor's house. The Ossetians spotted Nebieridze, dragged him into the neighbor's yard, and beat him before detaining him, yelling, "Why are you here? ... It's not your house anymore. It's ours. Why don't you

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<sup>369</sup> Human Rights Watch interview with Shermadin Nebieridze, Tbilisi, September 12, 2008.



understand this already?”<sup>370</sup> (The beating and detention of Shermadin Nebieridze is described in Chapter 4.4.)

### **Tamarasheni**

Tamarasheni is the ethnic Georgian village closest to Tskhinvali. This is how 69-year-old Tamar Khutsinashvili, described the looting and burning of her family’s home:

Ossetians came to my house on August 10, three or four of them. They first looted everything they could, including my car. They put hay in the house and set it on fire and burned the house. We had to watch it but could not do anything. They did not allow us to take anything from the house, not even our identity documents.<sup>371</sup>

Rusudan Chrelidze, 76, also described burning and looting in Tamarashani:

Several people from my neighborhood tried to flee together to Achabeti, but I could not run fast enough. I heard shooting from that direction so I returned to Tamarasheni in the evening. I saw that my house was burning. By the time I got there it was almost completely burned. I also saw that my three children’s houses were burning.

I went to my neighbor, who is missing a leg and so could not flee. Her house was also burned, but she had a basement where she was hiding. We hid in the basement together. We saw that our neighbor’s pigs had been slaughtered and taken away. We saw that many things had been taken from houses.<sup>372</sup>

Evidence of the burning of villages in Didi Liakhvi is also provided by images taken by a commercial satellite on August 19 and analyzed by experts of the Geneva-based UNOSAT program.<sup>373</sup> UNOSAT experts identified visible structures on the images that were likely to

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<sup>370</sup> Ibid.

<sup>371</sup> Human Rights Watch interview with Tamar Khutsinashvili, Tbilisi, August 26, 2008.

<sup>372</sup> Human Rights Watch interview with Rusudan Chrelidze, Tbilisi, September 1, 2008. She could not specify the date on which she witnessed her and other houses burning. However, other witness testimony strongly suggests that these attacks also took place on August 10.

<sup>373</sup> UNOSAT is part of the UN Institute for Training and Research and produces satellite-derived mapping in support of UN agencies and the international humanitarian community. See <http://unosat.web.cern.ch/unosat/>.

have been either destroyed or severely damaged. The expert analysis indicated clear patterns of destruction that were consistent with the data gathered by Human Rights Watch.

UNOSAT provided a map that marked satellite-detected active fire locations in the ethnic Georgian villages around Tskhinvali, including those described above.<sup>374</sup> The map shows active fires in the ethnic Georgian villages on August 10, 12, 13, 17, 19 and 22.<sup>375</sup>

UNOSAT also released a set of six high-resolution satellite images of Didi Liakhvi stretching 9 kilometers north from Tskhinvali, showing that the majority of villages along this stretch were destroyed. The images strongly indicate that the majority of the destruction in five of the villages—Tamarasheni, Kekhvi, Kvemo Achabeti, Zemo Achabeti, and Kurta—was caused by intentional burning and not shelling or bombardment.<sup>376</sup>

The damage shown in the ethnic Georgian villages is massive and concentrated. By August 22, in Tamarasheni, UNOSAT's experts counted a total of 177 buildings destroyed or severely damaged,<sup>377</sup> accounting for almost all of the buildings in the village. In Kvemo Achabeti they counted 87 destroyed and 28 severely damaged buildings (115 total); in Zemo Achabeti, 56 destroyed and 21 severely damaged buildings (77 total); in Kurta, 123 destroyed and 21 severely damaged buildings (144 total); in Kekhvi, 109 destroyed and 44 severely damaged buildings (153 total); in Kemerti, 58 destroyed and 20 severely damaged buildings (78 total); and in Dzartsemi, 29 destroyed and 10 severely damaged buildings (39 total)<sup>378</sup>.

### *Patara Liakhvi valley*

#### **Eredvi and Vanati**

When Human Rights Watch went to Eredvi on September 6, the village was deserted except for looters. Human Rights Watch witnessed two active fires and saw that every house in the

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<sup>374</sup> Ibid.

<sup>375</sup> On these dates the lack of cloud cover allowed the satellites to view those locations.

<sup>376</sup> Only along the main road through Tamarasheni are a number of homes visible with collapsed exterior walls, which may have been caused by tank fire. This is consistent with testimony provided by villagers about how tanks fired on their homes. The high-resolution images of these villages show no impact craters from incoming shelling or rocket fire, or aerial bombardment. The exterior and interior masonry walls of most of the destroyed homes are still standing, but the wood-framed roofs are collapsed, indicating that the buildings were burned.

<sup>377</sup> See UNOSAT map, "Satellite Damage Assessment for Tskhinvali, South Ossetia, Georgia," 22 August 2008, [http://unosat.web.cern.ch/unosat/freeproducts/Georgia/Russia\\_ConflictAugo8/UNOSAT\\_GEO\\_Tskhinvali\\_Damage\\_Overview\\_19augo8\\_Lowres.pdf](http://unosat.web.cern.ch/unosat/freeproducts/Georgia/Russia_ConflictAugo8/UNOSAT_GEO_Tskhinvali_Damage_Overview_19augo8_Lowres.pdf).

<sup>378</sup> See UNOSAT map, "Satellit Damage Assessment for Kekhvi Area, South Ossetia, Georgia, 25 August 2008, [http://unosat.web.cern.ch/unosat/freeproducts/Georgia/Russia\\_ConflictAugo8/UNOSAT\\_GEO\\_Kekhvi\\_Damage\\_Overview\\_19augo8\\_Lowres.pdf](http://unosat.web.cern.ch/unosat/freeproducts/Georgia/Russia_ConflictAugo8/UNOSAT_GEO_Kekhvi_Damage_Overview_19augo8_Lowres.pdf).



village had fire damage. A Human Rights Watch researcher saw six looters going through the houses and loading property onto two vehicles. Two of the looters were armed and wearing fatigues.

In the neighboring village of Vanati on the same day Human Rights Watch found that practically all the houses were burned (some were still burning), with the exception of those that allegedly belonged to the few Ossetian villagers (houses that were intact had signs on that identified their Ossetian ownership). There appeared to be no ethnic Georgians left in the village.

### **Disevi**

The torching of Disevi—an ethnic Georgian village of about 300 families that borders on three ethnic Ossetian villages—appeared to start around August 11, after Ossetian and Russian forces entered the village the previous day, and continued through October.<sup>379</sup> Its residents were gradually driven out by the torching and looting.

A 56-year-old woman who fled Disevi, Tamar Okhropiridze, told Human Rights Watch that half of the houses in the village were burnt in one day soon after Russian and Ossetian forces entered the village around August 10. She described in detail the torching of her own home,

I was hiding in the backyard of my house. Six men entered my yard. One was in civilian clothes; another was in military camouflage pants but a colorful shirt. They put together a heap of furniture and other household items, linens, and clothes. They poured something on it, probably kerosene, and set it on fire. I saw them go to my neighbor's house and set it on fire in the same way. I thought I could save it. I tried to pour water on the bed that was on fire...<sup>380</sup>

On September 13 Human Rights Watch spoke by telephone with Ia Khetaguri, 50, who was still living in a hillside neighborhood of Disevi despite the security challenges. Khetaguri said that only about 30 villagers remained and that most of the village had been burned.<sup>381</sup>

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<sup>379</sup> Human Rights Watch interview with a man from Disevi who did not provide his name, border of Disevi and Koshka, November 24, 2008.

<sup>380</sup> Human Rights Watch interview with Tamar Okhropiridze, Gori tent camp, September 13, 2008.

<sup>381</sup> Human Rights Watch telephone interview with Ia Khetaguri, September 13, 2008. Human Rights Watch could not independently confirm how many houses in Disevi were burnt and how many remained intact by mid-September.

She said that eight or nine houses were burned in Disevi on September 12,<sup>382</sup> and two on September 13.<sup>383</sup> Two days later Khetaguri had to flee the village as houses in her neighborhood were also torched.<sup>384</sup> Another Disevi resident, who was living in a facility for the displaced but maintained telephone contact with relatives remaining in Disevi, also reported that three houses were burning on September 15;<sup>385</sup> it is not known whether these accounts overlap.

When Human Rights Watch visited Disevi on November 24, the village appeared destroyed and completely deserted.

One villager who had fled Disevi would venture back periodically as far as a neighboring village, on the Gori district side of the administrative border, to see his house, which had been burned by Ossetian militias in mid-August. The man told Human Rights Watch in November,

I do not dare to go further than this [Georgian] checkpoint roadblock but I can clearly see my house from here. It's this one, barely 500 meters from us, on that small hill. It was such a wonderful house and nothing but charred walls are left of it. But somehow, something draws me here. I cannot stop coming to this place and looking at what used to be my and my children's home. We are all refugees now, we lost everything. And Disevi is like a desert. The very last family left the village yesterday. I spoke to them. They're saying that only 10 houses in the village escaped burning so far. Everything else is gone. The militias are roaming around non-stop, even though there must be nothing left to steal by now.<sup>386</sup>

### **Beloti, Satskheneti, and Atsriskhevi**

Ossetian militias started looting and torching Beloti on August 12, two days after Russian forces arrived.<sup>387</sup> A 79-year-old resident displaced by the violence provided us with a

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<sup>382</sup> Ibid.; and Human Rights Watch interview with Tamar Okhropiridze, September 13, 2008.

<sup>383</sup> Human Rights Watch telephone interview with Ia Khetaguri, September 13, 2008.

<sup>384</sup> Human Rights Watch interview with Ia Khetaguri, Gori tent camp, September 15, 2008.

<sup>385</sup> Human Rights Watch Interview with Dali Okhropiridze, Gori tent camp, September 13, 2008.

<sup>386</sup> Human Rights Watch interview with a man from Disevi who did not provide his name, border of Disevi and Koshka, November 24, 2008.

<sup>387</sup> Human Right Watch Interview with Nadia Terashvili, Gori tent camp, September 10, 2008.

detailed description of the abuses she saw perpetrated in Beloti before her evacuation to Gori by the ICRC in September:

Looting was going on all the time up until we left. One group would come and leave, then another would come and then leave. They took whatever they liked. Sometimes they would come into the yard and start shooting in the air. Some were very aggressive and yelling. One time, one Ossetian came in and had a huge knife and threatened to kill me. Another was more considerate ... But in any case they just took whatever they wanted.

Sometimes people in civilian clothes from neighboring Ossetian villages would also come and loot. They took our seven cows, and one pig. We had 19 beehives—they were all taken and all the equipment for the beekeeping. They also took ... a television. Some houses were burned, but I begged them in Ossetian not to burn ours. Our daughter's house [also in Beloti] was burned.<sup>388</sup>

When Human Rights Watch visited Beloti in November, the village appeared almost completely destroyed by burning. One of the three remaining residents of Satskheneti, another ethnic Georgian village close to Beloti, confirmed our assessment of Beloti as fully deserted.<sup>389</sup>

In November Human Rights Watch also saw that most of the houses in Satskheneti had been burned, with only a few still intact. Most residents had fled either right before or at the start of the armed conflict. Vladimir K., 73, remained in his home because he “spent a whole life building [it].” According to him, the looters, most of them armed and dressed in fatigues, started robbing and burning homes around August 10. Militias looted Vladimir K.’s home several times and set fire to it twice, but he had been able to put the fires out. When we spoke to him he expressed fear that it was only a matter of time before his house would be burned down; at this writing we do not know whether his fears have been realized.<sup>390</sup>

Atsriskhevi, a small, remote mountain village beyond Beloti, was fully deserted and almost completely destroyed, with only two houses still intact when Human Rights Watch was there in November.

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<sup>388</sup> Ibid.

<sup>389</sup> Human Rights Watch interview with Maria C. (surname withheld), Satskheneti, November 25, 2008.

<sup>390</sup> Human Rights Watch interview with Vladimir K. (surname withheld), Satskheneti, November 25, 2008.

## *Froni valley*

### **Avnevi and Nuli**

The village of Avnevi has two parts, one populated prior to the conflict mainly by ethnic Georgians and administered by Tbilisi, and the other populated mainly by ethnic Ossetians and administered by Tskhinvali. Widescale looting and torching in the Tbilisi-administered part began around August 12, and continued at a lesser scale at least until early September, causing most villagers to flee; by November looters were hauling bricks and piping from the remains of the houses.<sup>391</sup>

When Human Rights Watch visited Avnevi on September 4, its Tbilisi-administered part was almost fully destroyed by fire and looting. A Human Rights Watch researcher also saw and photographed two active fires in this part of the village.

Several days prior, militias burned the house of 86-year-old Elena Zoziashvili, who was then forced to live in a shed in her yard, with nothing to eat except what was in her vegetable patch. Zoziashvili is half blind and nearly deaf, and appeared to be in shock when Human Rights Watch spoke to her.<sup>392</sup> Several days later, the ICRC evacuated Zoziashvili to Tbilisi, where she had relatives.

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<sup>391</sup> Human Rights Watch field observation when driving through the village of Avnevi on the evening of November 23, 2008.

<sup>392</sup> Human Rights Watch interview with Elena Zoziashvili, Avnevi, September 4, 2008.



Elena Zoziashvili, 86, speaking with Human Rights Watch after her house in Avnevi was torched. © 2008 Human Rights Watch

When we visited, several of the homes in the Tbilisi-administered part of Avnevi had been looted but not burned, though militias threatened to torch them. The home of Vakhtang Durglishvili, an elderly Georgian whose family had fled, was intact because, he thought, an Ossetian acquaintance from the Ossetian part of the village took Durglishvili under his protection, including by bringing him food on a regular basis.<sup>393</sup>

Nuli is the next village to Avnevi. A Human Rights Watch researcher who walked through Nuli on September 4, 2008, saw that most of its houses had been burned and found the village deserted.

### **Alleged Extrajudicial Killings in the Course of Village Burnings**

An Ossetian taxi driver, Leonid L., told Human Rights Watch that his friend Omar Chovelidze, a resident of Kvemo Achabeti, and his wife were shot dead by unknown persons at some

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<sup>393</sup> Human Rights Watch interview with Vakhtang Durglishvili, Avnevi, September 8, 2008. Because Durglishvili had a tube in his throat from a tracheotomy, he could not speak but instead communicated in writing.

point between August 13 and 16.<sup>394</sup> Leonid said that once the hostilities ended he decided to check on Chovelidze, and found him and his wife at home in Kemo Achabeti on August 13, amid scenes of ongoing destruction in the village.<sup>395</sup>

When I saw Omar on the 13th in the middle of that burning village I could hardly believe it! I said, “Are you crazy? You must get out of here! Let me take you to Georgia.” But he refused flatly. He said he had a Russian passport and that’d protect him from the militias. When I returned three days later I found his body and that of his wife in the yard. [The house had been burned down.] I felt so awful I jumped in the car and drove away. But I did come back the next day to bury their bodies. I made a grave for them right in the yard and put a wooden cross on it.<sup>396</sup>

Tamar Okhropiridze, whose description of the burning of Disevi is given above, said that she witnessed Ossetian militias burn the house of 70-year-old Elguja Okhropiridze and shoot him dead. She also claimed to have seen an old woman burned to death in Disevi:

On the second day [of looting and burning]... Nato Okhropiridze, age 70, was burned in her house. I saw that Nato’s house was on fire and I went to her house. When I arrived I saw that something had fallen on her and burned her. She had a bucket in her hand, as if she was trying to put out the fire in her house.<sup>397</sup>

## Some Ossetian Villagers Not Immune from Looters

In some communities where Ossetians lived side-by-side with Georgians, or in mixed marriages, the Ossetians were also targeted for looting, harassment, and accusations of collaboration.

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<sup>394</sup> The last name of Omar Chovelidze’s wife was Babutidze. Leonid L. could not recall her first name.

<sup>395</sup> Leonid L. confirmed that many houses in the village had been burned, other houses were being torched, and looting was extensive.

<sup>396</sup> Human Rights Watch interview with Leonid L. (real name withheld), Kvemo Achabeti, November 25, 2008. Leonid L. accompanied Human Rights Watch researchers to Kvemo Achabeti to photograph the grave. However, it appeared to have been dug up and the bodies were missing. To date, Human Rights Watch has been unable to establish what happened to them.

<sup>397</sup> Human Rights Watch interview with Tamar Okhropiridze, September 13, 2008. It is not uncommon for many residents of the same village to share a surname.

On August 11 Ossetian militias began looting and burning homes in Zonkar, a tiny Tskhinvali-administered hamlet in the Patara Liakhvi valley surrounded by ethnic Georgian villages.<sup>398</sup> Human Rights Watch spoke to the only two remaining villagers, ethnic Ossetians Aza Valieva and her distant cousin Tamaz Valiev. Ossetian forces targeted them repeatedly because they believed either that the Valievs were ethnic Georgians or were collaborating with the Georgian authorities. At one point the attackers included men dressed in uniforms with insignia worn by Ossetian peacekeepers.

The attackers stole 8,000 roubles, a television, a VCR, three chainsaws, cattle, and other valuables from Tamaz Valiev.<sup>399</sup> They looted Aza Valieva's house, including taking 28,000 roubles.<sup>400</sup> Both Valievs said they repeatedly explained to the looters and militias that they were Ossetian and even showed their passports. The perpetrators, however, ignored their pleas or said that because they lived in this village in the middle of a Georgian enclave, they must either be Georgian or have had something to do with the Georgians.

Aza Valieva said that men dressed in Ossetian peacekeeper uniforms tried to set fire to her house. Although she reported the incident to the police, no officials from the South Ossetia prosecutor's office came to her house to investigate. She told Human Rights Watch,

On August 23 several servicemen came in a Kamaz-truck and not only took some things from my house but actually tried to burn it. They were Ossetian peacekeepers. This I know for sure because they had those two letters, MS [the Russian acronym for *Mirotvorscheskie Sily*, or Peacekeeping Forces] on their uniforms. They were shooting at the windows, saying obscene things. One of them aimed his sub-machine gun at me and yelled, "You just know how to speak Ossetian but in reality you're Georgian! Get the hell out of here!" Finally, they threw some blankets and clothes on the floor and set them on fire. I managed to [put out the fire] and then ran for the police. I showed them everything, explained the situation, and even told them the license plate number of the truck. They said I should not touch anything in the room because there would be an investigation but it's been three months and no one has done anything.<sup>401</sup>

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<sup>398</sup> After the 1992 conflict, only three families—two Ossetian and one ethnically mixed—remained in Zonkar. When the looting started in August 2008 the ethnically mixed family fled to undisputed Georgia.

<sup>399</sup> Human Rights Watch interview with Tamaz Valiev, Zonkar, November 25, 2008.

<sup>400</sup> Human Rights Watch interview with Aza Valieva, Zonkar, November 25, 2008.

<sup>401</sup> Ibid.



In the mixed village of Vanati three local elderly villagers, all of them Ossetian, complained to Human Rights Watch about the burning and looting and expressed fear for their own security and the safety of their home. According to them, the looters had already stolen everything valuable they could find in the Georgian households and had begun to harass the remaining Ossetian residents. They expressed their frustration with the authorities for failing to provide security.<sup>402</sup>

Most residents of Beloti (see above), which had about 50 families, were ethnic Georgians but some were Ossetian, mainly women married to Georgians.<sup>403</sup> Militias and common criminals looted and burned Georgian and mixed households alike.

In the Froni valley village of Avneni Human Rights Watch found mixed-marriage households similarly at the mercy of looters. The house of one elderly couple, Zalina Bestaeva and Durmishkhan Sikturashvili, remained intact but had been looted. Bestaeva and Sikturashvili were afraid that their house would be torched in the near future. “They [armed looters] almost set fire to the house!” said Bestaeva to Human Rights Watch. “We were kissing their hands, anything, as long as they left us in peace. But they keep coming back and take first one thing, then another. Our neighbor lost all her money to them, down to the last penny.”<sup>404</sup>

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<sup>402</sup> Human Rights Watch interviews with David D., Anna X. and Grigori D. (real names withheld), Vanati, September 6, 2008.

<sup>403</sup> Human Right Watch Interview with Tengiz Terashvili, Gori tent camp, September 10, 2008.

<sup>404</sup> Human Rights Watch separate interviews with Zalina Bestaeva and Durmishkhan Sikturashvili, Avnevi, September 8, 2008.





Maria Ch., an elderly Ossetian woman from Satskheneti, describes to Human Rights Watch frequent attacks by looters.  
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Bestaeva's neighbor is Anna Kokoeva, an Ossetian married to an ethnic Georgian. Kokoeva's husband fled at the start of the fighting but she stayed behind to watch over their house. She was able to convince the looters not to burn the house but they robbed her of money and valuables several days prior to Human Rights Watch's visit on September 8. Kokoeva told Human Rights Watch,

I had been saving for a year to pay for crowns on my teeth and saved up 1,500 roubles [approximately US\$60], but then the looters, the militias, came and they took it all! I was pleading with them but they yelled at me and even threatened to burn down my house. They were saying that my husband was a Georgian and we deserved this.<sup>405</sup>

Human Rights Watch interviewed two other Ossetian women, Tamara Tibilova and Elizaveta Dzioeva, both of them married to Ossetians but living in the Tbilisi-administered part of

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<sup>405</sup> Human Rights Watch interview with Anna Kokoeva, Avnevi, September 8, 2008.

Avnevi,<sup>406</sup> and sharing the same fate as the villagers in the Zonkar exclave. Tibilova told Human Rights Watch,

The looters come every day. They took everything valuable that was in my house. Nothing is left. I keep telling them I'm Ossetian and so is my husband, but what do they care? They've appropriated everything of any value that belonged to Georgians and now they're after our property. And if you try to argue with them, they threaten to burn your house. They know they can do what they want in this village and no one will ever punish them!<sup>407</sup>

Elizaveta Dzhioeva described to Human Rights Watch that the looters were “completely ruthless” and her own and her husband’s Ossetian ethnicity did not protect them from looting:

I'm scared to go to the city [to buy food] because the looters are likely to burn my home if I leave even for a few hours. They've already burnt my daughter's house [also in this part of the village]. They come every day and they really don't care if you are an Ossetian. I was once away from the house for a short while and they literally stole everything that we had there! When the burning started some Ossetian fighters were telling me not to worry. They were saying that we wouldn't be touched or suffer in any way because we were Ossetian. How wrong they were! The looters don't give a damn who you are, as long as you live here!<sup>408</sup>

## Situation in Akhlagori District

Akhlagori district, in the east of South Ossetia, has practically no communication lines with the rest of the territory.<sup>409</sup> There were no hostilities there during the August conflict, but following the conflict Russian forces occupied the district, prompting the dismissal of the Tbilisi-backed administration. This facilitated the appointment, by Tskhinvali, of an Ossetian

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<sup>406</sup> Tibilova told Human Rights Watch that her husband was wounded by a shell fragment around August 9 and Georgian servicemen took him with them to be hospitalized in Gori. At the time of the interview Tibilova had no information about the state of health or whereabouts of her husband.

<sup>407</sup> Human Rights Watch interview with Tamara Tibilova, Avnevi, September 8, 2008.

<sup>408</sup> Human Rights Watch interview with Elizaveta Dzhioeva, Avnevi, September 8, 2008.

<sup>409</sup> After the end of fighting in August, Russian authorities began constructing a road from Tskhinvali to Akhlagori through the mountains. However, at this writing the construction has not been completed and traveling to and from the South Ossetian capital is extraordinarily difficult.

administration for the district on September 3, 2008.<sup>410</sup> At this writing, the Russian military presence in Akhagori is substantial, with two bases in the district.<sup>411</sup> However, according to the head of Akhagori's district administration and local residents, Russian servicemen mainly keep to their bases. The Ossetian police, including OMON and KGB personnel, are deployed to the region from Tskhinvali on a rotating basis.<sup>412</sup>

In contrast to the villages in the Didi Liakhvi, Patara Liakhvi, and Froni valleys, villages in Akhagori district have not been burned by Ossetian militias. However, its ethnic Georgian residents are threatened and harassed by militias, and frightened by the possible closure of the district's administrative border with the rest of Georgia. The harassment and anxiety have caused great numbers of people to leave for undisputed Georgian territory.<sup>413</sup>

Nuzgar N., age 48, an ethnic Georgian resident of Akhagori town, summarized these anxieties and their consequences:

Thousands of people used to live here before August and now this place is like a desert. And how else can it be? There are all those armed people who frighten the locals by their mere presence.

Residents who could leave have mostly left. Families with young girls were afraid their daughters would be harassed by Ossetians. And the parents were no less concerned for the boys. They can easily be harassed. As a result, it's mostly elderly people that stayed, or those who have no place to go. I stayed

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<sup>410</sup> According to the head of the new administration, Anatoly Margiev, a decree appointing the new administration was signed by President Kokoity on September 3, 2008. By the end of November 2008, no village administrations have been appointed. The new district administration seems to enjoy no authority in Akhagori, and Margiev acknowledged having no capacity to fulfill its administrative functions. Human Rights Watch interview with Anatoly Margiev, Akhagori town, November 20, 2008.

<sup>411</sup> Conclusion made by Human Rights Watch based on observations on the ground on November 20-21, 2008.

<sup>412</sup> Conclusion made by Human Rights Watch based on observations on the ground on November 20-21, 2008.

<sup>413</sup> Human Rights Watch cannot confirm the exact number of the remaining residents. The newly appointed Ossetian administration told Human Rights Watch that 8,836 people out of the pre-August population of approximately 13,000 remain in Akhagori district, although according to Georgian government data the pre-war population was 7,894 and as of October 7, 2009, 3,597 people had been displaced and were staying in camps for displaced persons in Gori. See Government of Georgia, "Georgia Update:: Russian Invasion Facts---October 15, 2008" <http://georgiaupdate.gov.ge/doc/10006704/Microsoft%20Word%20-%20Ethnic%20cleansing%20last.pdf> (accessed January 17, 2008). To take one village, Kvanchivetti, as an example, according to residents the village population comprised approximately 200 families before the August conflict and only about 20 families remained as of November 21, 2008. Human Rights Watch interview with Giorgi X. corroborated by a dozen local residents, Kvanchavetti, November 21, 2008. Though the exodus from the smaller villages appears more dramatic than from the regional center, Akhagori town itself also looked largely abandoned by its residents.

because of my elderly mother first and foremost. But if they close the border everyone [Georgian] who's still here will pick up and leave. And so will I.<sup>414</sup>

### *Ossetian militia violence and intimidation*

At least two people were beaten by Ossetian militias in separate incidents in Akhagori district in November 2008, causing the death of one and severe injury to the other.

Akhagori town hospital staff told Human Rights Watch that around November 5 they treated Kanchaveti resident Givi Tetunashvili, age 76. Tetunashvili was brought to the hospital bleeding, with multiple bruises, a fractured arm and severe injury to his genitals. Tetunashvili told the doctors that he had been watching over his grazing sheep when several armed men in camouflage uniforms tried to steal one of them. When he protested, they started beating him.<sup>415</sup> Tetunashvili was in critical condition and was transferred for further treatment to Tbilisi, where he died approximately two weeks later.

When Human Rights Watch researchers visited Kanchaveti on November 21, they happened upon a crowd of local residents going to Tetunashvili's wake. Tetunashvili's wife, Rusiko, who was among the crowd, told Human Rights Watch that she was with her husband on the day he was assaulted and witnessed the incident. The assailants also threatened her, but did not beat her. She recognized one assailant as a member of the Ossetian militia and a resident of a neighboring Ossetian village.<sup>416</sup>

As Human Rights Watch was talking to Tetunashvili's relatives and neighbors, aggressive and apparently intoxicated armed militia members arrived in a military truck and chased the crowd away, preventing them from talking to Human Rights Watch. Human Rights Watch and Human Rights Centre Memorial reported Tetunashvili's case to the authorities in Tskhinvali. In December 2008 a leading Russian human rights activist, Svetlana Gannushkina of Memorial and the Civic Assistance Committee, told Human Rights Watch that on December 19, during her visit to Tskhinvali, she was informed by the deputy prosecutor of South Ossetia that "three perpetrators are held in custody" facing trial for "infliction of severe bodily harm" to Tetunashvili.<sup>417</sup> At this writing, the trial has not taken place.

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<sup>414</sup> Human Rights Watch interview with Nugzar N. (name withheld), Akhagori town, November 21, 2008.

<sup>415</sup> Human Rights Watch interview with a doctor and two nurses at Akhagori town hospital, November 21, 2008.

<sup>416</sup> Human Rights Watch interview with Rusiko Tetunashvili, Kanchaveti, November 21, 2008.

<sup>417</sup> Human Rights Watch telephone interview with Svetlana Gannushkina, December 29, 2008. According to Gannushkina, the South Ossetian prosecutor's office neither gave her the names of the perpetrators nor informed her of the date of the prospective trial.

Akhalgori town hospital staff also told Human Rights Watch that on November 16 they treated an 83-year-old resident of Korinta, Nestor Tinikashvili, who was severely bruised and had a fractured arm. The doctor said Tinikashvili told him that four Ossetians in camouflage uniforms had beaten him up because he had a photograph of Mikheil Saakashvili on his wall and admitted to them that he considered Saakashvili to be his president.<sup>418</sup>

Three members of the Ossetian police interviewed by Human Rights Watch in Akhalgori town confirmed the details of this incident and said that one of the perpetrators had been apprehended and transferred to the police in Tskhinvali. Human Rights Watch has not been able to confirm whether the suspect remains in custody and whether the de facto South Ossetian authorities conducted a criminal investigation.<sup>419</sup>

### *Anxiety about border closure*

At this writing Akhalgori's administrative border with the rest of Georgia border is open, though residents must pass through Russian-Ossetian checkpoints, where their identification documents are thoroughly checked and vehicles searched.

The new head of the Akhalgori district administration, Anatoly Margiev, told Human Rights Watch that the border was not likely to close, though not all of his staff shared this view.<sup>420</sup> Margiev also told Human Rights Watch that as of January 2009 the administration would start processing South Ossetian passports for all residents of Akhalgori, "in order to be able to move freely in North and South Ossetia. Following that, they will be also given Russian citizenship." Margiev tried to reassure Human Rights Watch that the residents would be permitted to keep their Georgian passports. However, Russian citizenship law does not provide for dual citizenship, and it remains unclear how those promises could be fulfilled in practice, and whether Russian authorities in South Ossetia will respect Georgian passports as valid for travel or other purposes.

The administration has not succeeded in reassuring Akhalgori residents, including their own employees, for whom the prospect of an imminent closure of Akhalgori's administrative border is a source of tremendous anxiety. Natela N., an ethnic Georgian staff-member of the

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<sup>418</sup> Human Rights Watch interview with a doctor and two nurses at Akhalgori town hospital, November 21, 2008.

<sup>419</sup> Human Rights Watch interviews with three members of the South Ossetian police force (names not disclosed), Akhalgori, November 21, 2008.

<sup>420</sup> Human Rights Watch interviews with Anatoly Margiev, head of the Akhalgori district administration, Tomaz Chitashvili, member of the Akhalgori commission on humanitarian aid, Rosa Doguzova, member of the Akhalgori commission on humanitarian aid, Natela N. (not her real name) staff-member of the Akhalgori district administration, Inal D. (not his real name), staff-member of the Akhalgori district administration, Akhalgori, November 21, 2008.

Akhalgori district administration, shared with Human Rights Watch her despair at not being able to see her first grandchild, who was due in December: “My three daughters all live in Tbilisi. How in the world am I going to see them? I already know [the baby] is going to be a girl. But will I ever see her?”<sup>421</sup> Several civil servants (who were still receiving salaries from Tbilisi) and other ethnic Georgian residents interviewed by Human Rights Watch all expressed profound concern that if the border were to close all remaining Georgians would have no choice but to leave.

## Position of de facto South Ossetian Officials toward Looting and House Burning

The de facto South Ossetian authorities were unrepentant about the destruction of ethnic Georgian villages and took no effective steps to prevent their destruction, protect civilians, and hold perpetrators accountable. On August 13, Anatoly Barankevich, then-head of the Security Council for South Ossetia, told a correspondent of the Russian official daily *Rossiiskaya Gazeta* that looting was indeed an issue, but largely dismissed it, “Unfortunately, war is war.”<sup>422</sup>

Eduard Kokoity, de facto president of South Ossetia, was straightforward about the purpose of the destruction in the villages. On August 15, in response to a question by *Kommersant Daily*, an independent Russian newspaper, about the situation in the “Georgian enclaves” in South Ossetia, Kokoity replied, “We practically have flattened everything there.” When *Kommersant* inquired whether the villages in those areas were fully destroyed, Kokoity confirmed this, asking, “So, you mean we should have allowed them [Georgians] to keep shooting at us and make fools of us?”<sup>423</sup>

According to Barankevich, the de facto South Ossetian authorities created a special committee to combat looting in the republic and armed patrols to prevent looting in the evening and at night.<sup>424</sup> These patrols did not operate effectively, if at all. Moreover, as observed by Human Rights Watch, widespread looting and torching visibly took place during daylight hours. The few remaining residents of ethnic Georgian villages whom Human Rights

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<sup>421</sup> Human Rights Watch interview with Natela N. (real name withheld), Akhalgori town, November 20, 2008.

<sup>422</sup> “South Ossetian authorities acknowledged cases of looting: ‘a war is a war’” (“Южная Осетия признала факты мародерства: ‘На войне как на войне’”), *Newsru.com*, August 13, 2008, <http://www.newsru.com/world/13aug2008/maroderstvo.html> (accessed November 14, 2008).

<sup>423</sup> “Eduard Kokoity: We flattened practically everything there” (“Эдуард Кокойты: мы там практически выровняли все”), *Kommersant.ru*, August 15, 2008, <http://www.kommersant.ru/doc.aspx?DocsID=1011783> (accessed November 14, 2008).

<sup>424</sup> “South Ossetian authorities acknowledged cases of looting: ‘a war is a war’” (“Южная Осетия признала факты мародерства: ‘На войне как на войне’”), *Newsru.com*, <http://www.newsru.com/world/13aug2008/maroderstvo.html>.



Watch interviewed in situ also complained that the looters were pervasive and acted freely during daylight hours. Additionally, in August and September Human Rights Watch researchers saw numerous houses freshly set on fire in Tbilisi-backed villages, which testifies to the fact that the torching of houses was also occurring during the day.

In September 2008 the head of the South Ossetia Committee for Press and Information, Irina Gagloeva, told the Human Rights Centre Memorial in response to a question about the situation in ethnic Georgian villages, “The looters aren’t really punished. If they’re caught by police at all this is processed as an administrative infraction. So, they need to pay a 2,500 rouble fine [approximately US\$100], and off they go. And for someone who stole five cows paying this fine is not a big deal.” Gagloeva expressed hope that local police would resume regular work in the near future and learn to do work diligently. She attempted to justify the abuses in the ethnic Georgian villages by stressing that they cooperated with Tbilisi and with the Georgian military and therefore—in contrast to those villages where ethnic Georgians lived that were under Ossetian administration and remained intact—they “received exactly what they’ve been preparing for 18 years [of the Georgia-Ossetia conflict].”<sup>425</sup>

## The Displaced Georgian Population’s Right to Return

As many as 20,000 ethnic Georgians cannot return to their homes in South Ossetia.

In mid-August 2008 Kokoity said that Ossetian authorities did not intend to let the Georgians return to the destroyed villages.<sup>426</sup> By the end of August 2008, he changed his position and assured the UN High Commissioner for Refugees that the displaced Georgians willing to return to South Ossetia would face no discrimination and have their security fully guaranteed.<sup>427</sup> In his September 2008 report, the human rights commissioner of the Council of Europe, Thomas Hammerberg, “notes that the de facto Ossetian authorities expressed to

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<sup>425</sup> Human Rights Centre Memorial interview with Irina Gagloeva (with Human Rights Watch in attendance), Tskhinvali, September 8, 2008. One of the Tskhinvali-administered villages with ethnic Georgian residents was Alkhasheni, however, where (in an exception that was in apparent contradiction to Gagloeva’s assertion) the local Georgian school was burned by alleged militias on September 1, the first day of classes after the summer break. Though classes are still held in two small houses next to the school, the number of pupils had decreased from 50 to 15 by November. Human Rights Watch interview with Guram Buzoladze, school principal in Alkhasheni, November 23, 2008.

<sup>426</sup> “Eduard Kokoity: We flattened practically everything there,” *Kommersant.ru*, <http://www.kommersant.ru/doc.aspx?DocsID=1011783>.

<sup>427</sup> See, for example, “Kokoity: Georgians face no threat of discrimination in South Ossetia,” [“Кокойты: В Южной Осетии грузинам дискриминация не грозит], *Korrespondent.net*, August 23, 2008 <http://korrespondent.net/world/562867> (accessed January 17, 2009.)

him their commitment to the right of return, including for ethnic Georgians who fled during the hostilities.”<sup>428</sup>

A key step to implementing this commitment would be to create security conditions that would make ethnic Georgians feel safe upon return. But as noted above, no effective measures were taken to stop the looting. Moreover, neither Ossetian nor Russian authorities have taken concrete measures to hold accountable those who intentionally destroyed the Georgian villages in the republic. Finally, Human Rights Watch is not aware of any steps taken by the Ossetian authorities to enable the displaced to return.

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<sup>428</sup> Thomas Hammerberg, “Special Follow Up Mission to the Areas Affected by the South Ossetia Conflict: Implementation of the Commissioner’s six principles for urgent human rights and humanitarian protection,” September 25-27, 2008, [http://www.coe.int/t/commissioner/CommDH\\_2008\\_33\\_GeorgiaVisit-full\\_report-21-10-2008.pdf](http://www.coe.int/t/commissioner/CommDH_2008_33_GeorgiaVisit-full_report-21-10-2008.pdf) (accessed November 14, 2008).



## 4.3 South Ossetian Abuses in Undisputed Georgian Territory

### Summary Executions

During and in the immediate aftermath of the war, at least 14 people were deliberately killed by Ossetian militias in territory controlled by Russian forces. Human Rights Watch documented six deliberate killings in undisputed Georgian territory controlled by Russian forces, and received credible allegations of another six cases. As described above, Human Rights Watch also heard allegations of two such killings in South Ossetia. In addition, Human Rights Watch documented the execution of one Georgian detainee and three Georgian prisoners of war by Ossetian forces, as described in Chapters 4.4 and 4.5. Extrajudicial killings constitute murder as prohibited under article 3 common to the Geneva Conventions, and “willful killings” of protected persons as prohibited under the four Geneva Conventions. Willful killings of protected persons constitute grave breaches of the Geneva Conventions and war crimes.<sup>429</sup>

### Killing of civilians in Tkviavi

On August 12, Russian forces passed through Tkviavi, 12 kilometers south of Tskhinvali. Shortly thereafter, several armed groups started to systematically loot the village. Villagers described to Human Rights Watch the killing of three people by armed groups during the looting spree, and named six others who they said were also killed.<sup>430</sup>

Among those killed were Mikheil Melitauri, age 76, and his brother, Shakhro. Mikheil Melitauri’s widow, Gulnara, said that around noon on August 12 several armed men broke into her house. According to Melitauri, two people speaking Ossetian entered the house while several people speaking Russian detained her husband and brother-in-law in the yard. Even though the perpetrators held Gulnara Melitauri separately, she could see the people in her yard beating her husband and his brother with their weapons. She told Human Rights Watch, “They really beat them mercilessly.”

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<sup>429</sup> Fourth Geneva Convention, arts. 32, 147,

<sup>430</sup> See also Sabrina Tavernise, “Survivors in Georgia Tell of Ethnic Killings,” *New York Times*, August 19, 2008, <http://www.nytimes.com/2008/08/20/world/europe/20refugee.html?pagewanted=2&sq=tkviavi&st=cse&scp=1> (accessed on November 23, 2008).

The armed men demanded the keys to the garage, money, and gold. They took the family's tractor, sprayed the house with bullets, and then attempted to burn the house by setting fire to some books on the balcony. Gulnara Melitauri told Human Rights Watch,

When I saw them leaving with the tractor, I ran into the bathroom to get water in a bucket to put out the fire. With that, I saved the house. [Then] I went out to find my husband. I found him and his brother lying next to each other. There was blood everywhere. They had been shot. They both had huge awful bruises on their faces.

Later that day a neighbor came and helped me move the bodies into the house, but then he left the village. I could not bury the bodies myself and there was no one there to help me. I had some apple vinegar, and I soaked cloths in vinegar and put them on the bodies to try to preserve them. For five days and nights, I was alone in the house. I sat with the bodies because I feared that dogs and cats would try to eat them.<sup>431</sup>

Melitauri eventually approached Russian peacekeepers stationed in the village who helped her bury the bodies in the backyard.

Another Tkviavi resident, Givi Chikhladze, age 62, witnessed the murder of his brother, Gela, by Ossetian militias on August 12. That evening, Givi Chikhladze and his 82-year-old father-in-law fled to Gela's house after six armed Ossetians had stolen Givi's tractor at gunpoint. Shortly after arriving at Gela's house, however, another group of Ossetians started banging on the gate and shooting in the air. Givi Chikhladze told Human Rights Watch,

They broke into the yard, they shot through the lock. My brother went to ask them to not burn down the house ... And then I heard them shoot and they shot him.

Two armed Ossetians took Givi Chikhladze and his father-in-law to a pigsty in the backyard, made them lie down, and held them at gunpoint:

One pointed a machine gun at me and the other pointed a machine gun at my father-in-law. For 40 minutes they held us like that. They themselves were

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<sup>431</sup> Human Rights Watch interview with Gulnara Melitauri, Tbilisi, September 15, 2008.

trembling, holding the guns. I was begging, “Please shoot us, please just finish this off!” I was so terrified. I was crying.

When the two Ossetians went into the house, Givi crawled through the bushes after them to see what was going on.

The Ossetians were still inside. I could hear my brother coughing, gasping for air. It was a horrible sound. The sound of death.

Chikhladze remained hidden until around 10 p.m. When he emerged, he “smelled something horrible” near his house, but did not return. He later learned that neighbors had found his brother burned on the floor, apparently set on fire by the looters. Some women who were neighbors buried him.<sup>432</sup>

Chikhladze and another villager named another six people—Nodar Batauri, Koba Jashiashvili, Shamil Orkopiridze, Lasha Basharauli, Soso Otiashvili, and Jaba Jabaladze—who were killed in Tkviavi on August 12 or shortly thereafter.<sup>433</sup>

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<sup>432</sup> Human Rights Watch interview with Givi Chikhladze, Tkviavi, September 15, 2008.

<sup>433</sup> Ibid.; and Human Rights Watch interview with Toma T., Tkviavi, August 22, 2008.



Interior of the home of Gela Chikhladze, age 55, burned down on August 12 by Ossetian militia in Tkviavi, August 19, 2008. © 2008 Marcus Bleasdale/VII

### The killing of Viktor Gagoshvili in Ergneti

One day in mid-August (the exact date is unclear) Viktor Gagoshvili was shot and killed in Ergneti, a Gori district village right on the South Ossetian administrative border. That day, two Ossetian men with automatic weapons broke open the gate and entered the yard of Zuriko Kasradze, age 54. Kasradze managed to run away and headed toward another house, where about 10 other villagers were hiding. He told Human Rights Watch,

When I got there I saw an old man hunched over and running toward the house, so I also ran in. As the man ran in and sat down, we could see he was bleeding and had been shot in the back. He rolled over and died right there. His name was Viktor Gagoshvili.<sup>434</sup>

When four villagers tried to take Gagoshvili to his house to bury him that evening, however, they were apprehended by about 10 Ossetians who pointed and cocked their guns at them.

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<sup>434</sup> Human Rights Watch interview with Zuriko Kasradze, Gori, September 14, 2008.

One of the Ossetians who knew Kasradze intervened, and in the end no one was shot. Zuriko Kasradze fled the village. Neighbors told Kasradze that his house was burned that night.

### **The killing of Aliko Bibilashvili in Karaleti**

About 4 or 5 p.m. on August 12, Nikoloz Bazandarashvili, age 78, Vlasiko Zaalishvili, and Aliko Bibilashvili were sitting by the main road from Tskhinvali to Gori city in the village of Karaleti. Ossetian militia driving by shot at Bibilashvili, killing him. Bazandarashvili told Human Rights Watch,

A white Zhiguli came down the central street. There were two guys in front and guys in the back. One of the guys in the front had a white armband. Someone from the back seat fired shots out the window.

They didn't stop [the car]. They fired at us and hit Aliko. Aliko fell and died soon after.<sup>435</sup>

### **The killing of Nora Kvinikadze in Abanoskoda**

Raul Kvinikadze, a 22-year-old from Abanoskoda, a village in Kareli district on the administrative border with South Ossetia, described to Human Rights Watch the killing of his 75-year-old grandmother, Nora Kvinikadze, on September 6. On September 5 Raul Kvinikadze was in the village to check on his grandmother and help with the harvest.

My father and I were harvesting crops in my grandmother's field. As I approached the house, two Ossetians in camouflage, armed with machine guns, stopped me and asked me who I was. One of them cocked his gun and demanded that I give him my cellphone, so I did.

The next evening, after going into the village, I returned to my grandmother's house and found that my father was being held by four armed men in masks, wearing camouflage uniforms. They tried to take me and my father away. My grandmother was protesting and pulling on my father to keep him from being taken. One of them grabbed her to pull her away, and we all began to struggle. The assailants shot me twice in the right leg. They shot my father ...

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<sup>435</sup> Human Rights Watch interview with Nikoloz Bazandarashvili, Karaleti, September 14, 2008.

and he immediately fell down. I don't know how my grandmother was shot, but when I was able to look at her I saw that she was dead.<sup>436</sup>

Raul Kvinikadze sustained a knee fracture, and his father was treated for a wound to the abdomen.

## Rape

Human Rights Watch received numerous reports of rape of ethnic Georgian women during the August 2008 war. The Fourth Geneva Convention obliges parties to a conflict to protect women from “attacks on their honour, especially rape,<sup>437</sup> and rape is considered an act of “willfully causing great suffering or serious injury to body or health” that is a grave breach of the Geneva Conventions, and a war crime.<sup>438</sup>

Due to the sensitive nature of the crime, rape is frequently under-reported, and it is particularly difficult to document cases during conflict. Human Rights Watch was able to document two cases of rape in undisputed areas of Georgia under Russian control. Several factors suggest that the perpetrators were members of South Ossetian forces or militia. In both cases, the perpetrators wore military uniforms and white armbands, usually worn by South Ossetian forces to identify them to the Russian army as friendly forces. In both cases, the perpetrators spoke Ossetian. In one case, the perpetrators handed the victim over to the South Ossetian police in Tskhinvali, who later included her with other detainees in a prisoner exchange with Georgian authorities.

On August 13, Mariam C., in her 20s, left Tbilisi on a minibus with about 15 other passengers. Near Gori city, around 1:30 p.m., the minibus had to turn back because the road was blocked by Russian military troops.

As the driver turned the minibus around, four armed men in a black jeep drove up to it and started shooting in the air, forcing the minibus to stop. The armed men, dressed in black T-shirts, camouflage pants, and white armbands, ordered all the passengers out of the minibus and confiscated their cellphones. They took the minibus and then let all of the passengers go, except Mariam C. She described to Human Rights Watch the terror she felt during the abduction,

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<sup>436</sup> Human Rights Watch interview with Raul Kvinikadze, Gori Military Hospital, September 13, 2008.

<sup>437</sup> Fourth Geneva Convention, art. 27.

<sup>438</sup> *Ibid.*, art. 147.

As one of the assailants took my cellphone he looked me in the eye, and I immediately felt that something terrible was going to happen. I just saw it in his eyes. Everyone was released but me. I begged them to let me go, but instead they dragged me and stuffed me into the jeep.

One of the assailants drove in the jeep with Mariam C., and three others rode in the minivan in the direction of Tskhinvali. Before reaching Tskhinvali the driver stopped the car, telling Mariam C. that it had broken down. They got out of the car on the edge of a deserted field and the driver asked Mariam C. whether she was married and had children. She told Human Rights Watch,

I sensed something terrible.... I immediately panicked. I was begging him not to do it, not to touch me. He just forced me onto the ground, slapped me several times, and raped me. The other three did the same.

At some point I must have lost consciousness. I saw them all before I fainted. I was thinking that they would kill me afterwards because I saw their faces. All I was thinking about—and waiting for—was when they would kill me.

When she regained consciousness she was surrounded by four or five men in military camouflage uniforms—apparently servicemen—and three of her attackers. They placed her in a Niva jeep and drove her to Tskhinvali. Mariam C. remembered feeling ill and in pain after her attack. “I felt sick. I had a terrible headache, and my back was aching,” she told Human Rights Watch.

In Tskhinvali, the servicemen first took her to a school or a kindergarten where an Ossetian man in green military uniform gave her some medicine, including what she thought was a tranquilizer. Around 5 p.m. Mariam C.’s captors brought her to the Tskhinvali police station where she was interrogated. She told them what had happened to her. According to Mariam C., the police officers did not write down the information but confiscated her gold ring, earrings, and money, which they never returned. The police officers then took her to the basement where she was put in a cell with 13 other women.<sup>439</sup> (For a description of the conditions of detention, see section below on Detention of Georgians).

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<sup>439</sup> Human Rights Watch interview with “Mariam” (not her real name), place and date withheld to protect her identity.



One of the women who shared a cell with Mariam C. described to Human Rights Watch the young woman's condition when she arrived at the police station:

At one point they brought in a young girl. Her name was [Mariam C.]. When they brought her in she immediately kneeled down on the floor and started crying. I said, "What happened to you my daughter?" She said, "I was taken away by some men." I asked, "Did they treat you badly?" And she said, "Yes, very much so," and continued to cry.<sup>440</sup>

On August 19 an unknown man arrived at the police station and promised to take Mariam C. home. Instead, however, he took her to an apartment where a woman was living with her two daughters. They gave her a separate room and meals, and treated her well. On August 22 Mariam C. was handed over to Georgian authorities during an exchange of prisoners, and she sought and received medical care. She described to Human Rights Watch the trauma she continued to suffer as a result of the rape: "Once back in Tbilisi, I was in shock and I could not sleep for three nights. I now take strong tranquilizers to sleep. I have nightmares and frequent headaches."<sup>441</sup>

On the morning of August 13, 18-year-old Eliso E. and her family learned that Ossetian looters were entering nearby villages (an uncle had phoned to say that looters had just stolen his car and had shot his friend who had refused to hand over a truck). The family began packing to leave their Gori district village,<sup>442</sup> but as they were doing so seven men in camouflage uniforms with white armbands arrived at their house in a Willys jeep. According to Eliso E., the men were heavily armed with automatic weapons, grenades, and large knives.

The armed men forced Eliso E. and her mother to the second floor of the house at gunpoint. They searched through the family's clothes, apparently looking for military uniforms. Some of the men beat Eliso E. on the shoulder and back with the butts of their guns and one slapped her in the face. The intruders stole several items of electronic equipment as well as gold jewelry and money (in the interests of protecting this young woman's identity, the details she gave have not been included with other accounts of looting featured below).

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<sup>440</sup> Human Rights Watch interview with former detainee. Name, place and date withheld. Human Rights Watch interviews with two other women also confirm Mariam C's condition when she was brought to detention. Human Rights interviews with former detainees. Names, place and date withheld.

<sup>441</sup> Human Rights Watch interview with Mariam C.

<sup>442</sup> Name and exact location of her home withheld.



The armed men then took her mother downstairs and forced Eliso E. to stay in her room, with one armed man guarding the door. She told Human Rights Watch,

I started crying and praying. I was very scared. Then one man came back to my room. He was the one person who knew Russian, Ossetian, and Georgian. He asked me, “Where is your husband?” I said that I don’t have one. He ordered me to take off my clothes. I resisted, but I couldn’t stop him. He tore my clothes off of me. He told me in Georgian, “You’d better do it yourself or we will kill you and we’ll still do what we want with you.”

He asked me if I was a virgin and I said yes. He was the only one of them who had a mask on his face. He started to really struggle with me, and I pulled the mask off and I saw his face. This infuriated him and he started beating me. Then he raped me and told me that if I told anyone, he would kill me.

Before they left, the armed men beat Eliso E.’s brother and cousin on the head, shoulder, and back. She and her family left for Tbilisi. One month after the rape, Eliso E. told Human Rights Watch that she continued to suffer from her attack. “One month has passed. I have headaches, fever. I have terrifying nightmares, thinking that they are coming up the steps to take me,” she said. “I don’t want to go back to that place where I lived before.”

Eliso did not immediately report the rape to a doctor, fearing the stigma attached to it, but eventually sought medical assistance.<sup>443</sup>

## Abductions

Human Rights Watch documented many incidents of unlawful detention by Ossetian forces in which the victims were taken into Ossetian police custody (see below); we also received reports of Georgians who were abducted by Ossetians and not handed over to the police. Abductions violate the ban, contained in article 147 of the Fourth Geneva Convention, on unlawful confinement of a protected person and are considered grave breaches, or war crimes.

Lia B., 76, tearfully told Human Rights Watch on September 10 how she witnessed two Ossetian men abduct her 17-year-old granddaughter, Natia B., on August 13 in the middle of the day. She remembered,

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<sup>443</sup> Human Rights Watch interview with Eliso E. location withheld, September 11, 2008.

We had left our village and spent a few nights in [a village in the Gori district]. We were walking back to our home in [South Ossetia]. Two men in a Zhiguli [car] ... in camouflage uniforms with white armbands pulled up next to us. One of them was Ossetian ... They were armed with automatic weapons and a big knife. The men didn't get out of the car. They grabbed Natia by her hair and dragged her into the car into the front seat. I begged them not to kill her. I screamed, "Help me they are taking my child away!" ... They drove off in the direction of Tskhinvali.<sup>444</sup>

Soon after this interview, having had no information on her granddaughter's fate for four weeks, Lia B. learned that her granddaughter had been released from her captors sometime in September. Natia B. told her grandmother that she had been kept alone in a run-down deserted building and given bread and water daily, but did not report other abuse. She had no idea where this building was located.<sup>445</sup>

Zura Kareli told Human Rights Watch that he was in Karaleti on August 19 or 20 on his way home to Tkviavi together with his wife, son, and another relative. An Ossetian man wearing camouflage and with an automatic weapon attempted to detain him, his family, and 10-12 residents of Karaleti. After some of the Karaleti villagers fled, the Ossetian man shot Kareli in the hand in order to take the keys to Kareli's car, and then drove off in the car with four villagers in the back seat. Kareli did not know the names of those abducted and has no information about their whereabouts since the abduction.<sup>446</sup>

## **Pillage and Destruction of Civilian Property**

Ossetian militias looted, destroyed, and burned homes on a wide scale in undisputed Georgian territory south of the South Ossetian administrative border. As noted above (Chapter 3, Violations by Russian Forces), Russian forces were in many instances involved in these actions, either as active participants, passive bystanders, or by providing transportation to militias into villages. The Geneva Conventions prohibit pillage and destruction of civilian property, and the deliberate nature of this violation against protected persons makes it a war crime.<sup>447</sup>

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<sup>444</sup> Human Rights Watch interview with Lia B., (name withheld), September 10, 2008, location withheld to protect her granddaughter's identity.

<sup>445</sup> Human Rights Watch interview with Natia B. (real name withheld), location withheld, September 15, 2008.

<sup>446</sup> Human Rights Watch interview with Zura Kareli, Tkviavi, August 22, 2008.

<sup>447</sup> Fourth Geneva Convention, arts. 33, 53.

Pillage is prohibited, and the destruction of any real or personal property is only permitted where it is rendered absolutely necessary by military operations.<sup>448</sup>

Villages close to the South Ossetian administrative border such as Koshka, Ergneti, Nikozi, Megvrekisi, Tirdznisi, and Tkviavi in Gori district, and Dvani, Knolevi, Avlevi, and Tseronisi in the Kareli district were particularly hard hit by destruction and pillage.<sup>449</sup> Though the looting and torching was ongoing, two waves are discernable: the first just after Russian troops began the occupation of Gori and Kareli districts, and the second in the last week of August.

As noted above, in some incidents looters killed residents during the pillaging.

### *Gori district*

#### **Tkviavi**

On August 12 several groups of armed Ossetians arrived in Tkviavi with Russian forces and stayed to loot and burn civilian property after Russian forces passed through the village. Luiza L., a Tkviavi resident who stayed in the village during the conflict, described to Human Rights Watch,

Three people came to my house. I can't remember the date, but it was after the bombing [on August 11].<sup>450</sup> They asked, "Where are the cars? Where are the people? Where are the big houses in the village?" I just said, "Take anything you want, but please don't shoot." If someone tried to say something, to prevent the looting, they would start shooting. They came to my house three times—first Ossetians, then Russians. Russians just asked if the "bandits" were here and asked for cigarettes.<sup>451</sup>

Other Tkviavi residents, Salome S. and Sofiko S., told Human Rights Watch, "The looters were mostly taking away cars, and money from some well-to-do houses as well. After Russian checkpoints were established here, the massive looting stopped, but they kept coming during the night."<sup>452</sup>

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<sup>448</sup> *Ibid.*, art. 53.

<sup>449</sup> Although Human Rights Watch did not visit Megvrekisi, a village bordering South Ossetia, because of the precarious security situation, local residents provided detailed statements about the looting and destruction of property in that village.

<sup>450</sup> Russian military aircraft bombed a neighborhood in Tkviavi on August 11. See above, Chapter 3.2.

<sup>451</sup> Human Rights Watch interview with Luiza L., Tkviavi, August 22, 2008.

<sup>452</sup> Human Rights Watch interview with Salome S. and Sofiko S., Tkviavi, August 22, 2008.

Toma T., an ethnic Russian who is a long-time Tkviavi resident, told Human Rights Watch, “They came on a tank. If a family wasn’t home, they would break the gates of the house with a tank, enter the houses—they were mainly looking for arms and ammunition. At that point, they were taking away cars, not household items. The looters took almost every car in the village—the ones that they couldn’t take away, they burned.”<sup>453</sup>

### **Tirdznisi**

A Tirdznisi village administrator told Human Rights Watch that Ossetian looters had deliberately burned 16 houses in the village; Human Rights Watch saw the remains of many of these houses.<sup>454</sup> A witness to at least one of the burnings, Julieata Tetunashvili, described to Human Rights Watch seeing militias shoot “a sort of rocket” into some of the houses, which would set them on fire: “They were shooting at houses from a long weapon and immediately after, the house would catch fire. It was Ossetians, not Russians, who set houses on fire.”<sup>455</sup>

On August 15, the home of Elizabeta Naskidashvili, age 78, was set on fire presumably by militias. Naskidashvili was not at home when the militias set fire to her house, but she arrived home to find thick smoke billowing out of the doors, which had been broken down. A neighbor helped her extinguish the fire. Her house had been ransacked, but nothing was missing.<sup>456</sup>

On August 12, Ossetian militia assaulted Leila Tetunashvili, age 65, and looted her house. She told Human Rights Watch,

At about 5 p.m. three Ossetians in camouflage uniforms and armed with automatic guns [broke] in, taking the door down. One of them stood there, raising his hand, saying that I had five minutes, then he would bend one finger, saying four minutes and so on ... they were counting the time that I had left before they would shoot me unless I gave them money and gold. The same guy called his friend to bring the gun to shoot me. I got really scared and gave them all the money I had—40 lari [about US\$28].

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<sup>453</sup> Human Rights Watch interview with Toma T., Tkviavi, August 22, 2008.

<sup>454</sup> Human Rights Watch interview with Zaira Tetunashvili, village administrator, Tirdznisi, August 24, 2008.

<sup>455</sup> Human Rights Watch interview with Julieta Tetunashvili, Tirdznisi, August 24, 2008.

<sup>456</sup> Human Rights Watch interview with Elizabeta Naskidashvili, Tirdznisi, August 27, 2008.

My grandson, who was not home, has a corner in the house with icons and he also had a Georgian flag hung there. The Ossetian found it and brought it down and started cursing at me. He slapped me on the face, shouting, “What is this?” And then he twisted it and ... started strangling me with it. I started suffocating and turning red. Then he released me. They stayed for 20-25 minutes and took everything they wanted.

The next day other Ossetians came and took two cows. The day after that only one came, saying that he was a Russian soldier, then he pointed a gun at my husband, but I begged him on my knees not to shoot him and he left.<sup>457</sup>

Seventy-year-old Izolda Samadashvili described a similar experience to Human Rights Watch:

Ossetians came, three of them, all armed with automatic guns. They pointed the gun at our head and demanded our car keys. We had a Zhiguli and we had to obey; we feared they would shoot us.

The second time they came, they asked for weapons. Then they asked for my son, who lives in Tbilisi. Then they entered the house and started looting. They took everything they liked, clothes, fur coats, 300 lari [US\$210]. They also broke into a small shop we had in our house and took food and cigarettes.<sup>458</sup>

## Dvani

According to one villager, Russian troops, followed by Ossetian militia and Cossacks, passed through Dvani on August 8. The villager, Vasili Otiashvili, said his neighbor’s house was looted that day; two days later Otiashvili fled.<sup>459</sup> When he returned on August 27 his house had been burned to the ground. Otiashvili estimated that at least 30 houses had been burned in the village, although it is not clear how he made this estimate.

## Koshka

As described in Chapter 3.6, Russian and Ossetian forces began looting Koshka on August 9 and 10. Because Russian forces failed to provide security in the areas under their effective

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<sup>457</sup> Human Rights Watch interview with Leila Tetunashvili, Tirdznisi, August 24, 2008.

<sup>458</sup> Human Rights Watch interview with Izolda Samadashvili, Tirdznisi, August 24, 2008.

<sup>459</sup> Human Rights Watch interview with Vasili Otiashvili, shelter for internally displaced persons, Gori, September 10, 2008.

control, the residents remaining in Koshka also became victims to common criminal groups operating in the area in the weeks following these initial attacks. On August 24, four armed Ossetians returned to the village and forced Arkadi A. to help them loot his neighbor's house. Arkadi A. knew the men and told Human Rights Watch that they were not members of the South Ossetian forces, but simply robbers from the ethnic Ossetian village of Khelchua, in South Ossetia. He told Human Rights Watch,

I stood in the street with three neighbors. They approached us, shooting in the air, and said, "You weren't happy with a peaceful life—now we're going to show you!" They asked for money, but what kind of money do we have? Then they started beating us with their gun butts. One neighbor had his collarbone broken as a result of the beating. They hit me and another neighbor in the face, on the ribs, and in the kidney area. Then they went to the house next door and looted it. I saw them take away a fridge, clothes, and other things. They loaded the loot onto a cart and forced me at gunpoint to push it.<sup>460</sup>

When Human Rights Watch interviewed Arkadi and his neighbor, the two men were visibly in pain, and were transported to a hospital shortly thereafter.

### **Megvrekisi and Nikozi**

On August 26 and 27, numerous residents fled the villages of Megvrekisi and Nikozi because on the previous days Ossetian militias had been looting and burning houses. Nanuli Maisuradze, a 52-year-old resident of Megvrekisi, told Human Rights Watch that she stayed in the village during most of the fighting, occupation, and looting that followed but that the deteriorating security situation eventually forced her to flee: "I left the village [on August 26]. We left because [on August 24] Ossetians came into the village, beat one person and killed another one. The Russians were not doing anything, but did not stop the Ossetians either."<sup>461</sup>

### **Karaleti**

Izolda Tedliashvili, age 66, was in Karaleti on August 13. She told Human Rights Watch,

I saw how three houses were burned. Within one hour they were completely burned. The fire started from the inside, then the roof would collapse, and

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<sup>460</sup> Human Rights Watch interview with Arkadi A. (full name withheld), Tkviavi, August 26, 2008.

<sup>461</sup> Human Rights Watch interview with Nanuli Maisuradze, Gori, August 27, 2008. We have no other information about the beating and killing she mentioned.

then smoke and fire would come up. We were hiding in the yard and we would peek out and see that the [assailants] were still there. We only know that they were in camouflage uniforms, we could not see their faces.<sup>462</sup>

Human Rights Watch saw the burned houses and has photographs of them on file.

### *Kareli district*

#### **Knolevi, Avlevi, and Tseronisi**

Knolevi, Avlevi, and Tseronisi are neighboring villages in Kareli district, close to the South Ossetian administrative border. Dmitri Abukidze, 24, described how he saw Ossetian militias fire grenade launchers at homes, setting them on fire and how the soldiers stole livestock from the local residents. Abukidze had been detained with his father in Tseronisi on August 13 and placed in an armored personnel carrier. Abukidze recounted that while he was being transported to Tskhinvali,<sup>463</sup> he observed in and near Tseronisi that “[the Ossetians] just fired from their grenade launcher at the houses, from a distance, and the houses would immediately catch fire. They mostly targeted big, wealthy-looking houses. They also took the cattle away. The elderly were forced to accompany the cattle to the border, and [the looters] went behind, holding them at gunpoint.”<sup>464</sup>

Inhabitants of Knolevi told Human Rights Watch that after Russian troops moved through their village on their way south, Ossetian looters followed in their own cars, looting and burning houses. The few remaining residents we found in Knolevi on August 23 told Human Rights Watch that Ossetians had looted and burned 29 houses in Knolevi, 6 in Avlevi and about 42 in Tseronisi.<sup>465</sup> One of the residents remarked,

They are still coming—yesterday [August 22], for example, they were here. They are taking away cars, cattle, and valuable things like fridges. There is no order, no law enforcement here. Just an Ossetian checkpoint nearby. Russians used to patrol, but now they are gone. There were also peacekeepers, but they don’t come anymore either.<sup>466</sup>

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<sup>462</sup> Human Rights Watch interview with Izolda Tedliashvili, Karaleti, September 14, 2008.

<sup>463</sup> Abukidze managed to escape while he was being taken to Tskhinvali (see Chapter 4.4).

<sup>464</sup> Human Rights Watch interview with Dmitri Abukidze, Tirdznisi, August 23, 2008.

<sup>465</sup> Human Rights Watch interview Tseronisi resident, August 23, 2008. Human Rights Watch did not ask the interviewee’s name due to his anxiety about security.

<sup>466</sup> Human Rights Watch interview, Knolevi, August 23, 2008. Human Rights Watch did not ask the interviewee’s name due to his anxiety about security.

Russian forces maintained a checkpoint just outside these villages at the time the looting took place.



#### **4.4. Execution, Illegal Detentions, Ill-Treatment, and Degrading Conditions of Detention by Ossetian Forces, at times with Russian Forces**

As Russian forces began to occupy South Ossetia on August 8 and 9, South Ossetian forces traveled with them or followed them into ethnic Georgian villages in South Ossetia and then into Gori and Kareli districts. Most of the able bodied and younger residents had fled just before the start of hostilities or in the initial days of fighting. Most of the residents who remained in the villages had chosen to stay behind to look after their homes and property or were unable to flee. Ossetian forces, at times together with Russian forces, detained some of the residents they found remaining in these villages, particularly in the ethnic Georgian villages of South Ossetia; in most cases, detentions took place in the context of the campaign of looting and destruction described above. Detainees told Human Rights Watch that they were not given reasons for their detention and did not have access to lawyers or any opportunity to challenge their detention.

As Russian and Ossetian forces entered Georgian villages in South Ossetia and the Gori district, they detained at least 159 people,<sup>467</sup> primarily ethnic Georgians as well as at least one Ossetian and one ethnic Russian married to an ethnic Georgian. Forty-five of the detained were women. At least 76 were age 60 or older, and at least 17 were age 80 or older.<sup>468</sup> There was one child, a boy, about eight years old.<sup>469</sup> Human Rights Watch interviewed 29 of the detained, all post-release. Many detainees described ill-treatment during detention, during transfer to custody, and in custody. Most detainees were held in the basement of the South Ossetian Ministry of Interior building in Tskhinvali for approximately two weeks in conditions that amounted to degrading treatment. Some of these detainees were forced to work clearing the Tskhinvali streets of decomposing bodies of Georgian soldiers, and debris. At least one man was executed while in Ossetian custody during his transfer to the Ministry of Interior. All of these actions are grave breaches of the Geneva Conventions and amount to war crimes. To the extent that Russia exercised effective control in the territory where these detentions took place, the Russian government is liable for these acts, which also amount to violations of its human rights obligations under the ICCPR and the ECHR.

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<sup>467</sup> National Security Council of Georgia letter to Human Rights Watch, December 3, 2008.

<sup>468</sup> Official protocols of Georgian, Ossetian, and Russia prisoner exchange, on file with Human Rights Watch.

<sup>469</sup> Two detainees interviewed separately by Human Rights Watch stated that a young boy named Giorgi, detained together with his father, was held with them in the South Ossetian Ministry of Interior building in Tskhinvali. Human Rights Watch interviews with Tamaz Chalaauri, Gori, September 10; and Gogita Kotuashvili, Gori, September 15, 2008.

In some instances, Russian forces directly participated in the detention of ethnic Georgians, and detainees held in the Ministry of Interior reported being interrogated by people who introduced themselves as members of Russian forces. Russian and Ossetian forces also held at least six Georgians at what appeared to be a military field base and beat them before handing them over to Ossetian police.

## **Legal Status of and Protections for Individuals Detained by Ossetian and Russian Forces**

All of those detained by Ossetian and Russian forces and interviewed by Human Rights Watch stated that they were civilians not participating in the hostilities and had not taken up arms against Ossetian and Russian forces. Under the Fourth Geneva Convention, which defines the protections afforded to civilians during wartime, civilians are considered to be protected persons. The Convention requires that persons “taking no active part in the hostilities, ... shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.”<sup>470</sup> Grave breaches of the Fourth Geneva Convention, including willful killing, torture and inhuman treatment, and willfully causing great suffering or serious injury to body or health, are war crimes.<sup>471</sup>

The protections guaranteed by the International Covenant on Civil and Political Rights and the European Convention on Human Rights are also applicable with respect to Ossetian and Russian detention of Georgians. Since Russia at the time had effective control over the areas where the detentions described in this section took place, it is Russia as the state party to both instruments that bears responsibility for protecting individuals’ rights under the convention. The ICCPR and ECHR provide an absolute prohibition on torture and other degrading or inhuman treatment.<sup>472</sup> The provisions of the ICCPR and ECHR banning arbitrary detention are also applicable, and Russia did not derogate from those convention obligations, although limited derogations in times of war are permitted.<sup>473</sup>

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<sup>470</sup> Fourth Geneva Convention, art. 3.

<sup>471</sup> *Ibid.*, art. 147.

<sup>472</sup> ICCPR, art. 3; and ECHR, art. 3.

<sup>473</sup> ICCPR, art. 4 (on derogations in a time of public emergency) and art. 9 (right to liberty and security of person); and ECHR, art. 5 (right to liberty and security of person) and art. 15 (on derogations in a time of emergency).

During hostilities and occupation, the Fourth Geneva Convention permits the internment or assigned residence of protected persons such as civilians for “imperative reasons of security.”<sup>474</sup> However, unlawful confinement of a protected person is a war crime.<sup>475</sup>

Human Rights Watch has not been presented with evidence that there were reasonable security grounds for the detention of the 159 persons detained by Ossetian and Russian forces. Many of those detained were very elderly, and one was a small child. Most were detained in circumstances that strongly suggest that they were not taking up arms, not participating in hostilities, and not otherwise posing a security threat, as described below.

If, among the detained, there were Georgians who participated in hostilities against Ossetian or Russian forces, but who were not members of the Georgian military, under international humanitarian law such persons would be considered non-privileged combatants.<sup>476</sup> Georgians who took up arms to defend their lives or property from advancing Ossetian or Russian forces would be considered armed civilians. In both cases, detention of such persons would be considered reasonable on security grounds. Such persons are entitled to the protections guaranteed to civilians under the Fourth Geneva Convention. Detentions must be carried out in accordance with a regular procedure permissible under international humanitarian law. Those detained have a right to appeal their internment and have their case reviewed every six months. The Fourth Geneva Convention provides detailed regulations for the humane treatment of internees. The International Committee of the Red Cross must be given access to all protected persons, wherever they are, whether or not they are deprived of their liberty.<sup>477</sup>

Given their particular vulnerability, children are afforded special protections under the Geneva Conventions. Protocol I states, “Children shall be the object of special respect ... Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.”<sup>478</sup>

Ossetian President Eduard Kokoity has stated that “ethnic Georgians were detained for their personal safety” and that “the Ministry of Interior [was] protecting them and saving their

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<sup>474</sup> Fourth Geneva Convention.

<sup>475</sup> *Ibid.*, article 147.

<sup>476</sup> Human Rights Watch did not document such cases, but we cannot exclude that they may exist.

<sup>477</sup> Fourth Geneva Convention, arts. 76, 78.

<sup>478</sup> Protocol 1, article 77.

lives.”<sup>479</sup> While the Geneva Conventions allow for internment in order to provide for the security of civilians, Human Rights Watch has not found evidence that the detentions by Russians and Ossetians had this purpose or were justified on these grounds. The fact that the majority of individuals were detained as Georgian soldiers were retreating and in areas in which Russian and Ossetians exercised effective control suggests that in most cases civilians were not likely to be threatened by armed combat. Furthermore, Russian and Ossetian forces apprehended most individuals in a violent and threatening manner and subjected them to inhuman and degrading treatment and conditions of detention, and forced labor, reflecting no intent on the part of these forces to provide for the personal safety and well-being of those detained.

### **Ill-treatment at the Time of Arrest and during Transfer to Custody, and an Execution**

Human Rights Watch interviewed several Georgian detainees from South Ossetia and the Gori district who reported ill-treatment, including beatings, humiliation, threats of killing, and mock executions when Ossetians detained them. Some also reported ill-treatment during transfer to the Ministry of Interior in Tskhinvali. Human Rights Watch documented the execution of one man during his transfer to the Ministry of Interior. Willful killing and ill-treatment of protected persons constitute war crimes.<sup>480</sup>

#### *Detentions in South Ossetia*

After Ossetian forces entered Kekhvi on August 11, Shermadin Nebieridze, age 71, fled to a neighboring village and then returned to his home in Kekhvi that evening, where his house was burning (as described in Chapter 4.2). The next day, August 12, he was in his yard when Ossetian forces armed with automatic weapons and wearing camouflage uniforms with white armbands spotted him and forced him into a neighbor’s yard at gunpoint. Nebieridze described to Human Rights Watch his treatment as the men detained him:

One of them loaded his weapon and pointed it at me. He said, “I’ll kill you, you motherfucker!” I begged them, “Please don’t kill me. I haven’t done anything. I am an elderly man.” A second fighter came and pushed the gun away and said, “Don’t kill him.” The first then kicked me in the chest and I

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<sup>479</sup> The quote in Russian: “...этнические грузины были арестованы для их же собственной безопасности, а не в рамках кампании по этнической чистке. “МВД защищает их и сохраняет им жизнь,” as reported in “The Work of Journalist Yuri Karmanov was Recognized as the Best Reporting of the Week from the Georgian Conflict,” Khai-Bei reporting service, October 4, 2008, <http://h.ua/story/140015/> (accessed January 14, 2009).

<sup>480</sup> Fourth Geneva Convention, art. 147.

fell back on the concrete. I must have hit my head because I lost consciousness. When I woke up I struggled to get up. The second fighter kicked me in the neck and I fell back down. They picked me up and walked [me] out of the yard.<sup>481</sup>

Husband and wife Ilo Khabareli, 73, and Salimat Bagaeva, 69, from Zemo Achabeti, described to Human Rights Watch the ill-treatment they each endured during detention by South Ossetian forces. Ossetian forces entered the village on August 10. Bagaeva, who is an ethnic Ossetian, had gone next door to her son's house to check on it when 15 armed Ossetian militia entered the house, pointed their guns at her and cursed her, saying, "Why the fuck are you not leaving this place?"<sup>482</sup> When Khabareli, who is an ethnic Georgian, came to the house to help her, they again yelled at Bagaeva saying, "Why did you marry this Georgian pig?" One of the Ossetians then kicked Khabareli in the chest, knocking him down. When he tried to stand, a second soldier hit him with the butt of a gun in the neck, knocking him down again. When he was finally able to get up, one of the Ossetians punched him in the face, causing Khabareli to lose several teeth. The Ossetian forces forced Khabareli and his wife and daughter to stand facing the wall of their house while they shot at their feet and in the air.<sup>483</sup>

The Ossetians gathered Bagaeva, Khabareli, and about 10 or 15 other Zemo Achabeti residents and forced them to walk one kilometer toward Kvemo Achabeti. According to Bagaeva, one of the soldiers told the group, "Come with us now, or you will all be killed. No one is allowed to stay here overnight."<sup>484</sup> The group was put into a minivan and taken to the Ministry of Interior building in Tskhinvali.<sup>485</sup>

Nunu Gogidze, 60, described how, on August 10, two Russian soldiers and two Ossetian soldiers entered her yard in Tamarasheni while she was home alone and demanded that she come with them. When she asked them to let her get her documents, "they shot at the ground in front of my feet."<sup>486</sup> On that same day in Tamarasheni, three or four Ossetians looted the house of Tamar Khutsinashvili and set it on fire (see Chapter 4.2).<sup>487</sup> The

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<sup>481</sup> Human Rights Watch interview with Shermadin Nebieridze, Tbilisi, September 12, 2008.

<sup>482</sup> Human Rights Watch interview with Salimat Bagaeva, September 12, 2008.

<sup>483</sup> Human Rights Watch interview with Ilo Khabareli, September 12, 2008.

<sup>484</sup> Human Rights Watch interview with Salimat Bagaeva, September 12, 2008.

<sup>485</sup> Human Rights Watch separate interviews with Salimat Bagaeva and Ilo Khabareli, Tbilisi, September 12, 2008.

<sup>486</sup> Human Rights Watch interview with Nunu Gogidze, Tbilisi, August 26, 2008.

<sup>487</sup> Human Rights Watch interview with Tamar Khutsinashvili, Tbilisi, August 26, 2008.

Ossetians directed Khutsinashvili, 69, and her 73-year-old husband to the side of the road where they had gathered numerous other Tamarasheni residents. Khutsinashvili recalled, “I was terrified. I told them, ‘Kill us here if you want.’ One Ossetian hit me on the head with a gun butt and cursed me and said, ‘Stop speaking the language of dogs [Georgian]!’”<sup>488</sup> Ossetian forces then took Gogidze, Khutsinashvili and several of their neighbors to the South Ossetian Ministry of Interior.<sup>489</sup>

### *Detentions in Gori district*

On August 10 Tamaz Chalauri, 60, fled his home in Mereti and boarded a white minivan in Tkviavi. As the van approached the center of Tkviavi, Ossetians on an armored personnel carrier stopped it and forced the passengers out. Chalauri told Human Rights Watch, “I got out and they hit me in the stomach with the butt of a gun. They were swearing at us ... saying, ‘You pigs, you killed so many of our people. Now we will kill you.’”

The Ossetians forced the minivan’s male passengers, as well as the male passengers from a car they had stopped in the same location, back into the minivan. An Ossetian drove the van, but lost control of the wheel on the outskirts of Tirdznisi, and the van rolled over several times. Chalauri told Human Rights Watch, “Most people got out of the van, but there was one person left inside. The Ossetians then sprayed the van with gunfire. The man inside was then dead, but I’m not sure whether it was from the accident or from the shooting.” Chalauri was injured, and complained to us of pain in his head and back.<sup>490</sup> Another man who had been in the van, but managed to escape in the chaos immediately following the accident, believed that the Ossetian driver was also killed.<sup>491</sup>

Another minivan arrived and the Ossetians forced the remaining 10 Georgians (at least four had escaped) into it. Chalauri described the ill-treatment he and others suffered in the van and the execution of one of the passengers:

We were made to lie on the floor face down [the van had no seats]. They yelled at us, “Don’t lift your heads!” One big Ossetian man in heavy boots was stomping on my ankle in order to try to force me to raise my head.

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<sup>488</sup> *ibid.*

<sup>489</sup> Human Rights Watch separate interviews with Nunu Gogidze and Tamar Khutsinashvili, August 26, 2008.

<sup>490</sup> Human Rights Watch interview with Tamaz Chalauri, Gori, September 10, 2008.

<sup>491</sup> Human Rights Watch interview with Koba Kebabze, Gori, September 6, 2008.

There was one young man, about 25, lying next to me. He raised his head several times and was hit several times. Then all at once one of them loaded his gun and shot the young man twice in the head to kill him and then shot a third “control” shot just to make sure [he was dead]. The young man’s brains came out of his head and onto my body. For 11 days I had to wear those same clothes with his blood and brains on them. They ... threw the body out somewhere between Brotsleti and Megvrekisi.<sup>492</sup>

The Ossetians then took the remaining nine men to school No. 6 in Tskhinvali, which Ossetian forces were using as an improvised base and where they had also held Georgian prisoners of war. Ossetian captors again threatened to beat and kill the detainees. A doctor treated two or three of the detainees who had been injured in the road accident, and gave the group water. Later that evening they transferred seven of the men to the South Ossetian Ministry of Interior. Two of the detainees were separated from the group and were not seen again.<sup>493</sup>

Dmitri Abukidze, 24, from Tirdznisi, told Human Rights Watch that on August 13, Ossetians in camouflage uniforms entered the village and began demanding that the residents provide information about three Ossetians whom they claimed were detained by Georgian military, saying, “Where are our three people, from Znauri? If you don’t find them, we’ll take you to Tskhinvali.” They then detained Abukidze, his father, and several of their neighbors and forced them onto an armored personnel carrier. According to Abukidze, “They started moving, and some 30 minutes later I managed to jump off. They fired at me from an automatic gun, and hit me in the leg. Then they let all of us go.”<sup>494</sup> The group was released apparently because the Ossetian captors seemed reluctant to take a wounded detainee and several witnesses to the shooting into detention.

### *Ill-treatment in detention and degrading conditions of detention at the South Ossetian Ministry of Interior, Tskhinvali*

All of the detainees interviewed by Human Rights Watch described appalling conditions of detention in small, overcrowded basement cells of the South Ossetian Ministry of Interior building in Tskhinvali. Many detainees described degrading treatment, particularly upon arrival at the facility. Material conditions in Tskhinvali at the time of these detentions were

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<sup>492</sup> Human Rights Watch interview with Tamaz Chalauri, Gori, September 10, 2008.

<sup>493</sup> Ibid.

<sup>494</sup> Human Rights Watch interview with Dmitri Abukidze, Tirdznisi, August 25, 2008.

dire: the city had no electricity, very little food, and very little water. Irrespective of these conditions, Russian and Ossetian authorities had an obligation to provide humane conditions of detention in accordance with international standards. Ill-treatment and willfully causing great suffering or serious injury to body or health constitute war crimes.<sup>495</sup> Several detainees told Human Rights Watch that Russian Federation officials were present at certain times at the Ministry of Interior during their detention.<sup>496</sup>

### Ill-treatment in detention

Tamaz Chalauri described treatment by Ossetian forces upon his arrival at the Ministry of Interior building in Tskhinvali on August 10: “They lined us up facing the wall. They wrote down our names, searched us, took everything we had with us. They were hitting us, kicking us, cursing us the whole time, and calling us, ‘You Georgian pigs, you motherfuckers.’”<sup>497</sup> Others also described searches, which sometimes involved beatings or stripping of clothes, as well as confiscation of money, cellphones, jewelry, and identity documents. Nothing was returned to the detainees upon their release, except identity documents in some cases.<sup>498</sup>

Some detainees reported that Ossetian forces forced them to walk across or spit on a Georgian flag placed on the ground near the Ministry of Interior building.<sup>499</sup> When Ilo Khabareli refused to step or spit on the flag and said, “Kill me here because I won’t do that,” an Ossetian fighter hit him on the head, forcing him into a wall, where he hit his head again.<sup>500</sup> Vazha Lagazashvili told Human Rights Watch that when he tried to walk around the flag, Ossetians hit him with the butt of a gun on the back and neck.<sup>501</sup>

Human Rights Watch did not interview anyone who was beaten at the detention facility, except in those cases when the interviewee was beaten upon arrival as described above.

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<sup>495</sup> Fourth Geneva Convention, art. 147.

<sup>496</sup> Human Rights Watch interviews with David Giunashvili, Gori, September 20 (stating men in uniforms with Russian Prosecutor General insignia questioned him on August 19 or 20); Tamaz Chalauri, September 10 (stating that on or around August 20 he was questioned by people who spoke only Russian, some of whom were in military uniform); and Emilia Lapachi, Rustavi, August 23, 2008 (stating she was detained on August 11 and kept at a Russian military base for a few hours before being transferred to the Ministry of Interior building, where she was interrogated on August 12 by someone introducing himself as a Russian vice-colonel).

<sup>497</sup> Human Rights Watch interview with Tamaz Chalauri, September 10, 2008.

<sup>498</sup> Human Rights Watch interviews with Ilia Chulukidze, Tbilisi, August 26; Ilo Khabareli, September 12; Shermadin Nebieridze, September 12; and Salimat Bagaeva, September 12, 2008.

<sup>499</sup> Human Rights Watch interviews with Revaz R. (real name withheld), Rustavi, August 28-29; Salimat Bagaeva, September 12; and Vazha Lagazashvili, Tbilisi, September 12, 2008.

<sup>500</sup> Human Rights Watch interview with Ilo Khabareli, September 12, 2008.

<sup>501</sup> Human Rights Watch interview with Vazha Lazagashvili, September 12, 2008.



However, former detainees told Human Rights Watch that many of the men, particularly the young men, were beaten, and that some were beaten frequently. They described consistently how men would be taken out of their cells and out of the basement, and how, when they were returned, they showed clear signs of beatings.<sup>502</sup> Manana Gogidze, 48, from Tamarasheni, told Human Rights Watch that she witnessed young men regularly being beaten:

We saw them being taken upstairs and we could hear their screams. When they were brought back, they would bear clear signs of beating.... I saw the bruises myself as I was trying to help them. There was a young man from Tirdznisi who was beaten several times. I saw large dark bruises mostly on his back ... There was one [elderly] detainee ... who spoke no Ossetian despite having an Ossetian name. He was hit once by the guards for not speaking Ossetian.<sup>503</sup>

Salimat Bagaeva told Human Rights Watch, “[Y]oung men would be taken out and then badly beaten. I saw them. Their bodies would be covered in bruises. There was one who had a broken nose.”<sup>504</sup>

Several, although not all, detainees reported that they were interrogated during their detention. One reported being insulted by an Ossetian police officer, but none of those interviewed by Human Rights Watch reported ill-treatment during interrogation.

### **Degrading conditions of detention**

Detainees stated that the basement contained five dark, dirty, poorly ventilated cells without windows, designed for short-term detentions. Women and men were held in separate cells. The cells quickly became overcrowded and the guards eventually opened the doors of the cells and detainees could move into the hall or the small, fenced-in, outdoor exercise yard accessible from the basement.<sup>505</sup> These areas quickly also became full as more detainees were brought to the basement. According to one detainee, “There wasn’t even space to walk around in the corridor or in the exercise yard” due to the large number of people.<sup>506</sup>

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<sup>502</sup> Human Rights Watch interviews with Nadia Gogidze, Rustavi, August 28; and Levan L., August 29, 2008.

<sup>503</sup> Human Rights Watch interview with Manana Gogidze, Rustavi, August 23, 2008.

<sup>504</sup> Human Rights Watch interview with Salimat Bagaeva, September 12, 2008.

<sup>505</sup> Human Rights Watch interviews with Ilia Chulukidze, August 26; Ilo Khabareli, September 12; Shermadin Nebieridze, September 12; Salimat Bagaeva, September 12; and Manana Gogidze, August 23, 2008.

<sup>506</sup> Human Rights Watch interview with Salimat Bagaeva, September 12, 2008.

With many more detainees in the cells than there were bunk beds for them, most were forced to sleep sitting up or lying on the floors of the cells, halls, or exercise yard.<sup>507</sup> One detainee, 76-year-old Rusudan Chrelidze, remarked that in her cell, “the women were sleeping like herrings in a tin.”<sup>508</sup> A 47-year-old detainee from Karaleti reported that in his cell people slept in shifts because there was not enough space for people to lie down.<sup>509</sup>

Detainees described being given small quantities of water that contained sand and was frequently undrinkable, and insufficient food.<sup>510</sup> During the initial days of detention, detainees received only bread. Guards would throw four to five loaves of bread into the cells, saying “Eat, you pigs!”<sup>511</sup> Detainees stated that later they were given slightly more and better food, including buckwheat cereal, more servings of bread, and tea. Detainees reported losing significant weight during their two weeks of detention.<sup>512</sup>

There was one toilet for all detainees covered with a plastic sheet that the detainees put up themselves. The toilet smelled terribly and frequently overflowed because it did not have water.<sup>513</sup> When asked what had been the most difficult part of her experience in detention, Rusudan Chrelidze said, “The toilet was a big problem. There was only one and there was always a long line for it.”<sup>514</sup>

### **Forced labor**

Ossetian forces forced many of the male detainees to work, which included recovering decomposing bodies from the streets of Tskhinvali, digging graves, and burying bodies, as well as clearing the streets of building debris from the hostilities.<sup>515</sup> Two detainees interviewed by Human Rights Watch stated that they volunteered to work on some days in order to be out of the overcrowded cells for a few hours. None of the workers received any compensation for this work. Under the Fourth Geneva Convention, adults (individuals age 18

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<sup>507</sup> Human Rights Watch interviews with Rusudan Chrelidze, September 12; Tamaz Chalauri, September 10; and Shermadin Nebieridze, September 12, 2008.

<sup>508</sup> Human Rights Watch interviews with Rusudan Chrelidze, September 12, 2008.

<sup>509</sup> Human Rights Watch interview with David Giunashvili, September 20, 2008.

<sup>510</sup> Human Rights Watch interviews with Revaz R., August 28-29; Gaioz Babutsidze, Tbilisi, August 29; Ilo Khabareli, September 12; Salimat Bagaeva, September 12; Shermadin Nebieridze, September 12; and Rusudan Chrelidze, September 12, 2008.

<sup>511</sup> Human Rights Watch interviews with Manana Gogidze, August 23; and Ilo Khabareli, September 12, 2008.

<sup>512</sup> Human Rights Watch separate interviews with Salimat Bagaeva and Shermadin Nebieridze, September 12, 2008.

<sup>513</sup> Human Rights Watch interviews with Manana Gogidze, August 23; and Shermadin Nebieridze, September 12, 2008.

<sup>514</sup> Human Rights Watch interview with Rusudan Chrelidze, September 12, 2008.

<sup>515</sup> Human Rights Watch interviews with Gaioz Babutsidze, August 29; Otar Mernashvili, August 29; and Vazha Lazagashvili, September 12, 2008.

or older) may be required to work as is necessary to maintain public utilities, and to meet needs of the army and humanitarian needs, such as activities related to feeding, sheltering, clothing, and health care of the civilian population. People must be appropriately compensated for their work, and there can be no obligation to work based on any form of discrimination. Unpaid or abusive forced labor, or work that amounts to partaking in military operations, is strictly prohibited.<sup>516</sup>

Vazha Lagazashvili, age 58, told Human Rights Watch that he was forced to work every day of his 20-day detention:

They would take us out at 9 a.m. until late evening. We were cleaning the streets. They told me that I must go. We had to clear dead bodies from the street. We had to pick them up and put them into body bags. Some had limbs missing. [We also] collected the body parts.

I was taken out sometimes to do other work, like unload trucks full of humanitarian aid from Russia... They would give us one tin of food per person and some bread after we unloaded the trucks. We could only rest when we were given some food, for about half an hour. Of course I was not paid.<sup>517</sup>

Revaz R., 36, from Zemo Achabeti, confirmed that he was among 30 men who were forced to work from early morning until 7 or 8 p.m. “We cleaned the street, threw out garbage, and removed and buried the dead. We buried about 44 people. Most of the corpses were already decaying,” he told Human Rights Watch. He also stated that while they worked they received better food, such as canned meat.<sup>518</sup> After about a week in detention, Ossetian forces also forced 70-year-old Gaioz Babutsidze to work for two days lifting coffins off trucks and placing them in graves. He estimates that they buried 50 bodies.<sup>519</sup>

Those who worked were also subjected to degrading treatment as they were taken from their work locations to the Ministry of Interior building. “Sometimes they would make us walk back to the police station ... accompanied by four soldiers... People on the streets would yell

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<sup>516</sup> See ICRC, Customary International Humanitarian Law, rule 95 and Fourth Geneva Convention, art. 51.

<sup>517</sup> Human Rights Watch interview with Vazha Lazagashvili, September 12, 2008.

<sup>518</sup> Human Rights Watch interviews with Revaz R., August 28-29, 2008.

<sup>519</sup> Human Rights Watch interview with Gaioz Babutsidze, August 29, 2008.

at us, insult us. They were cursing, swearing, calling us sons of bitches, pigs, whores,” Vazha Lazagashvili told Human Rights Watch.<sup>520</sup>

### **ICRC, journalist visits to the facility**

Detainees reported that the International Committee of the Red Cross visited the facility in mid-August.

Journalists also visited the facility. David Giunashvili stated that he spoke to a journalist from the Moscow newspaper *Nezavisimaya Gazeta*.<sup>521</sup> Tamaz Chalauri told Human Rights Watch that he was forced to give an interview to Russian television.<sup>522</sup> Emilia Lapachi, age 51, recalled being pressured to speak positively about her detention experience for Russian journalists:

One day Russian journalists came to interview us. We were told by the guards that ... if we wanted to be released, we should tell them that we had been treated well and that we had no complaints. We were told to say that we had been taken to custody for our own safety and security. We discussed it among ourselves and decided to say anything to be released from there.<sup>523</sup>

### **Release of civilian detainees**

Ossetian forces released one group of 61 detainees, including most of the elderly and all of the women, on August 21, in exchange for eight detainees whom the Georgian Ministry of Defense described as militia fighters. Other civilians were released on subsequent days, including a final group of 81 civilians on August 27, who, according to the Georgian Ministry of Defense, were exchanged for four people detained during active fighting and described as “militants,” as well as nine Ossetians previously convicted for crimes and serving sentences in Georgian prisons.<sup>524</sup> While prisoner exchanges are a recognized and legitimate process to facilitate repatriation of prisoners who are in the hands of the enemy, it is prohibited to use the mechanism of prisoner exchanges as a means of effecting population transfer.<sup>525</sup> It is

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<sup>520</sup> Human Rights Watch interview with Vazha Lazagashvili, September 12, 2008. Gaioz Babutsidze described similar treatment. Human Rights Watch interview with Gaioz Babutsidze, August 29, 2008.

<sup>521</sup> Human Rights Watch interview with David Giunashvili, September 20, 2008.

<sup>522</sup> Human Rights Watch interview with Tamaz Chalauri, September 10, 2008.

<sup>523</sup> Human Rights Watch interview with Emilia Lapachi, August 23, 2008.

<sup>524</sup> Human Rights Watch interview with Mamuka Mujiri, deputy minister of defense, Tbilisi, September 15, 2008.

<sup>525</sup> Population transfers are prohibited under international law. See ICRC *Customary International Humanitarian Law* rule 129, and Fourth Geneva Convention, art. 147, and codified in Additional Protocol I, art. 85(4) (a).

also prohibited to use prisoners as hostages—that would be to unlawfully detain persons with the intent of using them to compel the enemy to do or abstain from doing something as a condition of their release.

### *Detentions by Russian and Ossetian forces in other locations*

Four Georgian men who had been working on construction sites in Java for several weeks prior to the outbreak of hostilities on August 8 described their detention at two different military bases prior to being transferred to the Ministry of Interior building in Tskhinvali. Human Rights Watch interviewed separately two of the four, Gogita Kotuashvili, age 30, and David Giunashvili, age 47, who described how the four fled Java on foot when Georgian bombing of the town started on August 7. The men walked south hoping to reach a Georgian village, but mistakenly entered an Ossetian village in the Znauri district in South Ossetia. A group of armed Ossetian men in civilian clothes and several men in military uniforms, apparently members of Russian and Ossetian forces, detained the four men. Upon detention they beat the four, kicking them and hitting them in the back of the head with rifle butts. They also confiscated the men's identity documents, tied their hands behind their backs, and blindfolded them before putting them into a car and driving them to what the men described as a military base, consisting of a military tent as well as at least one tank.

The four men were questioned upon their arrival, including being asked whether they were in the Georgian military. With their hands still tied, but their blindfolds off, the men were then put into a hole dug out in the ground, approximately 1.5 meters deep, where they were held for three days. They were given food packaged in military green boxes with Russian labels, and saw cars with Russian license plates arrive at the base and heard Russian being spoken in the tent. On August 9, two men wearing camouflage took the four detainees out of the hole, again blindfolded them and tied their hands, and told them they were being taken to Tskhinvali to be handed over to a Russian and Ossetian military base. When they arrived, their blindfolds were removed, and the men could see a large amount of heavy military equipment, including tanks, on the base. The two detainees interviewed by Human Rights Watch said that many of the soldiers were Russian and Chechen members of the Russian federal forces as well as other irregular fighters from Russia.

Upon arrival at this base, the captors, together with 10 to 15 military servicemen, forced the four detainees to kneel down next to the bodies of two Georgian men lying on the ground. They ordered David Giunashvili to shoot one of his fellow detainees, and Gogita Kotuashvili to shoot the fourth detainee. However, when Giunashvili refused to shoot, the captors did

not do anything in retribution, other than forcing the detainees to place the two dead bodies in a car.<sup>526</sup>

The Ossetian and Russian forces then forced the men to sit near the edge of a swimming pool, and beat them. Gogita Kotuashvili stated that he was beaten with rifle butts.<sup>527</sup> The detainees were placed in what appeared to them to be a guardhouse, with two beds. The detainees were taken to eat meals in the canteen and were regularly cursed by the soldiers on the base. After two to three days, on August 11 or 12, two men wearing blue and white camouflage uniforms took the detainees to the South Ossetian Ministry of Interior in Tskhinvali.<sup>528</sup>

Nikoloz Eremov, age 40, and Vazha Kebabze, both from Variani (in Gori district), were held a few days later at what is clearly the same Russian-Ossetian military base in Tskhinvali where the four Georgians had been held. According to Eremov, men who appeared to be Russian military detained him and Kebabze in Variani on August 16, drove them to the base, and immediately placed them in the empty swimming pool. Eremov told Human Rights Watch that at the base he saw Russians, Chechens, and Cossacks and a large amount of heavy military equipment. Russian and Ossetian forces forced the detained men to remove all of their clothes and stand facing the pool wall, with their hands tied behind their backs with rope.

Eremov described how one Russian soldier questioned him while three Ossetians beat him: “The [Russian] officer wasn’t beating me but the others were. The Ossetians would beat me on the legs and on the shoulders with their gun butts, and the Russian officer would ask questions.” Eremov heard other soldiers questioning and beating Kebabze, who shouted out, “Just kill me! Don’t beat me anymore!” After three hours they allowed Eremov to dress and released him by leading him to the woods and telling him, “Get the hell out of here and go home!” Vazha Kebabze remained in the pool. At the time we interviewed Eremov, a week later, Eremov had no information of what had become of Kebabze.<sup>529</sup>

On August 12, Sergo Mindiashvili fled Nikozi, right on the administrative border, because the village was being bombed. He began walking to Gori, but was detained at an Ossetian checkpoint in Shindisi. As six or seven Ossetians detained him, they kicked and punched

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<sup>526</sup> Human Rights Watch interviews with Gogita Kotuashvili, September 15; and David Giunashvili, September 20, 2008.

<sup>527</sup> Human Rights Watch interview with Gogita Kotuashvili, September 15, 2008.

<sup>528</sup> Human Rights Watch interviews with Gogita Kotuashvili, September 15; and David Giunashvili, September 20, 2008.

<sup>529</sup> Human Rights Watch interview with Nikoloz Eremov, Variani, August 24, 2008.

Mindiashvili and beat him with the butts of their rifles for approximately 20 minutes. Then, they forced him to get in a car. “They threatened to kill me if I didn’t do as they said. They pointed a gun at me. [In the car] they continued to beat me all over,” Mindiashvili told Human Rights Watch.

The Ossetian forces drove Mindiashvili to a location that he described as a base near Tskhinvali, possibly the same base as described in the cases above. Mindiashvili described his short detention there:

They started questioning me, but I was beaten good first. They didn’t explain why I had been detained. They took me to ... a sort of storage room. There were about 10 to 15 Ossetians, all in camouflage uniforms. They kicked and punched me and beat me with rifles... They asked whether I had served [in the military], where the Georgian forces were located, ... I knew one of them, Alan, ... he also beat me. ... They decided I should be executed... They loaded their guns and one person lifted his arms [to take aim]. I started crying.

Alan then intervened to stop the execution and the Ossetian forces placed Mindiashvili in a small room. Mindiashvili told Human Rights Watch, “Anyone who wanted could come and beat me. I spent two to three hours there. I was beaten several times.”

The Ossetians then took Mindiashvili to Variani and handed him over to Russian soldiers at the checkpoint there. Two other Georgians were being held there; the Russian soldiers treated one of the men’s wounds and gave all three men food and water. A Russian officer questioned Mindiashvili and told the soldiers to “do away with him,” but once the officer left the other soldiers released Mindiashvili.<sup>530</sup>

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<sup>530</sup> Human Rights Watch interview with Sergo Mindiashvili, Ruisi, August 18, 2008.

## **4.5 Execution, Torture, and Other Degrading Treatment of Georgian Prisoners of War by Ossetian Forces, at times with Russian Forces**

Russian and Ossetian forces detained at least 13 Georgian military servicemen during active fighting. All these detainees were entitled to prisoner of war (POW) status and should have been treated as such. Human Rights Watch interviewed four, post-release, all of whom had been captured in Tskhinvali by Ossetian militias on August 8. Human Rights Watch also interviewed one of the Ossetian militia fighters responsible for holding the Georgian soldiers for the first three days following their capture. All four Georgian military servicemen were held in informal places of detention, including a dormitory and schools, for several days, and were then transferred to Ossetian police. Ossetian police held several Georgian soldiers for six days, including three of the four interviewed by Human Rights Watch. They transferred one of the Georgian serviceman interviewed by Human Rights Watch to Russian custody, where he was treated for wounds. Georgian soldiers reported that they had been subjected to severe torture and ill-treatment throughout their detention by Ossetian forces. Human Rights Watch documented the execution of three Georgian servicemen while in the custody of Ossetian forces.

Ossetian forces eventually transferred 13 Georgian prisoners of war to Russian forces, and Russian authorities exchanged them for five Russian prisoners of war on August 19.<sup>531</sup>

Russian forces had or ought to have had full knowledge that Ossetians detained Georgian servicemen. They apparently participated in the execution of two Georgian soldiers, as well as in interrogations of Georgian POWs in Ossetian custody. Furthermore, the Georgian soldiers were held in Tskhinvali, over which Russia exercised effective control from August 9, and therefore are to be regarded as having fallen into Russia's power. Russia was therefore obligated to afford them POW status and to treat them in conformity with the protections of the Third Geneva Convention, which include absolute prohibitions on ill-treatment and require POWs to be treated humanely and kept in good health.<sup>532</sup> The execution, torture, and ill-treatment of prisoners of war are grave breaches of the Third Geneva Convention and

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<sup>531</sup> Two people whom Georgian authorities claim were civilians were handed over for exchange, together with the 13 POWs. Human Rights Watch interview with Mamuka Mujiri, September 15, 2008.

<sup>532</sup> Other protections include: the obligation of POWs to give only name, rank, serial number and birthdate, and the repatriation of all POWs "without delay after the cessation of active hostilities." POWs are entitled to visits by the ICRC. While POWs can be prosecuted for war crimes before a court martial, they cannot be tried for taking part in the hostilities. Geneva Convention relative to the Treatment of Prisoners of War, adopted August 12, 1949, 75 U.N.T.S. 135, entered into force October 21, 1950, article 3.



constitute war crimes.<sup>533</sup> The ICCPR and ECHR also provide an absolute prohibition on torture and other degrading or inhuman treatment and an obligation to protect the right to life of those in detention.<sup>534</sup>

## Beatings and Humiliation during Initial Days of Detention

Three Georgian servicemen interviewed by Human Rights Watch—Davit Malachini, Imeda Kutashvili, and Kakha Zirakishvili—were detained together by Ossetian forces on the afternoon of August 8.<sup>535</sup>

The three were among a group of seven Georgian soldiers Ossetian forces took to the basement of a four-story building, where Ossetian women and elderly as well as wounded Ossetian militia fighters were hiding.<sup>536</sup> Although some soldiers described the building as an apartment block, an Ossetian militia fighter interviewed by Human Rights Watch and involved in the detentions stated that the building was actually a dormitory of the agricultural technical institute.<sup>537</sup> The Georgian soldiers were given some food, water, and cigarettes on the first day of detention.<sup>538</sup> That evening additional men arrived at the building, including some wearing helmets with plastic masks. According to Davit Malachini, a 26-year-old sergeant, “They kicked us, cursed us, and beat us with the butts of their guns. They spoke Russian and Ossetian.”<sup>539</sup> Imeda Kutashvili, 21, who had been serving in the military for only nine months, recalled, “They were beating us and swearing at us, saying, ‘You pigs, why did you come here [to Tskhinvali]?’”<sup>540</sup>

The fourth Georgian soldier Human Rights Watch interviewed was Zaza Kavtiashvili. On August 9 Kavtiashvili, 32, who had been shot in the knee during street fighting in Tskhinvali that day and had been hiding on the ground floor of the dormitory, crawled down to the basement to seek shelter for the night. He had no idea that Ossetian forces and others, including the group of Georgian POWs, were there. Ossetian forces captured him and held him with the others. Kavtiashvili recalled the moment of his detention:

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<sup>533</sup> *Ibid.*, art. 130.

<sup>534</sup> ICCPR, art. 3 and ECHR, art. 3.

<sup>535</sup> Human Rights Watch interviews with Davit Malachini, Ruisi, September 10; Kakha Zirakishvili, Gori, September 10; and Imeda Kutashvili, Tbilisi, September 11, 2008.

<sup>536</sup> *Ibid.*

<sup>537</sup> Human Rights Watch interview with Boris B., location of interview withheld, September 4, 2008.

<sup>538</sup> Human Rights Watch interviews with Davit Malachini and Kakha Zirakishvili, September 10, 2008.

<sup>539</sup> Human Rights Watch interview with Davit Malachini, September 10, 2008.

<sup>540</sup> Human Rights Watch interview with Imeda Kutashvili, September 11, 2008.

They were as surprised as I was that I crawled right to them. But there was nothing I could do. I could not walk. My leg was numb. They started beating me as soon as they detained me. They beat me on the head with the butt of a gun. They stood on my wounded leg and demanded to know where I had dropped my flak jacket.<sup>541</sup>

The Ossetian captors held the POWs in the dormitory for two nights. On the morning of August 10 they transferred all eight POWs to a school, possibly School No. 6, on the outskirts of Tskhinvali. The Ossetians forced the POWs to walk approximately two kilometers through Tskhinvali; the others had to carry Kavtiashvili because he could not walk. On the way, Russian troops, Ossetian forces, and civilians beat and humiliated the group.<sup>542</sup> According to Kavtiashvili, “Anyone who wanted to beat us, beat us. I fainted several times because I had already lost so much blood. I was in a lot of pain. Some people attacked us and grabbed dirt and shoved it into the mouths of the guys carrying me, saying, ‘You wanted this land, well here it is!’”<sup>543</sup> Their route took them through Tskhinvali central square. Davit Malachini told Human Rights Watch, “When we got to the square, whoever wanted to beat us, beat us ... They kicked and punched us, and those who were armed hit us with gun butts. We fell to the ground. They threatened us, saying, ‘Let’s kill them. Let’s execute them.’”<sup>544</sup> Kakha Zirakishvili, age 33, recalled,

They took us to the very center of the city, where many people beat us: Ossetian militia, local residents, Ossetian troops, anyone who wanted to... They beat us with gun butts, iron bars, whatever they had: wooden sticks, chairs, even. Some of us lost consciousness. When we lost consciousness [some of the attackers] would urinate on our faces to wake us up and began beating us again.<sup>545</sup>

From the central square the men were then taken to the school, which was apparently functioning as a makeshift base. According to Zaza Kavtiashvili, as many as a few hundred Ossetian fighters were at the school, where they would eat and rest before going back

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<sup>541</sup> Human Rights Watch interview with Zaza Kavtiashvili, September 11, 2008.

<sup>542</sup> Ibid., and Human Rights Watch interviews with Davit Malachini, September 10; Kakha Zirakishvili, September 10; Imeda Kutashvili, September 11, 2008.

<sup>543</sup> Human Rights Watch interview with Zaza Kavtiashvili, September 11, 2008.

<sup>544</sup> Human Rights Watch interview with Davit Malachini, September 10, 2008.

<sup>545</sup> Human Rights Watch interview with Kakha Zirakishvili, September 10, 2009.

outside.<sup>546</sup> Ossetian forces and civilians again beat the POWs upon their arrival at the school. According to Davit Malachini, “First they beat us outside of the school. Ten or fifteen people would come and beat us, then another group. Someone broke my rib. I couldn’t breathe normally. They beat me on the eyes, back, legs, and head.”<sup>547</sup>

### **Execution of Three Georgian POWs**

The Ossetian captors took the Georgian POWs into a small room that led off from a gymnasium, where Russian federal forces were among those present.<sup>548</sup> The Ossetians and Russians inspected each of the Georgian soldiers’ hands, apparently in an attempt to determine whether any of them bore the calluses characteristic of artillerymen or tank gunners. The captors singled out one of the men as a tank gunner and ordered him into a small shower room next door. The other POWs identified the tank driver as Sopromadze but did not know his first name.<sup>549</sup>

In describing what happened next, Davit Malachini told Human Rights Watch, “They called the tank gunner out into a small room and then we heard shooting. Quite a lot of machine gun fire.” Malachini, Zirakishvili, Kutashvili and one other Georgian POW were then also called into the room. “The tank gunner was lying face down. They had shot him in the back of the head. We saw that his head was open and his brain was exposed. It looked like a watermelon cut in half.”<sup>550</sup>

Although the Ossetian captors claimed that they had shot the tank gunner because he was trying to escape, both Zirakishvili and Kutashvili described the scene in the room as one in which some hasty preparation had apparently taken place. “Some kind of tarp or tent lay on the floor and, from the position of the body lying on the tarp, it seemed that he had been kneeling at the edge of the tarp when they shot him,” said Zirakishvili.<sup>551</sup> An Ossetian militia fighter, who was among the captors, confirmed that the tank gunner was singled out and taken away deliberately. “One [of the prisoners], a tank gunner, was taken away by some of

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<sup>546</sup> Human Rights Watch interview with Zaza Kavtiashvili, September 11, 2008.

<sup>547</sup> Human Rights Watch interview with Davit Malachini, September 10, 2008.

<sup>548</sup> Human Rights Watch interview with Boris B., location withheld, September 4, 2008.

<sup>549</sup> Human Rights Watch interviews with Davit Malachini, September 10; Kakha Zirakishvili, September 10; Imeda Kutashvili, September 11; and Zaza Kavtiashvili, September 11, 2008.

<sup>550</sup> Human Rights Watch interview with Davit Malachini, September 10, 2008.

<sup>551</sup> Human Rights Watch interview with Kakha Zirakishvili, September 10, 2009.

our own [Ossetians] and Russians. I don't know what happened to him but we had seven prisoners again," he told Human Rights Watch.<sup>552</sup>

The four POWs were then made to carry the body outside into a courtyard,<sup>553</sup> while the Ossetian captors threatened to kill them.<sup>554</sup> Kutashvili stated that Russian federal troops were also in this yard, and one Russian soldier with a gun, whom, based on his appearance, Kutashvili believed was ethnic Russian, approached him saying, "I'm going to kill you now." However, another Russian federal soldier, whom Kutashvili described as "a large man with a full beard," and whom he believes was possibly Chechen, intervened to stop the shooting, claiming that Kutashvili reminded him of his own son who also had been wounded in battle. The first soldier pushed the bearded soldier aside and again made as if to shoot Kutashvili. The bearded soldier punched the first soldier, and then protected Kutashvili from further threats or beatings that night.<sup>555</sup>

The other POWs were beaten again after moving the body outside. Two POWs were made to clean up the blood and remains in the shower room.<sup>556</sup> The Georgian soldiers then carried the body of the tank gunner to a location near a railway line where they were ordered to dig a grave.<sup>557</sup> According to Malachini, by the time they finished digging the grave, it was dark, and so they wrapped the body in the tarp with a rope and left it unburied.<sup>558</sup>

The next day, August 11, the POWs witnessed one of their group, whom they identified only as 21-year-old Khubulov, being singled out and led away, apparently because his surname was Ossetian and he claimed to be ethnic Ossetian. Khubulov was beaten and dragged away from the others, while the captors yelled at him, saying, "You will die! You are a traitor."<sup>559</sup> The Georgian POWs we interviewed never saw Khubulov again. When Zaza Kavtiashvili asked some of his Ossetian captors about Khubulov's fate, one of them replied, "We [killed him] because he was an Ossetian traitor."<sup>560</sup>

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<sup>552</sup> Human Rights Watch interview with Boris B., name and location withheld, September 4, 2008.

<sup>553</sup> Human Rights Watch interviews with Kakha Zirakishvili, September 10; Imeda Kutashvili, September 11; and Zaza Kavtiashvili, September 11, 2008.

<sup>554</sup> Human Rights Watch interviews with Kakha Zirakishvili, September 10; and Imeda Kutashvili, September 11, 2008.

<sup>555</sup> Human Rights Watch interview with Imeda Kutashvili, September 11, 2008.

<sup>556</sup> Human Rights Watch interview with Davit Malachini, September 10, 2008.

<sup>557</sup> Human Rights Watch interviews with Davit Malachini and Kakha Zirakishvili, September 10, 2009.

<sup>558</sup> Human Rights Watch interview with Davit Malachini, September 10, 2008.

<sup>559</sup> Human Rights Watch interview with Imeda Kutashvili, September 11, 2008.

<sup>560</sup> Human Rights Watch interview with Zaza Kavtiashvili, September 11, 2008.

The Ossetian militia fighter who was among the captors and was interviewed by Human Rights Watch apparently corroborated Khubulov's execution. He told us, "And then a Chechen fighter [possibly from the Russian Ministry of Defense's Vostok battalion], who came to us with some Russians and Chechens realized that one of our prisoners was an ethnic Ossetian. He could not believe it at first, and then got very angry. He said that traitors had to be punished, and took him out in the yard and just shot him."<sup>561</sup>

Human Rights Watch documented a third extrajudicial killing of a Georgian soldier, which also took place on August 11. A law enforcement officer of the South Ossetian forces described to us how they had executed a Georgian armed man:

The day before yesterday [August 11, 2008], the Georgians killed two of my soldiers in the village of Tamarasheni. We had been conducting a sweep operation there. We detained three of them. Two of them didn't do anything to us so we just let them go—we couldn't take them anywhere as I had to take care of my own men first. The third one seemed to be high on something—a normal person would have surrendered, and this one was shooting at us instead. We questioned him. He was the one who killed our guys. We executed him.<sup>562</sup>

### **Torture and Ill-Treatment by Ossetian Police**

The Ossetian captors transferred the group to what was apparently Ossetian police custody. According to one of the Ossetian militia captors, "We did not know what to do with all these prisoners and just passed them on to the [Ossetian] Ministry of Interior on August 11."<sup>563</sup> The POWs described these Ossetian forces as all having identical "star-shaped badges on their belts," as being "physically big and strong," and possibly being Ossetian special forces.<sup>564</sup>

Although Ossetian forces eventually transferred the injured Zaza Kavtashvili to Russian forces that day, they first interrogated him and beat and humiliated him. He described the ordeal:

They separated us in the yard. [They] started interrogating us. They would beat me, question me, then beat me, all the while also insulting and humiliating me. They brought a Georgian flag into the yard and ordered me to

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<sup>561</sup> Human Rights Watch interview with Boris B., location withheld, September 4, 2008.

<sup>562</sup> Human Rights Watch interview with Alan N. (real name withheld), on the road between Tskhinvali and Java, August 13, 2008.

<sup>563</sup> Human Rights Watch interview with Boris B., location withheld, September 4, 2008.

<sup>564</sup> Human Rights Watch interview with Kakha Zirakishvili, September 10, 2009.

spit on it. I refused. One of the Ossetians put a Makarov gun into my mouth and threatened to kill me if I would not spit. One of the Ossetians also put his foot on my wounded knee and pressed hard on it. Someone from the second floor of the building ordered them to stop this and then they took us inside the building to a room. There they beat me with chairs, metal sticks, and the butts of guns. They broke my right arm. After all this they handed me over to the Russian forces.

After being transferred to Russian military custody, Kavtiashvili underwent surgery on his leg at a Russian Ministry of Emergency Situations hospital in Tskhinvali, and after several days was taken to Java and from there flown to a military hospital in Vladikavkaz, North Ossetia, for further treatment. Kavtiashvili was exchanged with other Georgian POWs on August 19.<sup>565</sup>

Several Georgian POWs, including three interviewed by Human Rights Watch, were held in Ossetian police custody until August 17, when they were handed over to Russian troops. Ossetian police held the Georgian POWs in degrading conditions and subjected them to torture and severe ill-treatment. The soldiers were held in pairs in small cells and given very little water and almost no food for six days. Ossetian police interrogated the soldiers a number of times. One Georgian POW stated that Russian military forces visited them while in detention several times and also sometimes interrogated them.<sup>566</sup> Although both Imeda Kutashvili and Kakha Zirakishvili had been wounded during the Russian aerial bombardment, they received no medical care during their 12 days in Ossetian detention.<sup>567</sup>

Kakha Zirakishvili told Human Rights Watch about his experience in police detention, saying that the previous days' beatings "were nothing compared to what we faced at this place":

They put us into cells and gave us only 100 grams of water for two people per day. They beat us regularly. Five or seven guys would come into the cell, beat us, get tired, go out, rest, come back, beat us. They would beat us until we were unconscious. They punched us, kicked us, hit us with hammers and with gun butts. They hit my hands with a hammer. They broke a bone in my right hand, as well as in [my fingers]. They also beat me a lot in my face and head with a hammer and even in the mouth. I lost one tooth on the bottom as a result of the beating. Sometimes, two people would stand on my arm,

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<sup>565</sup> Human Rights Watch interview with Zaza Kavtiashvili, September 11, 2008.

<sup>566</sup> Human Rights Watch interview with Kakha Zirakishvili, September 10, 2008.

<sup>567</sup> *Ibid.*, and Human Rights Watch interview with Imeda Kutashvili, September 11, 2008.

while another burned my hands with a lighter.... They gave us bread once ... but they gave us so little water for six days that I couldn't eat anything.<sup>568</sup>

Davit Malachini and Imeda Kutashvili were held in the same cell and described similar treatment. Malachini told Human Rights Watch,

Three Ossetians would come regularly, beat us for five, ten, fifteen minutes, leave, come back again. They would beat us from morning until late at night. This went on for six days. They tortured us. They put a bucket on my head and would beat a stick against the bucket. Two guys would stand on my arm and a third guy would burn my finger with a lighter. The skin was totally burned through to the bone. They beat my ankles with iron rods and broke one bone on my foot. They beat me on the head with butts of Makarov pistols.

We were only given a small amount of water and some bread and once some buckwheat. But I could not eat because I was in so much pain. My jaw had been beaten. They swore at us and cursed at us saying, "Did you want our land? Did you want our money? If you wanted our land you can go and dig your own grave here."<sup>569</sup>

Imeda Kutashvili also stated that the Ossetians gave him very little water and almost no food, and beat him regularly with hammers on his hand as well as by placing a bucket on his head and hitting it. He also described beatings by Ossetian police using "anything they had on hand." "They beat us with chairs, belts, and ropes, and when the shovel broke, they used the handle," he said. "They beat me on the arms and on the soles of my feet with an iron rod. While they were beating me I tried to cover my head, and they broke my hand. Sometimes I lost consciousness and they would put water in my face to wake me up."<sup>570</sup> Davit Malachini stated that while in Ossetian police detention he witnessed police urinating on another soldier's face to wake him up in order to begin beating him again.<sup>571</sup>

The physical and psychological consequences of this treatment are described below.

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<sup>568</sup> Ibid.

<sup>569</sup> Human Rights Watch interview with Davit Malachini, September 10, 2008.

<sup>570</sup> Human Rights Watch interview with Imeda Kutashvili, September 11, 2008.

<sup>571</sup> Human Rights Watch interview with Davit Malachini, September 10, 2008.

At some point during the detention of Georgian POWs by Ossetian police, Russian journalists were allowed to film the Georgian soldiers and asked them their names, ages, and how they were being treated.<sup>572</sup> Some of this video was placed on the internet and included images of Malachini, Kutashvili, and Zirakishvili.<sup>573</sup>

### *Transfer to Russian custody and release*

On August 17, Ossetian police transferred Malachini, Kutashvili, and Zirakishvili to Russian forces, who took them to a base. The Georgian soldiers were in very poor physical condition: Davit Malachini said, “By that time I couldn’t really even move my arms. My feet dragged. My legs and arms were so swollen. I was trembling all over. I couldn’t control it.”<sup>574</sup> Kakha Zirakishvili said, “We couldn’t even really stand or walk. We leaned on each other in order to move.”<sup>575</sup>

The Russian forces questioned the three men and then placed them in a basement together with five or six other Georgian soldiers who had been detained separately. The Russian forces did not physically ill-treat the three. They allowed the Georgian soldiers to wash, shave, and rinse their uniforms and gave them food, water, and some basic medical treatment.<sup>576</sup>

Malachini, Zirakishvili, and Kutashvili, together with 10 others, were transferred to Georgian custody on August 19 in exchange for Russian POWs.

### *Consequences of ill-treatment and torture*

All of the former POWs suffered serious medical complications following their detention and ill-treatment. Imeda Kutashvili said, “I don’t sleep at night. I have nightmares. I wake up and think that this will happen to me again. I have problems walking, I am dizzy. My spine is damaged, my ribs are bruised, and my heels are split open.”<sup>577</sup> He spent approximately one week in hospital following his release. When Human Rights Watch interviewed Kutashvili, he walked with a severe limp and had visible scars on his head.

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<sup>572</sup> Ibid., and Human Rights Watch interviews with Kakha Zirakishvili, September 10; and Imeda Kutashvili, September 11, 2009.

<sup>573</sup> Footage on file with Human Rights Watch.

<sup>574</sup> Human Rights Watch interview with Davit Malachini, September 10, 2008.

<sup>575</sup> Human Rights Watch interview with Kakha Zirakishvili, September 10, 2008.

<sup>576</sup> Ibid., and Human Rights Watch interview with Davit Malachini, September 10, 2008.

<sup>577</sup> Human Rights Watch interview with Imeda Kutashvili, September 11, 2008.



Kakha Zirakishvili and Davit Malachini also had medical complications. Malachini stayed in hospital for approximately one week. He had a broken rib and damage and swelling to one lung. He also complained of pain in his ankles, back, sides, and chest, as well as from his severely burned finger.<sup>578</sup> Kakha Zirakishvili was still in hospital at the time of his interview with Human Rights Watch, more than three weeks following his release. He told Human Rights Watch,

Before this, I weighed 78 kilos. When they weighed me [in hospital after my release] I weighed only 52 kilos. I have a broken rib. I have a broken bone in my right hand and [two broken bones] in my fingers. I have a lot of bruising, internal bruising in my chest and abdomen. I have pain in my joints, where they beat me. My eardrum is broken. I will have surgery to repair it. I also have a lot of problems with my head now. I lose sense of reality, a sense of where I am. The doctors say there may be some serious head trauma.<sup>579</sup>

When Human Rights Watch interviewed Zaza Kavtiashvili on September 11, 2008, he had been in a Georgian hospital since he was exchanged. He could not walk, and doctors had told him that he will eventually need to receive an artificial knee replacement for the kneecap shattered when he was shot during the street fighting in Tskinali on August 9. His arm, broken as a result of the beatings by Ossetian police, required an additional operation, having been improperly set during initial medical treatment. Kavtiashvili also had many bruises and several head wounds from the beatings.<sup>580</sup>

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<sup>578</sup> Human Rights Watch interview with Davit Malachini, September 10, 2008.

<sup>579</sup> Human Rights Watch interview with Kakha Zirakishvili, September 10, 2008.

<sup>580</sup> Human Rights Watch interview with Zaza Kavtiashvili, September 11, 2008.

## PART 5: INTERNATIONAL SCRUTINY OF RIGHTS VIOLATIONS IN THE CONFLICT

### International Inquiry Commissioned by the European Union

In December 2008 the European Union commissioned a broad, six-month inquiry into the conflict. Headed by a former head of the United Nations Observer Mission in Georgia (UNOMIG), Heidi Tagliavini, the inquiry is to examine “the origins and the course of the conflict ... with regard to international law, humanitarian law and human rights, and the accusations made in that context.”<sup>581</sup> An EU diplomat told Human Rights Watch that the August war will only be a small part of the final report, which will look also at the events of the early 1990s, and the historical context.<sup>582</sup> The final report is due to be presented to the EU, the UN, the OSCE, Russia, and Georgia on November 30, 2009.

The Council of Europe commissioner for human rights published three reports on visits—in August, September, and November—to Georgia and Russia to assess the human rights situation with respect to the conflict. The commissioner’s September 2008 report set out six principles for the protection of human rights in the context of the conflict, which focused on the right of all persons displaced by the conflict to return, the need for demining, and end to the torching and looting of civilian property, the need for protection of prisoners of war and other detained individuals, and the need for international agencies to be engaged in human rights protection in the region.<sup>583</sup> The two subsequent reports followed up on developments under these six principles.<sup>584</sup>

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<sup>581</sup> Phillippa Runner, “Swiss diplomat outlines Georgia war probe,” *EU Observer*, December 3, 2008, <http://euobserver.com/24/27221> (accessed December 21, 2008).

<sup>582</sup> Human Rights Watch interview with an EU diplomat (name withheld), Tbilisi, December 18, 2008.

<sup>583</sup> Thomas Hammerberg, “Human Rights in Areas Affected by the South Ossetia Conflict. Special Mission to Georgia and Russian Federation,” September 8, 2008, CommDH(2008)22. [https://wcd.coe.int/ViewDoc.jsp?id=1338365&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679#P72\\_923](https://wcd.coe.int/ViewDoc.jsp?id=1338365&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679#P72_923) (accessed January 14, 2009).

<sup>584</sup> Thomas Hammerberg, “Special Follow Up Mission to the Areas Affected by the South Ossetia Conflict: Implementation of the Commissioner’s six principles for urgent human rights and humanitarian protection September 25-27, 2008, and Thomas Hammerberg, “Special Follow-Up Mission to the Areas Affected by the South Ossetia Conflict: Implementation of the Commissioner’s six principles for urgent human rights and humanitarian protection (12-14 November 2008, Tbilisi, Tskhinvali and Gori)” CommDH(2008)37 December 16, 2008. <https://wcd.coe.int/ViewDoc.jsp?id=1386877&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679> (accessed January 14, 2009).

## Complaints to International Courts

In addition to carrying out its own investigation, the Russian Prosecutor's Office has assisted South Ossetia residents in preparing complaints against Georgia to international and regional courts. On August 12, 2008, the prosecutor general of the Russian Federation, Yury Chaika, announced that he had created "a special brigade of prosecutors that would provide legal assistance in preparing appeals and complaints to the European Court of Human Rights and the Hague International Criminal Court."<sup>585</sup> While individual complaints can be lodged with the European Court of Human Rights, it is a matter for the Prosecutor of the International Criminal Court to determine whether there will be any cases opened against individuals in any given situation. Individuals, governments, or organizations can submit information to the Prosecutor about alleged crimes.

As a result, in the following two months, hundreds of complaints were submitted to the European Court of Human Rights and cases for investigation sent to the ICC Prosecutor.

### *European Court of Human Rights*

On October 9, 2008, the European Court of Human Rights announced that it had received 2,729 applications from South Ossetians. According to the Court's communiqué,

These applicants allege that, in connection with the intervention of Georgian armed forces last August, they have been the victims of violations of the rights guaranteed by Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private and family life), 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the European Convention on Human Rights and by Article 1 of Protocol No. 1 (protection of property) to the Convention. Among other complaints, they claim that they have sustained damage to their health and breaches of their property rights.<sup>586</sup>

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<sup>585</sup> Vladimir Shishlin, "Prosecutor General Chaika will Help the Victims of the War to Obtain Justice," *Interfax*, August 12, 2008, <http://www.interfax.ru/print.asp?sec=1484&id=26795> (accessed November 8, 2008).

<sup>586</sup> European Court of Human Rights, "2,700 applications received by the Court from South Ossetians against Georgia," Press release by the Registrar, October 10, 2008, <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=841889&portal=hbkm&source=externalbydocnumbr&table=F69A27FD8FB86142BF01C1166DEA398649> (accessed November 8, 2008).

On January 14, 2009, the court announced that it had examined seven applications against Georgia, and that it had received a total of 3,300 cases “with a similar factual background.”<sup>587</sup>

Several Georgian nongovernmental organizations, including the Georgian Young Lawyers’ Association and the Human Rights Information and Documentation Centre are preparing about 180 cases, some of which unite the complaints of multiple individuals from specific villages.<sup>588</sup> The complaints are expected to concern articles 2, 3, 5, 6, 8, 13, and 14.<sup>589</sup>

### *International Criminal Court*

In addition, nongovernmental organization Residents of South Ossetia against Genocide, appealed to the ICC chief prosecutor to investigate the crimes committed by Georgian citizens on the territory of South Ossetia. Shortly after the end of hostilities, the organization submitted to the ICC several hundred appeals from the residents of South Ossetia; the head of the organization said she was convinced that Georgian forces had committed crimes which “fall under the jurisdiction of the International Criminal Court.”<sup>590</sup>

On August 20 the prosecutor of the ICC confirmed that in “light of information related to the alleged commission of crimes under ICC jurisdiction,” the situation was “under analysis by his office,” but since then has not provided any further comments on the matter.<sup>591</sup>

By September 11, according to the Russian official publication *Rossiiskaya Gazeta*, 2,500 South Ossetia residents submitted complaints of violations by Georgian forces to the ICC.<sup>592</sup>

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<sup>587</sup> European Court of Human Rights, “Seven applications against Georgia Concerning hostilities in South Ossetia, Press-release by the Registrar, January 14, 2009, <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=&sessionid=18135459&skin=hu-doc-pr-en> (accessed January 17, 2009).

<sup>588</sup> Human Rights Watch interview with the Georgian Young Lawyers’ Association and the Human Rights Information and Documentation Centre, January 15, 2009.

<sup>589</sup> Human Rights Watch email correspondence with Levan Meskhoradze, government agent of Georgia to the European Court of Human Rights of the Ministry of Justice of Georgia, January 18, 2009.

<sup>590</sup> “Residents of South Ossetia against Genocide’ Appealed to the International Criminal Court,” *Kavkazskii Uzel*, September 20, 2008, <http://kavkaz-uzel.ru/newstext/news/id/1229292.html> (accessed November 8, 2008).

<sup>591</sup> “ICC Prosecutor Confirms Situation in Georgia under Analysis,” International Criminal Court press release, August 20, 2008, <http://www.icc-cpi.int/press/pressreleases/413.html> (accessed November 8, 2008).

<sup>592</sup> Nadezhda Sorokina, “It Makes Take Years to Investigate Crimes Committed in South Ossetia,” *Rossiiskaya Gazeta*, September 11, 2008, <http://www.rg.ru/2008/09/11/osetia-mucihin.html> (accessed November 8, 2008).

### *International Court of Justice*

The first case to be filed on the conflict was an interstate complaint the Georgian government lodged against Russia at the International Court of Justice. In its complaint the Georgian government sought from the court a declaration that Russia was in violation of its obligations under the International Convention on the Elimination of Racial Discrimination (ICERD) and asked for compensation.<sup>593</sup> The complaint claims that Russia, acting through its own agencies and “separatist Abkhaz and South Ossetian forces under its direction and control has practiced, sponsored or supported racial discrimination through attacks against and mass expulsions of ethnic Georgians ... in South Ossetia and Abkhazia.” It also accused Russia of trying to change or consolidate changes in the ethnic composition of Abkhazia and South Ossetia by preventing forcibly displaced people from returning to their homes in these territories.

During the conflict the court made no conclusive ruling on jurisdiction or the merits of the case. On October 15, 2008, it issued an order on provisional measures calling on Russia and Georgia to observe their legal obligations under the ICERD to prevent “irreparable prejudice” to the rights of persons before the court could rule on the merits of the case.

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<sup>593</sup> *Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (Georgia v. Russian Federation), International Court of Justice, General List 140, Request for the Indication of Provisional Measures, October 15, 2008.

## Recommendations

### To the Georgian Government

#### *Accountability*

- Investigate and hold accountable those among Georgian forces responsible for violations of international human rights and humanitarian law. In accordance with international standards, investigations should be prompt, thorough, independent, impartial, and open to public scrutiny.
- Provide compensation for damage and destruction caused by Georgian forces' violations of international humanitarian law.

#### *Cooperation with and access for international organizations*

- Cooperate fully with the international inquiry commissioned by the European Union, including by providing full, unimpeded access to Georgia and access to all relevant persons and information for all of the inquiry's experts and staff.
- Continue to cooperate fully with the European Union and OSCE monitoring missions for as long as they operate in undisputed territories of Georgia.
- Cooperate fully with the European Court of Human Rights concerning potential applications brought against Georgia regarding violations committed during the August 2008 war.
- Fully implement the guarantees urged by the Council of Europe commissioner for human rights.

#### *Banning cluster munitions*

- Sign and ratify the Convention on Cluster Munitions.
  - In the interim period prior to ratification of the Convention on Cluster Munitions, take measures to protect civilian lives, including by prohibiting the use of cluster munitions in populated areas, placing a ban or moratorium on production and trade of cluster munitions, and starting to destroy stockpiles.
- Make every effort to expand assistance to demining organizations with clearance and risk education in contaminated areas, including by providing unfettered access and providing strike data, to prevent injuries and casualties among the civilian population.
- Continue to conduct public information campaigns regarding unexploded ordnance.

### *Protection and assistance for displaced persons*

- Take all measures to ensure the protection of and continued assistance to all persons displaced as a result of the conflict. This includes, but is not limited to:
  - Providing adequate housing, nutrition, access to medical care, access to education for children, and other support for those displaced;
  - Taking concrete steps to guarantee that the displaced participate in decisions affecting them;
  - Informing the displaced of their rights to return, to resettlement, or integration with local society if they so wish, and facilitating the realization of those rights to the extent possible.

## **To the Russian Government**

### *Return of all displaced persons*

- Publicly promote and implement the right of all persons displaced by the conflict, including ethnic Georgians, to return and live in their homes in South Ossetia in safety and dignity, and take measures to ensure that they may return.
- Prevail on the de facto authorities in South Ossetia to publicly acknowledge the right of all people, without regard to their ethnic background or imputed political affiliations, to safe and dignified return to their homes in South Ossetia, and to facilitate their return. This includes individuals from the villages of South Ossetia that had been administered by Tbilisi prior to the conflict.
- Adopt measures to facilitate the return of all persons displaced by the conflict, including all inhabitants of villages of South Ossetia administered by Tbilisi prior to the conflict, including by ensuring security as outlined below and by providing reparations for damage and destruction caused by violations of international humanitarian law by Russian and South Ossetian forces.

### *Security and accountability*

- Ensure that Russian forces provide security to all persons, regardless of ethnicity, living in areas in South Ossetia that are under Russia's effective control. Specifically, put an immediate end to South Ossetian militia attacks and looting against ethnic Georgians in Akhalkgori district in South Ossetia.
- Ensure that those responsible for crimes against all persons, including ethnic Georgians, in South Ossetia are held accountable.
- Investigate and hold accountable those among Russian and Ossetian forces responsible for the violations of international human rights and humanitarian law

under areas of effective Russian control that are documented in this report. In accordance with international standards, investigations should be prompt, independent, impartial, thorough, and open to public scrutiny.

#### *Cooperation with and access for international organizations*

- Cooperate fully with the international inquiry commissioned by the European Union, including by providing full, unimpeded access to South Ossetia and access to all relevant persons and information for all of the inquiry's experts and staff.
- Provide full access to South Ossetia and cooperate with the European Union Monitoring Mission.
- Reconsider the objections to OSCE activities in Georgia and facilitate OSCE monitoring in South Ossetia and undisputed parts of Georgia.
- Fully implement the guarantees urged by the Council of Europe commissioner for human rights.
- Cooperate fully with the European Court of Human Rights concerning potential applications brought against Russia regarding violations committed during the August 2008 war.

#### *Banning cluster munitions*

- Sign and ratify the Convention on Cluster Munitions.
  - In the interim period prior to ratification of the Convention on Cluster Munitions, take measures to protect civilian lives, including by prohibiting the use of cluster munitions in populated areas, placing a ban or moratorium on production and trade of cluster munitions, and starting to destroy stockpiles.
- Make every effort to assist demining organizations with clearance and risk education in contaminated areas currently under effective Russian control, including by providing unfettered access and providing strike data, to prevent injuries and casualties among the civilian population.

#### **To the de facto South Ossetian Authorities**

- Publicly acknowledge, and respect and implement, the right of all people displaced by the conflict, including all ethnic Georgians, to the safe and dignified return to their homes in South Ossetia, and facilitate their return.
  - Ensure equal access to financial and material assistance to all residents, irrespective of ethnicity.



- Ensure the security of all persons, regardless of ethnicity, living in South Ossetia. Specifically, put an end to South Ossetian militia attacks and looting against ethnic Georgians in Akhalkalaki district.
- Cooperate with Russia and Georgia to ensure that all those responsible for violations are brought to justice.
- Cooperate fully with the international inquiry commissioned by the European Union, including by providing full, unimpeded access to South Ossetia and access to all relevant persons and information for all of the inquiry's experts and staff.
- Provide full access to South Ossetia and cooperate with all monitoring missions, including the mission led by the European Union, currently operating in undisputed territories of Georgia.
- Fully implement the guarantees urged by the Council of Europe commissioner for human rights.

### **To the International Inquiry Commissioned by the European Union**

- Make every effort to gain access to all regions affected by the conflict. Publicize, where necessary, parties' refusal to cooperate with the commission
- Ensure that witnesses and victims and any other individuals who provide information to the inquiry are protected from reprisals.
- Ensure that the inquiry's final report includes detailed recommendations to all parties to the conflict aimed at preventing further human rights violations and ensuring justice and reparation for victims.
- Actively seek the input and expertise of local and international nongovernmental organizations, as well as local lawyers and other experts, throughout the course of the inquiry's work.

### **To the Council of Europe**

- The Parliamentary Assembly of the Council of Europe (PACE) should monitor closely Russia's and Georgia's obligations under the European Convention on Human Rights, paying particular attention to the human rights violations committed during the August 2008 war and its aftermath, as well as Russia's and Georgia's compliance with the recommendations set forth in PACE resolution 1633.<sup>594</sup>

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<sup>594</sup> Parliamentary Assembly of the Council of Europe, "The Consequences of the War between Georgia and Russia," Resolution 1633 (2008), <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/tao8/ERES1633.htm> (accessed December 23, 2008).

- In accordance with PACE resolution 1633, the PACE Bureau should ensure that the Assembly remains seized of the human rights implications of the August 2008 war through its competent committees, including the Monitoring, Legal Affairs and Human Rights, Political Affairs, and Migration and Refugees committees, and step up its monitoring procedure with respect to both Russia and Georgia.
- In accordance with PACE resolution 1633, the secretary general of the Council of Europe should consider the establishment, possibly in consultation with the commissioner for human rights, of a special human rights field mission of the Council of Europe with unhindered access to all areas affected by the war.
- The Council of Europe commissioner for human rights should continue to conduct regular missions to Georgia, including to South Ossetia, to assess all parties' compliance with the September 2008 recommendations set forth in the commissioner's principles for urgent protection of human rights after the Georgia-Russia armed conflict. These principles call on all parties to guarantee: the right to return of those who fled or were displaced; adequate housing and other support for those displaced; protection for civilians from physical attacks and looting; and cooperation with and support for international agencies working in the conflict zone.

## **To the European Union**

- Continue to provide full political and material support to the international commission of inquiry, including by calling on all parties to the conflict to cooperate fully with the inquiry and providing the inquiry with adequate resources to conduct a thorough and comprehensive investigation.
- Prevail upon the Russian and Georgian governments and South Ossetian de facto administration to implement the recommendations outlined above. Condition deepening of relations with Russia and Georgia on their fulfillment of their obligations under international humanitarian and human rights law.
- In the context of the Geneva talks hosted jointly by the European Union, OSCE, and United Nations, prioritize the creation of security and monitoring mechanisms to facilitate return to South Ossetia of all persons displaced by the conflict and its aftermath.
- Make Georgia's cooperation with the international commission of inquiry examining the conflict in South Ossetia a precondition for providing financial and other assistance designated for Georgia.
- Make Georgia's progress on investigations into allegations of abuses committed during the conflict in South Ossetia as well as on substantive progress on other

- human rights concerns a precondition for providing financial and other assistance designated for Georgia.
- Ensure that states exercise jurisdiction, including, where necessary, universal jurisdiction, over suspects of crimes under international law, including war crimes committed during the conflict.
  - Support the Convention on Cluster Munitions: end the use, stockpiling and transfer of all cluster weapons, by private companies and individuals as well as states.

### **To the United States Government**

- Continue to provide full support to the international commission of inquiry, including by calling on all parties to the conflict to cooperate fully with the inquiry and providing the inquiry with adequate resources to conduct a thorough and comprehensive investigation.
- Make Georgia's cooperation with the international commission of inquiry examining the conflict in South Ossetia a precondition for receiving financial and other assistance designated for Georgia.
- Make Georgia's progress on investigations into allegations of abuses committed during the conflict in South Ossetia as well as on substantive progress on other human rights concerns a precondition for providing financial and other assistance designated for Georgia.

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The photos in the report were taken by Human Rights Watch researchers as well as Marcus Bleasdale.

Human Rights Watch expresses its sincere gratitude to the many individuals who shared their stories with us, and hope that it will lead to an increased understanding of the events and how civilians were affected.

## Appendix

Letters are available at [www.hrw.org](http://www.hrw.org)

Human Rights Watch letter of October 10, 2008 to President of Georgia Mikheil Saakashvili

Human Rights Watch letter of October 13, 2008 to Minister of Emergency Situations of the Russian Federation Sergey Shoygu

Human Rights Watch letter of October 13, 2008 to Prosecutor General of the Russian Federation Yuri Chaika

Human Rights Watch letter of October 13, 2008 to Russian Federation Minister of Defense Anatoly Serdyukov

Human Rights Watch letter of October 13, 2008 to President of the Russian Federation Dmitri Medvedev

Human Rights Watch letter of November 12, 2008 to Minister of Defense of Georgia David Kezerashvili

Human Rights Watch letter of November 12, 2008 to Minister of Justice of Georgia Zurab Adeishvili

Human Rights Watch letter of November 12, 2008 to Minister of Internal Affairs of Georgia Ivane Merabishvili

Response from the Georgian government of December 2, 2008

Response from A.S. Kypriyanov, Director of Legal Aid, Headquarters of International Legal Cooperation, Office of the Prosecutor General of the Russian Federation, December 12, 2008

## Up In Flames

### Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia

The armed conflict over South Ossetia lasted just one week in August 2008, but will have long-lasting consequences. The conflict and its aftermath have seen lives, livelihoods, homes, and communities devastated in South Ossetia and bordering districts of Georgia.

The armed conflict between Georgian, Russian, and South Ossetian forces, and the many subsequent weeks of rampant violence and insecurity in the affected districts, took a terrible toll on civilians. It killed hundreds, displaced tens of thousands, and caused extensive damage to civilian property.

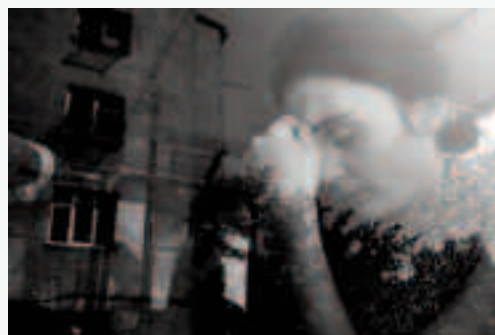
This report, based on more than 460 interviews with victims, witnesses, and others, examines the conflict within the framework of international humanitarian law, chiefly the Geneva Conventions, and documents violations by all parties to the conflict. The report details how both Georgian and Russian forces carried out indiscriminate and disproportionate attacks. It describes Russia's failure as an occupying power in Georgia to do what was possible to ensure public order and safety in areas under its effective control. And it documents South Ossetian forces' campaign of deliberate and systematic destruction of certain ethnic Georgian villages in South Ossetia.

Today, there is an acute need for accountability for all perpetrators of violations, and for security conditions to allow all displaced persons to return in safety and dignity to their homes. Human Rights Watch calls on the Georgian and Russian governments to pursue accountability and create conditions for the voluntary return of all displaced persons.

*Top: After hiding in a basement for nearly a week in her home village, a displaced Georgian arrives in Gori. August 18, 2008.*

*Bottom: Residents of Tskhinvali pass destroyed homes in the city center. August 21, 2008.*

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# CIVILIANS IN THE LINE OF FIRE

THE GEORGIA-RUSSIA CONFLICT

**AMNESTY**  
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*Cover photo:* A house in a South Ossetian village destroyed by Georgian bombardment, 30 August 2008.

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MAP OF GEORGIA



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# 1. INTRODUCTION

*The injured were taken to the basement; they arrived not one by one, but in groups of five or 15, fighters and civilians. The most serious cases we started to operate right in the corridor. Blood loss was the most serious problem. During the shelling, there had been no possibility to bring the injured here, they had been sitting somewhere for many hours, bleeding. Many people died because of this. We had space for two operating tables here in the corridor; the others were taken down to the basement. We had people dying, who had very complicated injuries, in one case the abdomen wall of the injured was torn, and he died from this injury. I remember the woman who came with her dead daughter. She had been looking for shelter but was hit by a shell. The daughter was supposed to get married this month.*

-Amnesty International interview with a doctor, Tskhinvali, 29 August 2008

*We were bombed. We came out of the house where we had been hiding in the cellar with relatives, got into the car and headed down the road that leads into the forest. We wanted to get to Tbilisi. That's when we were bombed. As we approached Eredvi village a bomb fell on the car in front of us. The four people inside were killed. From the car we could also see that the houses in the village had been bombed too.*

-Georgian villager, speaking to Amnesty International in Tbilisi, 20 August 2008.

From the onset of the five-day war between Georgia and Russia in the self-proclaimed republic of South Ossetia in August 2008 the conflicting parties failed to take necessary measures to protect civilians from the hostilities. Villages and residential areas in towns were bombed and shelled, and some civilians reported being bombed while fleeing their villages. The overall number of civilian deaths outnumbered that of combatants, and in communities across the conflict divide homes, hospitals, schools and other mainstays of civilian life were damaged or destroyed. Extensive pillaging and arson by militia groups loyal to South Ossetia wrought large-scale destruction to several Georgian-majority settlements on territory controlled by Russian armed forces at the time. The conflict displaced nearly 200,000 people at its peak, and leaves a legacy of long-term displacement for tens of thousands unable to return to home in the foreseeable future.

Information collected by Amnesty International in visits to the region in August 2008, together with that from other sources, raises concerns that serious violations of both international human rights law and international humanitarian law were committed by all parties, both during the course of the conflict and in its aftermath. This report highlights these concerns.

International humanitarian law comprises legal obligations binding upon all parties to an armed conflict, be they states or armed groups. These obligations, which apply only in situations of armed conflict, serve to protect primarily those who are not participating in hostilities, especially civilians, but also combatants, including those who are wounded or

captured. International human rights law applies both in armed conflict and peace time. This report presents the findings of Amnesty International's enquiries into alleged violations of international humanitarian law and human rights abuses by Georgian, Russian and South Ossetian armed forces.

In public statements published during the conflict and its aftermath Amnesty International sought to remind the conflicting parties of their obligations under international human rights and humanitarian law, to take precautions to protect civilians. Following the cessation of hostilities Amnesty International delegates visited the conflict zone in and around South Ossetia. This report is based on the research findings of four visits to the field by Amnesty International representatives. These visits took place in South Ossetia (24-28, 29-30 August), North Ossetia in the Russian Federation (21-28 August), the capital of Georgia, Tbilisi, and surrounding areas (15-23 August) and the Georgian town of Gori, near to the conflict zone (29-30 August). Amnesty International was granted access to most areas, although the organization was not given access by the Russian military to the so-called "buffer zone" to the north of Gori on two consecutive days in late August. In the course of their research Amnesty International representatives met with those wounded and/or displaced during the conflict, representatives of international humanitarian organizations, government officials in Tbilisi, Tskhinvali and Vladikavkaz, non-governmental organizations, journalists and health workers. They also collected extensive photographic documentation of the damage caused by the conflict on the ground. The report also makes use of photographs collected by Amnesty International, news reports, official statements and communiqués, updates and reports issued by humanitarian and human rights organizations, as well as satellite imagery analysed by the American Association for the Advancement of Science for Amnesty International.

The conflict was characterized from the outset by misinformation, exaggeration in reports of the scale of fighting and numbers of casualties and sometimes wildly conflicting accounts of the same events. All parties to the conflict have sought to justify the use of force and the way in which they have conducted hostilities. While the exact circumstances surrounding the onset of hostilities on 7 August remain the subject of dispute, all sides have declared their actions to be "defensive" even when civilians on the other side have borne the brunt of their military operations. Wherever possible Amnesty International sought independent confirmation of reports and allegations made in order to minimize the margin of doubt. Nevertheless, numerous alleged facts and figures have been extremely difficult to independently verify. This report further reflects responses received from the Georgian authorities on 7 October and from the Russian authorities on 10 October to letters detailing Amnesty International's concerns.

Amnesty International takes no position on the broad political issues underlying the hostilities between Georgia and South Ossetia, or Georgia and Russia. The use of terms such as "South Ossetia" and "Georgia proper" in this report does not imply support for any political position in the conflict, but is aimed at clarity of language. However, from the outset of the conflict Amnesty International has urged all sides to respect international humanitarian law, the rules of which apply to both attackers and defenders, the armed forces of recognized states and organized armed groups without official state affiliation.

For this report Amnesty International has investigated the conduct of all sides in the light of their obligations under the rules of international human rights and humanitarian law. In the light of its findings Amnesty International is calling upon the conflict parties, and the international community, to ensure justice and reparation for the victims of violations of international law, accountability for those responsible for violations of these rules and the prevention of similar violations in the future.

## THE GEORGIA–SOUTH OSSETIA CONFLICT

The status of South Ossetia is one of two such issues over sovereignty that accompanied Georgia's exit from the Soviet Union in 1991, the other being located in Abkhazia on the Black Sea coast. The former autonomous region of South Ossetia, established by the Soviet authorities in 1923 and abolished in 1990 by sovereign Georgia's first president, Zviad Gamsakhurdia, is known in Georgia as Tskhinvali district (or more informally by its historical Georgian name Samachablo). A two-year conflict between 1990 and 1992 ended with the *de facto* secession of South Ossetia<sup>1</sup>; in 1992 conflict ensued in Abkhazia, also resulting in its *de facto* secession after Georgian military defeat in 1993. While South Ossetia and Abkhazia proclaimed their independence from Georgia, no other state recognized them as independent until the present conflict. South Ossetia saw a fleeting yet nonetheless serious resumption of violence in August 2004.

In 2003 the government of Georgia was ousted in the "Rose Revolution" following widely discredited elections and opposition figure Mikheil Saakashvili won subsequent presidential elections in 2004. President Saakashvili made the restoration of Georgia's territorial integrity a priority of his administration, which was renewed with a very narrow majority in presidential elections called early as a result of mass protests in the Georgian capital Tbilisi in November 2007.<sup>2</sup>

The *de facto* authority in the capital of the region, Tskhinvali, refers to itself as the Republic of South Ossetia, which was not recognized by any state until Russia's 26 August recognition. Nicaragua is the only other state to have recognized the independence of South Ossetia and Abkhazia.<sup>3</sup> In this report the term "South Ossetia" is used to denote the territory of the former South Ossetian autonomous region. Tskhinvali is known as Tskhinval to Ossetians.

Since 1992 the authorities of South Ossetia retained *de facto* independence from Georgia, although they did not control South Ossetia in its entirety — sizeable but territorially non-contiguous parts of territory within the former South Ossetian autonomous region, populated mainly by Georgians, remained under Georgian control. According to a Georgian government source, there were 21 villages under *de facto* pro-Georgian administrative control until the August conflict.<sup>4</sup> Up to the August 2008 conflict South Ossetia therefore represented a patchwork of territories under *de facto* Georgian and South Ossetian control.

Russia has extended various forms of support to the *de facto* administrations in Abkhazia and South Ossetia since the early 1990s, and has issued passports to substantial shares of the population in each territory. Without these passports inhabitants of Abkhazia and South Ossetia would have no other document (other than the politically charged acceptance of Georgian passports) allowing for international travel. This process of "passportization" provides the basis for the Russian claim that military action against Georgia was necessary in

order to protect “Russian citizens”.

Since 2001 the *de facto* administration of South Ossetia, located in the capital Tskhinvali has been headed by President Eduard Kokoity. Since 2006 a rival, Tbilisi-backed *de facto* administration emerged in South Ossetia, headed by Dmitri Sanakoev. An ethnic Ossetian previously associated with the secessionist administration, Dmitri Sanakoev subsequently became an advocate of resolving the conflict within the framework of Georgian territorial integrity.<sup>5</sup> His administration was based in Kurta, a Georgian-majority settlement under *de facto* pro-Georgian administrative control.

## BACKGROUND TO THE RECENT HOSTILITIES

From April 2008 tensions around South Ossetia increased, against a longer-term backdrop of deteriorating Georgian-Russian relations. Although tensions appeared to be more serious in Abkhazia, Georgia's other disputed territory, in July there were reports of armed clashes, the kidnapping of Georgian military personnel by South Ossetian forces, sporadic shelling and firing on Tskhinvali and Georgian villages in the region, the alleged violation of Georgian airspace by Russian military aircraft and shooting incidents in South Ossetia through July.<sup>6</sup> Dmitry Sanakoev also survived an assassination attempt on 3 July. These developments took place against a background of the collapse of the formal negotiations process for resolving the conflict. A Russian proposal for the first meeting in two years of the Joint Control Commission (JCC), the multilateral body tasked with monitoring the conflict zone<sup>7</sup>, was rejected by Georgia, and a proposal for bilateral Georgian-Ossetian talks was rejected by the *de facto* authority in South Ossetia. Both Ossetians and Georgians who had been displaced from South Ossetia by the conflict and who were interviewed in displacement by Amnesty International told of the general deterioration in the security situation in the months preceding the conflict and of sporadic skirmishes between Georgian- and Ossetian-populated villages over this period.

Tensions flared in the first week of August preceding the outbreak of hostilities. On 31 July reports indicate that South Ossetian forces attacked and blew up a Georgian military vehicle carrying Georgian peacekeepers.<sup>8</sup> Following skirmishes on 1 August, the *de facto* South Ossetian authorities admitted six dead and 15 wounded, many hit by sniper fire, whilst the Georgians admitted nine wounded.<sup>9</sup> Both sides accused the other of using mortar fire.<sup>10</sup> The *de facto* authorities began to evacuate parts of the population to North Ossetia, a republic within the Russian Federation with close ties to South Ossetia; some Georgians also left the area for locations elsewhere in Georgia.<sup>11</sup> Civilians from South Ossetia interviewed by Amnesty International reported sleeping in their cellars during the first week of August in anticipation of resumed hostilities.





Bella Kharibova, with daughter, a South Ossetian refugee in Vladikavkaz, Russian Federation, 25 August 2008. Her husband Valerii Dzhioev was killed in an explosion near the Georgian-South Ossetian border on 25 July 2008.  
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## THE WAR AND ITS AFTERMATH

The five-day war began on the night of 7-8 August 2008. Russian-brokered Georgian-Ossetian talks collapsed on 7 August; a Russian attempt to convene a UN Security Council emergency meeting on the situation failed to secure agreement on a text proposed by Russia calling on both sides to renounce the use of force. At 7pm Georgian President Mikheil Saakashvili declared a ceasefire during a televised speech. Some four hours later at 11.30pm Georgian forces launched an offensive on the capital of South Ossetia, Tskhinvali.

Statements by Georgian officials initially indicated that the assault on Tskhinvali was a response to sustained attacks on the Georgian villages of Prisi and Tamarasheni by Ossetian forces; a statement by Mamuka Kurashvili, commander of Georgian peacekeepers in the region, said that Georgia had “decided to restore constitutional order in the entire region” of South Ossetia.<sup>12</sup> On 13 August President Saakashvili, however, said that “[w]e clearly responded to the Russians...The point here is that around 11 o'clock, Russian tanks started to move into Georgia, 150 at first. And that was a clear-cut invasion. That was the moment when we started to open fire with artillery.”<sup>13</sup> Russian officials dispute the claim and maintain that the movement of Russian armed forces into Georgia was initiated in response to the Georgian assault on Tskhinvali.

Although Georgian forces initially took control of parts of Tskhinvali and several surrounding villages, they were rapidly repelled by Russian forces, which had entered South Ossetia from North Ossetia via the Roki tunnel (through the Caucasus mountain range between the

Russian Federation and Georgia). As Russian troops were taking control of South Ossetia, hostilities further extended to a number of other locations in Georgia outside of South Ossetia, including the nearby town of Gori, the Black Sea port of Poti, the western Georgian towns of Zugdidi and Senaki, and the Kodori gorge, the only part of Abkhazia under Georgian control. Russian troops, backed by air forces, quickly assumed control of these locations, some of which were far removed from the immediate conflict zone in South Ossetia.

On 12 August Russian President Dmitri Medvedev agreed to a truce brokered by President Nicolas Sarkozy of France, the holder of the rotating chair of the European Union, and announced the end of Russian operations in Georgia; Russian forces nonetheless continued to be deployed in areas outside of South Ossetia and Abkhazia.<sup>14</sup> A six-point peace plan based on the ceasefire agreement brokered by President Sarkozy was signed by President Saakashvili on 15 August and President Medvedev on 16 August.

Against a backdrop of differing interpretations of the six-point peace plan and disputes between Russia and Georgia over the meaning of some of its terms, Russian troops remained in place in early September, demarcating strips of territory known as “security” or “buffer zones” on undisputed Georgian territory beyond South Ossetia. On 8 September Russia conditionally agreed to withdraw all of its forces still deployed outside of the boundaries of South Ossetia and Abkhazia by 10 October, upon the deployment of 200 monitors from the European Union.

While a certain degree of confusion and conflicting information is practically inevitable during a period of intense fighting, it appears that there was deliberate misinformation and exaggerated reports during the course of the conflict, and particularly in its early stages. The problem of obtaining reliable information was exacerbated by the blocking of access by the parties to the conflict zone for independent monitors to verify claims of civilian casualties by the parties and reproduced in the international media.

Following the Georgian assault on Tskhinvali on the night of 7 August Russian media sources, some of them citing Russia’s ambassador to Georgia, were reporting that 2,000 civilians had been killed during the attack<sup>15</sup>; the *de facto* authorities in Tskhinvali reported 1,492 deaths on 20 August.<sup>16</sup> Russian sources on 21 August dramatically reduced the number of casualties to 133 civilians and 64 combatants killed.<sup>17</sup> In an interview on 12 October, the head of the Investigative Committee of the Russian Office of the General Prosecutor stated that 159 civilian deaths had been registered to date.<sup>18</sup> As of 12 September there were 220 wounded in Tskhinvali hospital and 255 wounded in Vladikavkaz, the capital of North Ossetia in the Russian Federation.<sup>19</sup>

With regard to casualties on the Georgian side, according to information supplied to Amnesty International by the Georgian Ministry of Foreign Affairs, as of 7 October there were a reported total of 405 deaths (220 civilians and 169 military servicemen, of whom 41 were still unidentified, and 16 policemen) as a result of the hostilities.<sup>20</sup> There was, in addition, as reported in mid-September, a total of 2,234 wounded, of whom 1,964 were combatants, 170 civilians and 100 unidentified.<sup>21</sup> Overall, the total number of deaths appeared to be in the hundreds rather than thousands as originally reported.

The withdrawal of Russian forces from the so-called “buffer zones” began with the dismantling in early October of some of the checkpoints established on Georgian territory near South Ossetia. On 3 October a car bomb in Tskhinvali killed seven Russian soldiers and injured several others. No one claimed responsibility for the attack. The Russian withdrawal from the “buffer zones” was completed by 10 October, although Russia continues to maintain a significant military presence in both South Ossetia and Abkhazia.

## 2. INTERNATIONAL LAW APPLICABLE TO THE CONFLICT AND ITS AFTERMATH

Several bodies of international law apply to the conflict between Georgia and Russia. International human rights law applies both in peacetime and during armed conflict and is legally binding on states, their armed forces and other agents. International humanitarian law, also known as the laws of war, binds all parties to an armed conflict, including non-state armed groups. Customary international law, consisting of rules of law derived from the consistent conduct of states, applies to all parties to an armed conflict. Under international criminal law, individuals incur criminal responsibility for certain violations of IHRL, such as torture and enforced disappearance, and for crimes against humanity and genocide, as well as for serious violations of international humanitarian law, such as war crimes. International law also provides a framework to address the issue of the right to remedy and reparations for victims.

In some instances Amnesty International has clearly identified violations of international human rights law and international humanitarian law by the parties to the conflict, and calls for the conduct of hostilities by all parties to be the subject of an international enquiry as laid out in the recommendations at the end of this report.

### INTERNATIONAL HUMANITARIAN LAW

International humanitarian law applies only in situations of armed conflict. Its central purpose is to limit, to the extent feasible, human suffering in times of armed conflict. It sets out standards of humane conduct and limits the means and methods of conducting military operations. It contains rules and principles that seek to protect primarily those who are not participating in hostilities, notably civilians, as well as combatants, including those who are wounded or captured.

The four Geneva Conventions of 1949 and their two Additional Protocols of 1977 are among the principal instruments of international humanitarian law. Georgia and Russia are both parties to and thus bound to implement these treaties. Article 3, common to the four Geneva Conventions and Protocol II, applies to non-international conflict, but does not contain detailed rules on the conduct of hostilities. The rules governing the conduct of hostilities are included in Protocol I, which governs the conduct of international armed conflict. The rules on the conduct of hostilities are considered part of customary international law and are thus binding on all parties to a conflict. An International Committee of the Red Cross (ICRC) study on customary law concluded that most of these rules are binding in non-international armed

conflict, as well as international armed conflict.<sup>22</sup> Grave breaches of many of these rules may amount to war crimes. The generally accepted definitions of these crimes in both international and non-international armed conflict are contained in the Rome Statute of the International Criminal Court (ICC).

International humanitarian law defines combatants so as to include all members of a government's armed forces (and their proxies, such as paramilitaries). Organized non-state armed groups fighting in a non-international armed conflict, while not classified as combatants, are civilians who are actively participating in hostilities. As such they lose their civilian immunity from attack for the duration of their participation in hostilities. Members of the armed forces who are captured by the adversary military in an international armed conflict are entitled to the status of prisoners of war (POWs). In non-international conflict, there is no POW status, for captured members of the security forces or of non-state armed groups, but such prisoners must be treated humanely at all times, as outlined in Common Article 3 of and Protocol II to the Geneva Conventions. Civilians are defined in international humanitarian law as those persons who are not combatants.

The responsibilities of an occupying power are laid out in the Regulations concerning the Laws and Customs of War on Land (the Hague Regulations) and the Fourth Geneva Convention. Article 42 of the Hague Regulations defines occupation: "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised." In such situations, the occupying power "shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." (Hague Regulations, Article 43).

The Fourth Geneva Convention prescribes rules for an occupying power in relation to the inhabitants, who are described as "protected persons". Among other things, the rules prohibit the occupying power from wilfully killing, ill-treating or deporting protected persons. The occupying power is responsible for the welfare of the population under its control. This means it must ensure that law and order is maintained and basic necessities are provided for.

## PROHIBITION ON DIRECT ATTACKS ON CIVILIANS AND CIVILIAN OBJECTS – THE PRINCIPLE OF DISTINCTION

Article 48 of Protocol I sets out the "basic rule" regarding the protection of civilians – the principle of distinction. This is a cornerstone of international humanitarian law:

*"In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives."*



A house in Tskhinvali , South Ossetia, destroyed by a GRAD missile.  
©Amnesty International

According to the Rome Statute, intentionally directing attacks against the civilian population or against individual civilians not taking direct part in hostilities is a war crime.<sup>23</sup> Under Article 51(3) of Protocol I, civilians remain protected “unless and for such time as they take a direct part in hostilities”. Article 52(1) of Protocol I stipulates that:

*“Civilian objects are all objects which are not military objectives.”*

Article 52(2) defines military objectives as:

*“those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”*

Objects that do not meet these criteria are civilian objects. In cases where it is unclear whether a target is used for military purposes, “it shall be presumed not to be so used” (Article 52(3)).<sup>24</sup> Intentionally directing attacks against civilian objects, and the wanton, unlawful and extensive destruction of property not justified by military necessity are war crimes.

Military advantage may not be interpreted so broadly as to render the rule ineffective. To justify under this provision attacks to harm the economic well-being of the adversary or to demoralize civilians perceived to support one’s adversary in order to weaken the ability to fight distorts the legal meaning of military advantage, undermines fundamental IHL principles, and poses a severe threat to civilians.

The destruction or seizure of property of an adversary is prohibited by international humanitarian law, unless required by imperative military necessity. Wanton, extensive and unlawful destruction of property not justified by military necessity is a war crime (Article 8 (2) (b) (xiii)).

## PROHIBITION ON INDISCRIMINATE OR DISPROPORTIONATE ATTACKS

Article 51(4) of Protocol I prohibits indiscriminate attacks, which are those:

*“of a nature to strike military objectives and civilians or civilian objects without distinction.”*

A disproportionate attack, a type of indiscriminate attack, is one that:

*“may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated” (Article 51(5)).*

Intentionally launching a disproportionate attack<sup>25</sup> is a war crime, as is launching an indiscriminate attack resulting in loss of life or injury to civilians or damage to civilian objects.<sup>26</sup> The extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly, is also a war crime.<sup>27</sup>



A woman stands in front of the ruins of her former home on Thaelman Street in Tskhinvali, South Ossetia, 24 August 2008.

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## PRECAUTIONS IN ATTACK

Article 57 requires all parties to exercise constant care “to spare the civilian population, civilians and civilian objects.” Article 57(2) stipulates that those who plan or decide upon an attack shall:

*(i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of Article 52 and that it is not prohibited by the provisions of this Protocol to attack them;*

*(ii) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects;*

*(iii) refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;*

*(b) an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;*

*(c) effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit."*



Bombed café in the centre of Tskhinvali, South Ossetia, August 2008.

© Amnesty International

## PRECAUTIONS IN DEFENCE

Warring parties also have obligations to take all feasible precautions to protect civilians and



civilian objects under their control against the effects of attacks by the adversary. Protocol I requires each party to avoid locating military objectives within or near densely populated areas (Article 58(b)). Article 50(3) states that “The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.”

As indicated by the ICRC in its authoritative commentary:

*“In wartime conditions it is inevitable that individuals belonging to the category of combatants become intermingled with the civilian population, for example, soldiers on leave visiting their families. However, provided that these are not regular units with fairly large numbers, this does not in any way change the civilian character of a population.”*



Russian military vehicle in Tskhinvali, South Ossetia, 26 August 2008. © Amnesty International

## WEAPONS

International humanitarian law prohibits the use of weapons that are by nature indiscriminate and weapons that are of a nature to cause superfluous injury or unnecessary suffering. The ICRC Commentary to the Protocols mentions “long-range missiles which cannot be aimed exactly at the objective” as an example of indiscriminate weapons.

Other weapons used in attacks during the conflict which may have been indiscriminate included cluster weapons. Cluster bombs or shells scatter scores of bomblets, or submunitions, over a wide area, typically the size of one or two football fields. These can be

dropped by aircraft, or fired by artillery or rocket launchers. Depending on which type of submunition is used, between 5 and 20 per cent of cluster bomblets fail to explode. They are then left behind as explosive remnants of war, posing a threat to civilians similar to anti-personnel landmines. The use of these bombs in areas where there is a concentration of civilians violates the prohibition of indiscriminate attack, because of the wide area covered by the numerous bomblets released and the danger posed to all those, including civilians, who come into contact with the unexploded bomblets.

A new treaty banning cluster weapons was agreed in Dublin in May 2008, but has not yet come into force. According to Article 1(1) of the Convention on Cluster Weapons: "Each State Party undertakes never under any circumstances to: (a) Use cluster munitions; (b) Develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, cluster munitions; (c) Assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention."

However, Russia is already a party to the Convention on Certain Conventional Weapons as well as its Protocol V on Explosive Remnants of War, which entered into force in 2006. States party to the Protocol, and which control an area with explosive remnants of war are responsible for clearing such munitions. The Protocol covers munitions, such as artillery shells, grenades, and cluster sub-munitions, that fail to explode as intended, and any unused explosives left behind and uncontrolled by armed forces.

## FORCED DISPLACEMENT

Warring parties are prohibited from forcibly displacing civilians except for the civilians own safety or when absolutely necessary for imperative military reasons. Parties to a conflict must prevent displacement of civilians caused by their own actions, when those actions are prohibited in themselves. Article 7 of the Statute of Rome characterizes forced displacement as a crime against humanity.

Forced displacement can occur when civilians are forced to flee because parties to a conflict are terrorizing the civilian population or committing other violations, as well as when they are physically expelled. The Guiding Principles on Internal Displacement,<sup>28</sup> which have been recognized by the General Assembly as an important international framework for the protection of internally displaced persons, address this situation.<sup>29</sup> According to Principle 5: "All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons."

Additionally, Principles 28 and 29 set out four basic rules regarding the return of internally displaced persons to their places of origin.<sup>30</sup> First, states must make available three solutions for internally displaced persons: return to their former homes; local integration; and resettlement in another part of the country. Second, internally displaced persons, as citizens of the country, have freedom of movement and the right to choose their place of residence, like anybody else. They must have the ability to freely choose between these options and competent authorities are responsible for creating the conditions that allow displaced persons to rebuild their lives in any one of these locations, and ensure that displaced persons participate fully in the planning and management of their return, resettlement and reintegration. Third, decisions to return must be voluntary, that is free of coercion and based

on an informed choice, and return must occur in conditions of safety and dignity, which would allow returnees to live without threats to their security and under economic, social and political conditions compatible with the requirements of human dignity. Finally, internally displaced persons and returnees are entitled to be protected from discrimination and to recover their property, and/or receive compensation in cases of damages or loss.

## INTERNATIONAL HUMAN RIGHTS LAW

Georgia and Russia are both parties to a number of universal human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination. Georgia and Russia are also party to a number of regional human rights instruments, including the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR). Both states are legally bound by their obligations under these universal and regional treaties, as well as by relevant customary international law to take measures to respect and protect a range of human rights.

As affirmed by the International Court of Justice and the UN Human Rights Committee, human rights law applies in times of armed conflict as well as peace. The UN Human Rights Committee has also affirmed this principle and added that with respect to rights under the ICCPR:

*“While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specifically relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.”<sup>31</sup>*

As the UN Human Rights Committee also made clear the human rights obligations of states in respect of the ICCPR apply extraterritorially with respect to any person within the power or effective control of that state party,<sup>32</sup> while the ICESCR provides for no explicit limitations with respect to territorial jurisdiction.

Among the human rights concerns highlighted in this report are concerns about violations of the right to life (Article 6 of the ICCPR and Article 2 of the ECHR), the prohibition against torture and other ill-treatment (Article 7 of the ICCPR and Article 3 of the ECHR), the prohibition against arbitrary detention and enforced disappearance (Article 9 of the ICCPR and Article 5 of the ECHR), the right to adequate food and housing (Article 11 of the ICESCR) and the right to education (Article 13 of the ICESCR). Actions that are aimed towards or are likely to result in the destruction or impairment of infrastructure necessary for the enjoyment of those rights, on the territory or with respect to persons or territory within the effect control of the state, including hospitals, and schools are violations for which the state can be held responsible. Furthermore, the destruction of hundreds of homes by Georgian or Russian forces and in the course of subsequent pillaging may constitute unlawful forced evictions breaching Article 11 of the ICESCR. The Committee on Economic, Social and Cultural Rights defines “forced evictions” as:

*“the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”<sup>33</sup>*

The Committee includes among such evictions those resulting from “international armed

conflicts, internal strife and communal or ethnic violence”.<sup>34</sup>

## INTERNATIONAL CRIMINAL LAW

Grave breaches of the Geneva Conventions and Protocol I and other serious violations of international humanitarian law are war crimes. The list of war crimes in Article 8 of the Rome Statute of the ICC basically reflected customary international law at the time of its adoption, although they are not complete and a number of important war crimes are not included. Article 86 of Protocol I requires that “[P]arties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches of the [1949 Geneva] Conventions or of this Protocol which result from a failure to act when under a duty to do so.”

Individuals, whether civilians or military, can be held criminally responsible for such violations. Commanders and other superiors can be held responsible for the acts of their subordinates. Article 86(2) of Protocol I, which imposes a single standard for military commanders and civilian superiors, reflects customary international law. It states:

*“The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.”*

Superior orders cannot be invoked as a defence for violations of international humanitarian law, but they may be taken into account in mitigation of punishment. This principle has been recognized since the Nuremberg trials after World War II and is now part of customary international law.

There are several possible mechanisms for investigating the truth about crimes and bringing to justice those responsible for violations of international humanitarian law, in proceedings which meet international standards of fairness and do not result in the death penalty. States must also ensure respect for the rights of victims and their families to seek and obtain full reparations:

- (a) By Georgia, Russia and South Ossetia: Each party to the conflict has an obligation to bring to justice any person suspected of being responsible for serious violations of internationally recognized human rights or international humanitarian law.
- (b) By other states: other states should exercise their obligations to conduct criminal investigations of anyone suspected of grave breaches of international humanitarian law and other crimes under international law during the conflict. If there is sufficient admissible evidence, states should prosecute the suspect or extradite him or her to another state willing and able to do so in fair proceedings which do not result in the imposition of the death penalty or surrender him or her to an international criminal court which has jurisdiction. In addition to being obliged to exercise universal jurisdiction for grave breaches of the Geneva Conventions and Protocol I, states are permitted to exercise universal jurisdiction for other serious violations of international humanitarian law. If there is sufficient admissible evidence states should also prosecute, extradite the suspects to another state willing and able to try them or surrender them to an international criminal court.

(c) By the ICC: Georgia ratified the Rome Statute on 5 September 2003. War crimes or crimes against humanity, committed on the territory of Georgia, regardless of nationality of the perpetrator, would fall within the jurisdiction of the International Criminal Court under Article 12 of the Rome Statute of the International Criminal Court. Russia signed the Rome Statute on 13 September 2000; while it has not yet ratified it, it is bound not to defeat its object and purpose by committing war crimes or crimes against humanity.

#### COMMAND RESPONSIBILITY

Commanders and other superiors (including civilians leaders) can be held responsible for the acts of their subordinates if they knew or had reason to know that their subordinates were committing or were about to commit a breach and they were in a position to prevent or suppress such breaches and failed to do so. In the words of Article 86(2) of Protocol I:

*"The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach."*

Article 87 specifies the duty of commanders "with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol." The principle of command responsibility is reflected also in the Rome Statute of the International Criminal Court (Rome Statute, Article 28).

The ICRC study of customary international humanitarian law has concluded that the principle of command responsibility is a norm of customary international law applicable in both international and non-international armed conflict (Rules 152 and 153.)

#### CRIMES AGAINST HUMANITY

In addition to war crimes and genocide, the ICC also has jurisdiction over crimes against humanity. According to the Rome Statute, certain acts, if directed against a civilian population as part of a widespread or systematic attack, and as part of a state or organizational policy, amount to crimes against humanity. Such acts include, inter alia, murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, rape and other sexual crimes, and enforced disappearance. Crimes against humanity can be committed in either times of peace or during an armed conflict.

#### REPARATIONS AND STATE RESPONSIBILITY

The rules governing the responsibility of states under general international law for "internationally wrongful acts" have been incorporated into the 2001 International Law Commission's Articles of Responsibility of States for Internationally Wrongful Acts. These Articles codify the law on state responsibility and were commended to governments by the UN General Assembly in 2002.<sup>35</sup> Article 31 states that:

*"[t]he responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act... Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State."*

Internationally wrongful acts include violations of a state's obligations under customary and conventional international law.

The right to reparation of individual victims is also well established in international human rights law as a key element of the right to a remedy contained in international and regional human rights treaties.<sup>36</sup> The Customary International Humanitarian Law<sup>37</sup> study by the ICRC concludes in Rule 150: "A state responsible for violations of international humanitarian law is required to make full reparations for the loss or injury caused." In addition, the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the UN General Assembly in 2005 (Resolution 60/147 of 16 December 2005), enshrines the duty of states to provide effective remedies, including reparation to victims. This instrument sets out the appropriate form of reparation, including, in principles 19-23, restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

## ARMED GROUPS AND REPARATIONS

Under the law of state responsibility, an armed group can only be required to provide reparations if it subsequently becomes the new government of a state, or succeeds in establishing a new state in part of the territory of a pre-existing state or a territory under its administration.

International human rights law focuses primarily on the obligations of states and therefore does not create obligations in respect to armed groups, except the obligation of the state to exercise due diligence to prevent, investigate or redress the harm caused by such actors. With regard to militia groups engaged in arson and pillaging attacks on civilians and their property documented in the conflict the South Ossetian authorities are responsible for the activities of armed groups that they controlled; as the occupying power with responsibility for law and order in areas under its control Russia is also responsible for their activities.

## 3. THE CONDUCT OF HOSTILITIES

The conflict proper, dating from the Georgian assault on Tskhinvali to the signing of the ceasefire agreement, lasted five days and took place, with the exception of isolated incidents in and around the neighbouring territory of Abkhazia, within a relatively thin strip of land no more than 30km wide and 60km long.

In the course of various missions in and around the conflict zone, Amnesty International delegates gathered information strongly suggesting that serious violations of international humanitarian law were committed by all parties. Amnesty International is particularly concerned by apparent indiscriminate attacks resulting in civilian deaths and injuries and considerable damage to civilian objects, such as schools, hospitals and houses, and a small number of other incidents suggesting that civilians may have been directly targeted.

This report provides information gathered by Amnesty International. The information is based on the direct observation by Amnesty International delegates of material destruction in Tskhinvali, Gori and some, but not all, of the surrounding Georgian and Ossetian villages, as well as interviews with civilians caught up in the conflict.

In all cases an attempt has been made to obtain as much information as possible regarding the circumstances surrounding the destruction observed or the events described by witnesses, including, in particular, the precise time, location and source of the attack, the nature of the weapons and munitions used and the possible presence nearby of combatants or other military objectives. However, serious difficulties remain in reconstructing events from material damage and eye-witness accounts seen and heard several days after they occurred. Material damage speaks only of the consequences of an attack and not of its cause, nearby movements nor the knowledge or intent of the attackers. Eye-witness accounts inevitably present a partial, and occasionally confused, view of all the circumstances relevant to assessing the lawfulness of a particular attack.

Further investigation and disclosure by all parties of information regarding the intended targets, means and methods of particular attacks affecting the civilian population is urgently required before any definitive conclusions can be reached regarding the nature and degree of responsibility of those engaged in, or directing, military operations. Information is also required about precautions in defence, that is, what measures were taken to protect civilians from the effects of hostilities.

## ATTACKS BY GEORGIAN FORCES

### GEORGIAN BOMBARDMENT AND MISSILE ATTACKS

The Georgian army entered South Ossetia at around 11.00pm on 7 August along three main axes. Part of the Georgian army headed directly for Tskhinvali along the main road from Gori. Georgian forces also sought to occupy the heights on either side of Tskhinvali, entering South Ossetia to the West of Tskhinvali via Muguti, Didmukha, and Khetagurovo and, to the east of Tskhinvali, through Dmenisi and Sarabukh. The entry of Georgian ground forces into these villages, and into Tskhinvali itself, was preceded by several hours of shelling and rocket attacks as well as limited aerial bombardment. Much of the destruction in Tskhinvali was caused by GRADLAR MLRS (GRAD) launched rockets, which are known to be difficult to direct with any great precision. Eyewitness reports, the nature of the munitions used and the evidence of scattered destruction in densely populated civilian areas strongly suggest that Georgian forces committed indiscriminate attacks in its assault on Tskhinvali on the night of 7 August, causing deaths and injuries among South Ossetian civilians and considerable damage to civilian objects.

“Ana”<sup>38</sup>, an Ossetian woman interviewed by Amnesty International in Vladikavkaz on 23 August, recounted her experiences:

*I was hiding in a cellar of an old two-storey building with other civilians, my neighbours. My house was only a few yards away from this building, but my cellar was weak and rather primitive to provide shelter from bombing. The shelling started on 7 August, late in the evening — bombing, tanks, airplanes. My family (I have two children aged 12 and 14) was asleep when it started, so we jumped out of our beds in our night clothes and dived into the cellar of that big building nearby. That night we spent in the cellar, without light, without water. The children were asking for water and as there were male civilians in the cellar, one of them, a man of about 50 by the name of Vassili Bazayev, volunteered himself to fetch some water. He brought a bottle of water and as he was stepping down into the cellar, he was killed... Next time they wanted water I thought I cannot send anybody to die and I decided to go myself. Another lady in the cellar said she had some bread and pies in her house and asked me to bring the food. As I went out of the cellar at about ten o'clock the following morning I saw my house [in Thaelmann Street] had burned down. Just the walls were left standing.*

Of the outlying Ossetian villages, Khetagurovo sustained particularly heavy damage resulting, according to the village's mayor, in the death of six civilians and injuries to many more. According to information supplied to Amnesty International by the Georgian authorities, the severe damage sustained by Khetagurovo was due to the location in and around the village of substantial amounts of military equipment and personnel.<sup>39</sup> Georgii Mamiev, a young man also from Khetagurovo, told Amnesty how his father died in the bombing of his village:

*They started firing at the village on 7 August. At first there was some firing at the end of the village and then they started firing at the centre. Nobody expected that they would be firing*



*at the village's centre. My father was worried about us and he came out. He came out just to see what was happening - two bombs fell near him and he was killed by the shrapnel. Then for two days we stayed here in order to bury him. The firing continued. On the 8th the Georgians came here with tanks. On the second night the fire was most severe with Grad missiles and artillery. Two shells fell on our house while we were on the first floor.*



The remains of a shell that hit a house in Thaelman Sreet, in Tskhinvali, South Ossetia. © Amnesty International

The Georgian authorities claim that other Ossetian-majority villages that came under Georgian control for two days from 8 August did not sustain heavy damage, nor were there reports of pillaging or arson. This appears to be corroborated by reports by both South Ossetian officials and civilians to Amnesty International to the effect that other Ossetian villages suffered only limited destruction. "Soslan", a resident of Khetagurovo told Amnesty International:

*Everything started during the night, then I saw Georgian troops in the village in the morning. They didn't enter the houses and didn't touch anything. I approached them and they asked me who else was in the house, then went in and came out again. They came back after half an hour, detained me then let me go because they must have received an order to leave... They didn't touch my parents. Maybe they were looking for my son, who's in the military.*

The shelling of Tskhinvali itself began at around 11.30pm and continued for several hours. According to information provided to Amnesty International by the Georgian authorities, Georgian artillery fire was directed against three types of target:

- points of origin of artillery attacks on Georgian peacekeepers and villages under Georgian control prior to the onset of full-scale hostilities;

- military targets pre-determined on the basis of intelligence information; and
- points of origin of artillery attacks once full-scale hostilities had begun.

The Georgian forces employed a variety of munitions in the assault on Tskhinvali and the surrounding villages, including 122mm howitzers, 203mm self-propelled artillery system DANA, tankfire and GRAD rockets. The Georgian authorities informed Amnesty International that GRAD rockets were employed in the assault on Khetagurovo, and to target three locations in Tskhinvali itself.

The first of these areas was Verkhny Gorodok, on the southern fringe of the town, where Russian peacekeepers were based, and from which the Georgian authorities allege artillery was being fired despite repeated warnings to the Russian peacekeepers not to allow their positions to be used for attacks. Ten Russian peacekeepers were reported by the Russian authorities to have been killed and a further 30 injured in the course of this attack and another on their second base in the north of Tskhinvali.

The Georgian authorities also acknowledged using GRAD rockets to target stockpiles of munitions and fuel depots in the western part of the town and military barracks in the northwest. Whilst these areas are all on the periphery of Tskhinvali they are all adjacent to built up civilian areas. Many missiles that missed their target consequently landed in civilian areas causing considerable damage to private houses and resulting in numerous civilian casualties. Amnesty International representatives observed extensive damage to civilian property in a radius of 100-150m from these points, particularly in the south and south west of the town, highlighting the inappropriateness of the use of GRAD missiles to target these locations.

Amnesty International representatives also observed damage caused by GRAD missiles during the night of 7 August in built up areas at least half a kilometre from these areas. Thaelmann Street, in the eastern part of the town was particularly severely hit, with a row of 10 houses stretching over 50m almost completely destroyed. Other streets to have been struck by an array of artillery fire, including GRAD missiles, include Lenin Street, Pobeda Street, Geroev Street, Kalinin Street and Komarov Street.

In Tskhinvali, Kazbek Djiloev showed Amnesty International representatives around his severely damaged house in a residential area in the southern part of the town. He showed Amnesty International the remains of four GRAD rockets, which he claimed had struck his house on the night of 7 August:

*We were listening to Saakashvili who was saying that he agrees to any negotiations. We felt comfortable ... I was drinking tea and suddenly I heard gunfire followed by tanks, artillery... we all went downstairs. Two hours later I heard explosions, the house shook, the roof exploded and these four GRAD missiles fell on our house. The sofa and other stuff caught fire. We heard an airplane and it aimed at us and started firing at us with a machine gun. My brother and I hid downstairs again. After a while another GRAD fell and half of the house was destroyed. I was in shock. The Georgians claim that they fired at positions of Russian soldiers. This is a lie. There was no soldier here. They were firing at peaceful citizens. There was nothing military here. I was here with my brother and mother ... Now I don't have a*

*house. The weather is fine right now and I can sleep in the garden, but I don't know what to do when the rain comes. Nobody is helping me. I'll never be able to restore the house because I don't have the money...*

An analysis of satellite imagery of Tskhinvali on 10 August obtained by the American Association for the Advancement of Science for Amnesty International identified a total of 182 damaged structures, liberally scattered across the town.<sup>40</sup> Whilst some of the destruction in Tskhinvali resulted from Georgian artillery and tank-fire in the course of street-fighting on 8 and 9 August and also Russian artillery fire as Russian forces moved into the town, eyewitness accounts related to Amnesty International suggest that the bulk of the destruction occurred during the initial shelling of Tskhinvali by Georgian forces on night of 7 August.

Whilst Ossetian forces may have violated Article 58(b) of Protocol I to the Geneva Conventions requiring parties to avoid locating military objectives within or near densely populated areas by firing at Georgian forces from locations close to civilian areas prior to their entry into Tskhinvali itself, Amnesty International is concerned that the Georgian forces may have selected targets in areas with large numbers of civilians on the basis of outdated and imprecise intelligence and failed to take necessary measures to verify that their information was accurate before launching their attacks. At the time of the initial shelling of Tskhinvali, Georgian forces were positioned several kilometres from Tskhinvali, at a distance from which it would have been difficult to establish the precise location of the Ossetian positions firing on them. Nor, as Ossetian forces were lightly armed and mobile, could there have been any guarantee that positions from which munitions had been fired in preceding days were still occupied on the night of 7 August. Amnesty International is also concerned that rules on other precautions, such as giving warning to civilians where feasible and choosing means and methods that are least likely to cause harm to civilians, were not properly followed.

The Georgian authorities informed Amnesty International that they estimated the population of Tskhinvali prior to the conflict at around 7,000 people and that this number decreased substantially in the first few days of August as many South Ossetians left the region as the security situation deteriorated. The town appeared virtually deserted to Georgian officials who travelled to Tskhinvali on the 7 August for the aborted ceasefire discussions. According to the Major of Tskhinvali, however, 15,000 people out of the town's pre-conflict population of 30,000 were in Tskhinvali on the night of the Georgian assault<sup>41</sup>. A member of the South Ossetian Parliament spoken to by Amnesty International, estimated the number of civilians in Tskhinvali on the night of 7 August at between three and four thousand, most of whom, however, had long ceased to venture out of their homes and spent the night of the bombardment hiding in their cellars. Even if the population of Tskhinvali was, indeed, much reduced on night of 7 August, there were still several thousand of civilians in their homes across the town.

A precise estimate of the number of civilian casualties resulting from the Georgian shelling of areas in and around Tskhinvali is difficult to provide. Accounts provided by witnesses in the areas that were struck suggest that the number of deaths in the each of the streets affected ranged from two or three to around 10 in the worst hit areas. The 133 civilian deaths reported by the Russian Prosecutor's Office covers the entirety of the conflict and may well include a number of private individuals who engaged in military activity. However, doctors at

the Tskhinvali hospital indicated that the majority of casualties they treated were brought to the hospital during the early hours of 8 August. Casualties could have been significantly higher were it not for the fact that many of the houses hit were built out of reinforced concrete, allowing residents hiding in cellars to emerge relatively unscathed. Indeed, many of the casualties would appear to have resulted from bombs falling on brick houses and from individuals being caught outside in the street by the blast and debris from falling rockets.

The nature of the munitions used, the scale of the destruction caused and the number of civilian casualties that resulted from the bombardment of built-up residential areas in the course of the Georgian assault on Tskhinvali on the night of the 7-8 August all point to a failure to take necessary precautions in attack in violation of Article 57 or Protocol I and may in some instances have amounted to a violation of Article 51(4), the prohibition of indiscriminate attack.

#### GEORGIAN GROUND FORCES

Georgian ground forces entered Tskhinvali early in the morning of 8 August, having taken the surrounding Ossetian villages a short while earlier. Both in the villages and in Tskhinvali, Georgian ground forces met resistance from a variety of South Ossetian forces, including organised units, less formal militia and privately armed individuals. Whilst the South Ossetian forces had a number of light armoured vehicles most were engaged on foot or driving around in civilian vehicles, which would have made it difficult for the advancing Georgian forces to distinguish between armed resistance fighters and fleeing civilians such as those that were reported to have occupied some of the few cars that were hit by tank fire on the road from Khetagurovo to Tskhinvali on 8 August.

When Amnesty International delegates visited Tskhinvali at the end of August, signs of heavy fighting were still etched in many of Tskhinvali's buildings. Along the main roads, very few windows remained intact and walls were heavily pock-marked with machine gun fire. Several public buildings, including the university, the central library, the hospital and schools number five and six, as well as numerous private houses had been damaged by tank and artillery fire. Given the nature of the fighting, however, it is difficult to say of any individual incident whether the damage was caused by exchanges of fire between combatants or as a result of indiscriminate firing by Georgian troops.

Georgian forces withdrew from Tskhinvali and the rest of South Ossetia in the early hours of 10 August, as they came under sustained attack from Russian air strikes and ground forces.

#### ATTACKS BY RUSSIAN FORCES

Following the entry of Georgian troops into South Ossetia on the evening of 7 August, the first wave of Russian forces engaged the Georgian army north of Tskhinvali during the course of 8 August. Russian and Georgian ground forces continued to exchange fire on the 9 and 10 August, as the Russian advance progressively gained ground. Russian forces took control of Tskhinvali on 10 August, following which Georgian military activity in the area progressively dissolved. The Georgian government maintains it ordered its troops to cease firing on the evening of 10 August. Alleging the continued bombardment of South Ossetia by Georgian forces on 11 August, however, the Russian army continued its advance and aerial bombardment until 12 August, when it agreed to a French-brokered truce. By this time the Russian army had already extended its control to the town of Gori, some 20km beyond the

Ossetian border, and occupied strategic locations around the Georgian-Abkhaz border in the west of the country. Until its withdrawal beginning on 20 August, the Russian army continued to destroy and remove military hardware from Georgian bases outside South Ossetia and Abkhazia and to disable selected civilian infrastructure including the Black Sea port of Poti and the railway bridge at Metekhi-Grakali, linking the east of Georgia to the west.

Russian armed forces continued to retain control over so-called “buffer” or “security zones” extending beyond the 1990 boundaries of South Ossetia and Abkhazia until the second week of October. Russian forces began their withdrawal on 8 October, and Georgian civilians began to return to their homes in some areas.

#### RUSSIAN AERIAL AND MISSILE ATTACKS

The Russian aerial and artillery bombardment took place over four days from 8 to 12 August. According to information supplied to Amnesty International by the Georgian government, there were more than 75 aerial bombardments of Georgian territory by Russian air forces, including areas where there had previously been no fighting, such as the Autonomous Republic of Ajara, Imereti region and Tbilisi itself.<sup>42</sup> Amnesty International has not received a response from the Russian authorities to a request for further information regarding the conduct of hostilities and the measures taken to minimize risk to civilians by Russian forces.

Eyewitness accounts suggest that the bulk of the bombardment occurred in a relatively small area around Eredvi in South Ossetia and around Tqviavi and Variani in the Gori district. The ethnic Georgian villages to the north of Tskhinvali from Kurta to Tamarasheni would appear to have been less extensively targeted by aerial bombardment. The town of Gori was hit in four or five localised areas in the course of a number of separate attacks between 8 and 12 August.

As with the Georgian bombardment of Tskhinvali and the surrounding Ossetian villages, the Russian bombardment of populated areas could not be described as blanket bombing. Most of the bombing would appear to have targeted Georgian military positions outside built up areas. However, villages and towns were hit, even if the damage would appear to be limited to stretches of streets and isolated houses here and there in the villages affected.

Unlike the Georgian assault on Tskhinvali, the Russian bombing took the form of isolated attacks on a range of targets, over a wide area and over a period of several days, as the military situation on the ground evolved.

Eyewitness accounts of many of these attacks clearly point to the presence of military targets in the vicinity. However, Amnesty International delegates also heard a number of accounts in which civilians and civilian objects were struck by aerial and missile attacks in the apparent absence of nearby military targets. Amnesty International is consequently concerned that civilians and civilian objects may have been directly attacked in violation of Article 51(3) of Protocol 1 to the Geneva Conventions, or that they were hit in the course of indiscriminate attacks in violation of Article 51(4).

On 12 August at around noon, an aerial bomb attack on the main square of Gori resulted in the death of a Dutch journalist and a reported seven Georgian civilians. The intended target of this strike remains unclear. The square is not close to any military installations and there

do not appear to have been any Georgian armed forces nearby. Amnesty International spoke to Maneli Maisuradze who was injured in the attack:

*I was injured near the local municipality building, next to the statue of Stalin [in the main square in Gori]... I was out with two other women. The plane flew over and the bomb exploded soon after. Pieces of the bomb affected my eyes and we were all wounded. A journalist died in this incident. I also saw three other dead bodies. I live close to the local municipality building. The window panes in my house broke during the bombings. This was on the 12 of August at about 12pm. Before the bombing, humanitarian aid was being distributed. Elderly people were walking around and waiting to get assistance. We were also trying to get humanitarian aid. We were on the other side of the road but those people who were on the side of the municipality building died and were more seriously injured during the bombings. There were no Georgian soldiers there at that moment, only elderly people who stayed in the city.*

At 11.30 am on 9 August, Avto Tsimakuridze, an elderly man, was injured outside his house in the village of Karbi when a Russian fighter plane dropped two bombs on the village, killing nine people. He described the attack as follows:

*We were just civilians. They must have made a mistake – why else would they bomb us? A plane flew high over the village and dropped two bombs. Seven people died in front of my eyes. The other bomb fell in another part of the village and killed two more people. There were no Georgian soldiers in the village. There were Georgian batteries about two kilometres away with anti-aircraft weapons. First they targeted these batteries. Then the plane came back and dropped the two bombs on the village. I really did not believe that the Russians would do such a thing to us. I had a lot of Russian friends. I was in the Russian army and I really could not believe this.*



Avto Kurashvili, a civilian wounded on 10 August in Gori. He does not know who shot him. He was later moved to a hospital in Tblisi. © Amnesty International

Amnesty International also received reports of Russian aircraft bombing fleeing Georgian civilians as they moved southwards towards Georgia out of the conflict zone. "Maka", from Kemeti village, told Amnesty International:

*On 8 August there was panic that the gorge would be bombed...the local population was left to fend for itself, leaving their houses in cars. I took only my bag and passport...others did not manage to take anything. Like this we left, and took the roundabout roads to get out of there...We heard shooting from all sides. I did not know how to protect my daughter, I just covered her body with my own. Everybody with children was doing the same. When we crossed the gorge and got to Ereti, a car with a man and woman in it in front of us was hit and exploded. Bombs were falling on civilians, families...*

"Goga" told Amnesty International how he was injured by Russian bombing as he was driving through the village of Variani:

*On 12 August, I was leaving my village of Pkhvenisi [a few kilometres south of Tskhinvali] with a number of other civilians in my car. As I was driving through Variani at about 11 o'clock in the morning three planes flew overhead and started dropping bombs. The village was practically deserted and mine was the only car moving. I decided it would be safer to stop the car and we all got out. At that moment a bomb fell near us and I was injured. The man standing next to me was killed. Apart from the planes I couldn't hear any other sounds of fighting nearby.*

Amnesty International also wrote to the Russian authorities about these specific incidents requesting information about the intended targets of these attacks and what measures were taken to verify that they were targeting military objectives and that they were minimizing risk to civilians. The reply from the Russian authorities did not address these specific concerns.

#### RUSSIAN GROUND FORCES

Eye-witnesses to the activities of Russian soldiers and Ossetian forces and militia groups contrasted the disciplined conduct of the Russian infantry with accounts of looting and pillaging by Ossetian fighters and militia groups. Amnesty International was widely informed by Georgians displaced from South Ossetia that Russian soldiers had, on the whole, conducted themselves in a disciplined and orderly fashion with regard to Georgian civilians.

However, Amnesty International delegates did interview two injured civilians recovering in a hospital in Tbilisi who reported that they had been shot at, at close range, by Russian soldiers as they were fleeing an aerial bombardment of the area around Akhaldaba, in the Gori district at around 11.00am on 12 August. "Nugzar" was working as a security guard with three other colleagues at a television mast about 10km north of Gori, when the bombing raid began. Whilst it is unclear whether the television mast was directly targeted, Nugzar alleged that the aerial bombardment covered a wide area, including strikes on the television mast, and lasted about an hour. Deciding that it was unsafe to remain in the area, Nugzar and his three colleagues decided to leave in an ordinary civilian vehicle. As they were leaving the television antenna, they passed a column of tanks approaching the television mast from the direction of Tskhinvali:

*We were driving away in an ordinary car, when three Russian tanks approached from the opposite direction with lots of soldiers sitting on top. As the first tank went past the soldiers on top opened fire on our car. The soldiers on the second tank also fired at us. It was not a populated area, there was no else around, though we could hear shooting in the distance. There were four of us in the car. One of us was killed. My colleague here [in the next door bed], was also injured. The other one was only lightly injured. After they had gone by, we got out of the car and made for the forest. Eventually we got to the nearest village [Akhaldaba], where we tried to call an ambulance. But no ambulance was allowed to get through. We spent three days in the village before we were eventually evacuated on Friday [15 August].*

Amnesty International is particularly concerned by the many reports of Russian forces looking on while South Ossetian forces, militia groups and armed individuals looted and destroyed Georgian villages and threatened and abused the residents remaining there. One Georgian from the village of Marana told Amnesty International that he was warned by Russian soldiers to leave his village before the arrival of South Ossetian paramilitaries, as they could not guarantee his security.

As the occupying force, the Russian army had a duty to ensure the protection of civilians and civilian property in areas under their control. Whilst this may have been difficult in practice in the early days of the conflict, when Russian forces were still engaging the Georgian army, the looting and destruction of property owned by ethnic Georgians, and the threatening of remaining Georgians in South Ossetia and the surrounding “buffer zone”, continued on a large scale for several weeks after the formal cessation of hostilities. It is clear that the Russian authorities singularly failed in their duty to prevent reprisals and serious human rights abuses being carried out by South Ossetian forces and militia units. In the “buffer zones”, Russia was bound by its obligations as an occupying power as codified in the Fourth Geneva Convention. This means that it was primarily responsible for the security and welfare of Georgian civilians in those areas. In South Ossetia, while it may not formally have been the occupying power, it was nevertheless bound by its obligations under human rights law to respect and protect the rights of all those under its effective control.

## USE OF CLUSTER BOMBS

Amnesty International is concerned by the use of cluster bombs in this conflict, the first instance of their use since the Israel/Lebanon conflict of 2006. A cluster munition is a weapon comprising multiple explosive submunitions which are dispensed from a container. Cluster munitions pose severe risks to civilians' lives and livelihoods both at the time of their use and after hostilities have ended. This is due to the wide-area effect of cluster munitions and the large number of sub-munitions they leave unexploded, due to their high dud rate. Unexploded sub-munitions continue to indiscriminately injure and maim after the conflict has ended, hinder humanitarian assistance, peace operations and post-conflict reconstruction. For these reasons, Amnesty International called for many years for a moratorium on their use. There is an emerging international consensus that the use, stockpiling and transfer of cluster weapons should be banned. This is why over 100 states adopted, in May 2008, the Convention on Cluster Munitions. Neither Georgia nor Russia has signed this Convention.

There is compelling evidence that both Russian and Georgian forces used cluster bombs, a weapon commonly found in the arsenals of post-Soviet states, although by mid-October only



Georgia had admitted their use. On 1 September the Georgian authorities stated publicly that while cluster bombs had been used, they were deployed only against Russian armament and military equipment in the vicinity of the Roki tunnel in the early hours of 8 August.<sup>43</sup> The Georgian authorities clarified to Amnesty International on 7 October that cluster munitions were used only by Georgian ground forces. These were MK4 LAR160 type rockets with M85 submunitions fired by GRADLAR 160 multiple launch rocket systems. The Georgian authorities informed Amnesty International that such cluster munitions were also used on 8 August to attack Russian and Ossetian forces on the Dzara byroad, which runs from Tskhinvali towards the north, in the direction of the Russian approach.

Amnesty International is concerned that while the intention behind these attacks may have been to hit military objectives, the nature of cluster weapons makes it particularly likely that civilians will also have been affected. It is likely that there would have been at least some civilian movement around the Roki tunnel at the time of their deployment, as the tunnel offered the main avenue of flight for South Ossetians travelling north. The Georgian authorities maintain that there were no civilians on the Dzara road at the time of the Georgian cluster bombing as the movement of all kinds of civilian transport vehicles was stopped during combat operations in the area, and that this was confirmed by Georgian forward observers. Amnesty International is not able to establish whether there were definitely civilians in the areas targeted by Georgian cluster bombs along the Dzara road at the precise time of their deployment. However, it is clear that several thousand civilians were fleeing their homes both towards central Georgia and to North Ossetia during the course of 8 August and that the Dzara road was an obvious avenue of flight for South Ossetians heading north. Indeed, Amnesty International representatives heard several accounts from displaced South Ossetians in Vladikavkaz alleging that the Dzara road was shelled as they were travelling along it on 8 August.

M85 cluster munitions and impact traces have also been found in an arc of villages just outside South Ossetia, suggesting that the use of cluster munitions by Georgian forces was not limited to the Dzara road and the vicinity of the Roki tunnel. Whilst the majority of the local residents, mostly ethnic Georgians, had already left the area, many were still left behind as the targeted Russian army entered the Gori region.

As noted above, unexploded cluster bomb ordnance remains a hazard to civilians long after its deployment. The Georgian authorities have stated that M85 submunitions they deployed have a self-destruction mechanism designed to ensure that armed bomblets are not left on the battlefield to endanger either friendly troops or civilians.<sup>44</sup> However, the presence of a self-destruct mechanism has been widely discredited as a solution to the problem of cluster munitions both by non-governmental organisations and by independent and military fuse experts.<sup>45</sup> UN led clear-up operations following the recent Israel/Lebanon conflict reported finding large numbers of unexploded M85 submunitions.<sup>46</sup> Field studies following the conflict put the failure rate at between 6 and 10 percent - much higher than the 1 percent rate claimed by states who have acquired this weapon.

Although Russia continues to deny the use of cluster bombs, Amnesty International delegates heard numerous independent eye-witness accounts suggesting their use in Kvemo Kviti, Trdnisi, Tqviavi, Pkhvenisi, Kekhvi, Ruisi and Akhaldaba, mostly on 8 August, but also in the following days. Material evidence of the use of both AO 2.5 RTM cluster munitions

(dropped from planes in RBK 500 bombs) and Uragan fired M210 bomblets have been found around several villages just north of Gori. These areas were still populated by many civilians, many of whom were on the roads trying to flee the conflict. It has also been alleged that the bomb attack on the central square of Gori on 12 August was conducted using cluster munitions.<sup>47</sup>

Uri Sekmiashvili was severely injured in a bomb attack near Akhaldaba on 12 August between 10 and 11am. In an interview with Amnesty International, he described multiple small explosions and alleged that he had sustained his injuries as a result of a bomblet exploding next to him. Speaking to Amnesty International, Bejam Basilidze described a cluster bomb attack he witnessed over Kvemo Kviti on 8 August between 6 and 7pm.

*It was evening. Suddenly I heard a terrible sound. I saw an explosion in the air, then bombs were falling like hailstones each covering an area of 3 or 4 metres. Everything exploded, the ground, the roofs of the houses. Seven people were wounded and cows too. There weren't any Georgian troops in the area – they had already left for Gori in the afternoon.*

Amnesty International continues to call on all parties to make public all relevant information about the deployment of cluster munitions in the recent conflict so that appropriate warnings can be given to the population and the required clearing of unexploded devices can take place.

## LANDMINES

The Georgian authorities have alleged the use by Russian forces of planting landmines on roads and on railroad tracks in the region of Svaneti, near Abkhazia, and near Gori. Information supplied to Amnesty International by the Georgian Ministry of Foreign Affairs, 7 October 2007. On 24 August a train carrying crude oil reportedly exploded upon hitting a landmine five kilometres west of Gori. The Georgian authorities report finding mines and unexploded artillery shells at other locations along the tracks. Anti-personnel mines have also reportedly been found in gardens and orchards in the Gori area; according to information received by Amnesty International from the Georgian authorities mines killed a woman in her garden in Gori on 24 August, and injured a man in Tirdznisi village.

## THE CONDUCT OF SOUTH OSSETIAN FORCES AND MILITIA GROUPS

According to eye-witness testimony collected by Amnesty International, the advancing Russian army was accompanied by both regular South Ossetian forces and an array of paramilitary groups. The latter groups have been widely referred to as “militias” (*opolchentsy* in Russian, *dajgubebebi* in Georgian), and their exact composition is unclear. Just prior to the conflict there were reports of the arrival of 300 Ossetian volunteers who had been serving in the police in North Ossetia.<sup>48</sup> *De facto* South Ossetian President Eduard Kokoity reportedly ordered the integration of these volunteers into the *de facto* South Ossetian Ministry of the Interior forces. There were also reports of representatives of other ethnic groups from the North Caucasus moving into South Ossetia following the onset of hostilities, in order to fight on the South Ossetian side. Amnesty International was also informed in North Ossetia that significant numbers of men who initially fled to North Ossetia from South Ossetia in the first days of the conflict returned to South Ossetia in order to fight. Several South Ossetians interviewed by Amnesty International representatives in both South and North Ossetia stated that they had taken up arms and participated in the hostilities.



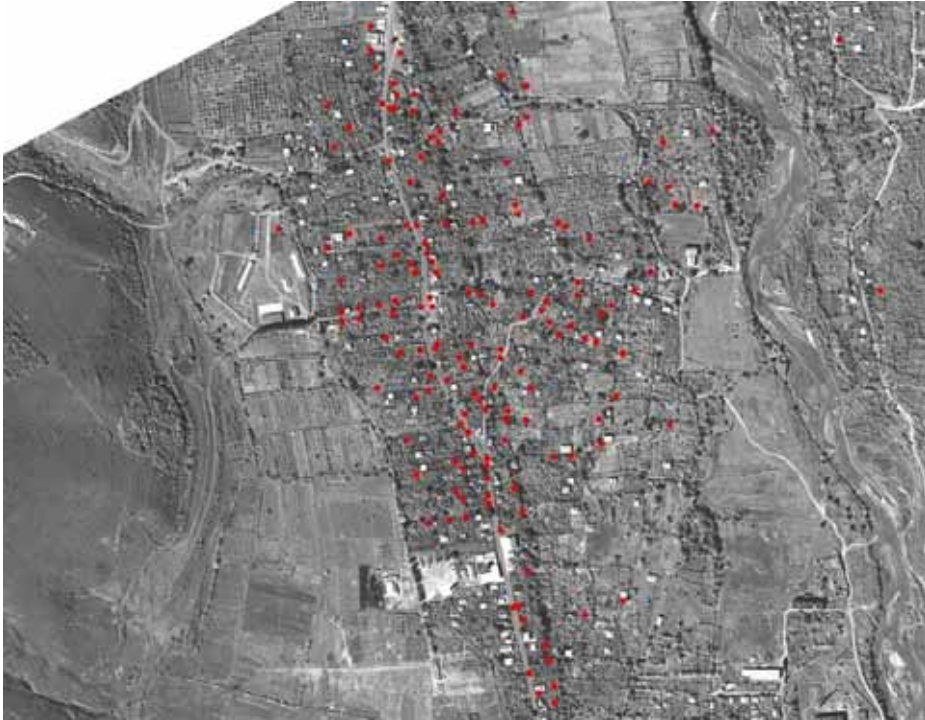
Houses set on fire in the Georgian village of Eredvi in South Ossetia, 26 August 2008. © Varvara Pakhomenko



Internally displaced persons centre in Tblisi, Georgia, 20 August 2008. © Amnesty International



Satellite image of Tskhinvali, South Ossetia taken on 10 August 2008 with damage overlay from 10 and 19 August. The orange dots represent damage present on 10 August, and the red dots represent damage present on 19 August. Dots at the top of the picture (north) and at the bottom to the right (south east) are included in assessments for Tamarasheni and Ergneti, respectively. Note that the majority of damage to Tskhinvali occurred prior to or on 10 August, with 182 structures damaged, while only 4 additional damaged structures were identified for the city on 19 August. © 2008 GeoEye



Satellite image of the Georgian village of Tamarasheni, South Ossetia, taken on 19 August. The red dots represent all buildings sustaining damage (152 structures in total). © 2008 ImageSat





Ruined buildings on Thaelman Street in Tshkinvali, South Ossetia, 29 September 2008. © Amnesty International



Bombed building in Gori, Georgia 29 September 2008. © Amnesty International

The composition of armed groups identified by eye-witnesses as “South Ossetian militias” is therefore extremely difficult to establish. Several accounts collected by Amnesty International indicated that these militias were composed of representatives from different ethnic groups and used Russian as a common language. These groups are widely described as having followed in the wake of Russian ground forces or aerial attacks; they were also widely reported by eye-witnesses and humanitarian organizations as moving through the “buffer zones” established and maintained by Russian armed forces following the cessation of hostilities and throughout the following weeks. It would appear that the majority of these groups answered, if only loosely, to a South Ossetian chain of command and that the South Ossetian forces in turn operated in co-operation with Russian military forces.

Amnesty International is concerned by the serious abuses against ethnic Georgians in South Ossetia and adjacent “buffer zones” under effective Russian control. Amnesty International documented unlawful killings, beatings, threats, arson and looting perpetrated by armed groups associated with the South Ossetian side and acting with the apparent acquiescence of Russian armed forces. Whilst the looting and pillaging of ethnic Georgian villages was initially focused on South Ossetia, and limited, in the immediate aftermath of the conflict, to largely opportunistic raids on Georgian property and villages along the main roads beyond the regions borders, it progressively extended to the adjacent “buffer zone” under effective Russian control in the weeks that followed. However, Georgian-populated settlements in South Ossetia under *de facto* South Ossetian administrative control are not reported as having suffered extensive damage.

As the occupying power Russian armed forces had overall responsibility for maintaining security, for law and order and for ensuring the welfare of the populations living in areas under their control. The Russian authorities therefore share, with the *de facto* South Ossetian authority controlling them, accountability for human rights abuses committed by South Ossetian militias engaged in looting, arson and other attacks, whether within the 1990 boundaries of South Ossetia or in Georgia proper.

#### ATTACKS ON CIVILIANS BY SOUTH OSSETIAN ARMED GROUPS

Amnesty International is seriously concerned by reports of assaults on civilians by groups aligned with South Ossetia, during and in the wake of the conflict. In many cases South Ossetian armed groups or irregulars arrived in villages that were largely depopulated, with only the elderly and infirm remaining. According to eye-witness reports militias ordered local inhabitants to leave; Amnesty International received reports that those who resisted these orders were, in some cases, beaten and/or killed. Others were attacked in the course of uncontrolled looting.

“Ani” from the village of Disevi, a village in South Ossetia to the east of Tskhinvali, told Amnesty International:

*All the Georgian villages were burned. Only those houses which had Ossetian wives in their households survived. This was done by the Ossetian separatists and Russian and Cossack groups dressed in black military uniforms with masks on the faces. One of them even spoke to us in Georgian from the tank. One of my neighbours who tried to resist them was killed.*

In the village of Avnevi, in South Ossetia, on 27 August representatives of Amnesty

International met two elderly Georgian men who had remained in the village after the other residents had fled. They told Amnesty International:

*I worked for 20 years as the director of the village school. It was a mixed school, we had both Georgians and Ossetians studying and working there. In our village there were 350 families and there was someone of Ossetian background in about 200 of these families. They all left when Georgian forces attacked Tskhinvali. Only the old people stayed behind, those who didn't have relatives. Here they only killed two people. Shura, my neighbour, he was really ill – he was 50 years old when they burnt him to death in his home. They killed another man, he must have been about 50 years old. They began setting fire to things from 11 o'clock in the morning and again every night. There were people moving around in civilian clothing and in uniform. I saw one young lad, 20 years old maybe, shouting to these other two other boys to bring the goods out more quickly and jump in the car. And then I saw that the house they had come out of was on fire, though I managed to put the fire out. [On the intervention of the South Ossetian Ombudsman, the two men were taken by the ICRC to Tbilisi, where they were reunited with their families.]*

“Revaz”, a Georgian interviewed by Amnesty International in a hospital in Tbilisi on 21 August, gave the following account of the injuries he sustained in Gori during the looting of the town shortly after the truce was agreed:

*There was a lot of shooting around Gori by marauding gangs of militias. They were stealing anything that crossed their path. Three paramilitaries were firing full magazines into my car. I was hit in the kidney, and another passerby was also shot.*

#### ARSON AND LOOTING: GEORGIAN-MAJORITY VILLAGES INSIDE SOUTH OSSETIA UNDER DE FACTO PRO-GEORGIAN ADMINISTRATIVE CONTROL UNTIL THE CONFLICT

Amnesty International has documented the extensive looting and arson of Georgian-majority villages by South Ossetian forces and militia groups on territory within South Ossetia but under *de facto* pro-Georgian administrative control prior to the conflict. As well as eye-witness testimony and Amnesty International's own observations, satellite imagery obtained for Amnesty International has confirmed extensive destruction in various settlements that occurred after the ceasefire.

Looting and arson attacks appear to have been concentrated on Georgian-majority villages north and east of Tskhinvali, associated prior to the conflict with the Tbilisi-backed alternative administration headed by Dmitri Sanakoev. In particular, the villages of Kekhvi, Kurta, Kvemo Achabeti, Zemo Achabeti, Tamarasheni, Ergneti, Kemerti, Berula and Eredvi sustained heavy damage.<sup>49</sup> Official Georgian sources claim that the population of the municipalities of Kurta, Tighva and Eredvi, estimated at 14,500 prior to the conflict, was displaced almost in its entirety as a result of the conflict. The Georgian Civil Registry Agency registered 13,260 internally displaced people from these municipalities as of 26 September.<sup>50</sup>

The destruction of houses and property in some Georgian-majority settlements in South Ossetia took place in the aftermath of hostilities and not as a direct result of them. Satellite images obtained for Amnesty International by the American Association for the Advancement of Science reveal no damage to the village of Tamarasheni, for example, on 10 August.



Satellite photos from the 19 August, however, already reveal extensive destruction, with 152 damaged buildings in Tamarasheni.<sup>51</sup> By the time that Amnesty International delegates were able to visit these villages at the end of August, they were virtually deserted and only a very few buildings were still intact.

Extensive looting of Georgian administered villages appears to have taken place over the two weeks following the cessation of hostilities. Eye-witness accounts of some villages dating from the 13-14 August refer only to limited looting, yet when Amnesty International representatives visited these same villages almost two weeks later on the 26 August, they observed first hand that looting and pillaging was still going on .

According to eye-witnesses interviewed by Amnesty International, when Russian forces entered the cluster of Georgian administered villages only a few dozen of their inhabitants remained, mainly elderly and disabled people, or those who did not want to leave their homes. One such person, Nina, an elderly woman from Kurta village in South Ossetia, told Amnesty International:

*Men in military uniform were going through the gardens. They were Russian-speaking but not Russian soldiers. I took them to be Ossetians, Chechens, some Asians, maybe Uzbeks and Cossacks. They were all wearing the same military uniform and they were armed with Kalashnikovs. They burnt about 15 houses in Kurta, and took the livestock away on trucks. As we were leaving Kurta we saw two neighbours being abducted, they were pushed into a car boot by the marauders. We left Kurta on 13 August by foot. We went to Eredvi via Kheiti. In Eredvi we saw dead bodies, a man, woman and two children. We continued walking and reached the village of Ditsi [outside of South Ossetia]. I saw no dead bodies in Ditsi and some of the houses were burnt down, but not all of them. We passed Ditsi and reached Trdnisi. There we also saw many burnt houses and property thrown around in the streets. We stayed the night there and moved on to Tqviavi. We saw many more dead bodies there, under cars and vans. All the dead bodies were civilians, I didn't see any dead Georgian soldiers..."*



Nina from Kurta in a centre for displaced people in Tbilisi, 22 August 2008. © Amnesty International

Reportedly, Russian forces only installed roadblocks and checkpoints controlling the entries and exits to these villages on 13 August. On 24 August, however, Amnesty International representatives observed South Ossetian forces in control of these checkpoints and overseeing movement into and out of these villages along the main road running north from Tskhinvali. Travelling along the road from Java to Tskhinvali on 27 August Amnesty International representatives observed scenes of total destruction, with houses pillaged, burnt and many in ruins. Only a few new buildings and the local park appeared to be intact. In Kurta, at the buildings housing the former alternative South Ossetian administration headed by Dmitri Sanakoev, Amnesty International representatives encountered two men loading office furniture and other items onto a truck. Amnesty International was not able to find native inhabitants in any of the above-mentioned villages on 27 August, nor did it observe the presence of any Russian military.

Some of those displaced from these villages spent several days moving cross-country on foot before arriving in Gori at the end of August. In Gori Ira, a Georgian woman from the mixed Georgian-Ossetian village of Beloti, some 18km to the north-east of Tskhinvali, told Amnesty International:

*On 9 August Ossetian militias entered Beloti and began shooting at about one o'clock in the afternoon. They wounded the village policeman and demanded all weapons be handed over to them. At the sound of shooting all the young people from the village escaped into the woods, and the whole population of the village scattered ... We found ourselves on the other side of the village, in the woods, and ... we watched events from there. That same day the Ossetian militias set fire to the houses and burnt them ... We saw how the Ossetian militia carted*

*everything off in trucks, anything that was there, and then they set fire to the houses. Only the old and the infirm stayed behind, but even to these people the Ossetians were saying 'Get out! We don't want any Georgians here. We're burning your houses so your children won't come back'...The Russians didn't bother us at all, it was the Ossetian militias...Even the local Ossetian population was joining in, people whom I knew from the local administration...*

Two women from Disevi, a village to the east of Tskhinvali, told Amnesty International:

*I saw Russians and Ossetians destroying our houses. Russian planes bombed the villages, then soldiers came into the village. They took one of the local inhabitants, a man, beat and killed him. They started looting all of the houses ...it was purposeful, looting then burning... The Russian soldiers didn't participate in the looting, they just held their positions at the checkpoints and looked on as the looting was taking place...*

*It was just Georgian houses that were destroyed. Those households where there were mixed marriages survived, the rest were burnt by Ossetians and Russians... Whether the Russians were Cossacks or not, I don't know... They were dark, swarthy people, in military uniform and sometimes in masks. They killed one of my neighbours who tried to stop them... They took everything out of the houses then burnt them... But my neighbour had an Ossetian wife and they didn't touch his house... They targeted houses with families from the military, from the police...*

In another pocket of mixed Georgian-Ossetian settlement in South Ossetia, in the villages of Avnevi and Nuli, Amnesty International observed a similar, if not so complete, state of destruction. The majority of houses were burnt and pillaged, although the level of destruction was less severe. Painted on the gates and walls of some houses Amnesty International representatives observed the words "*Iron*" ("Ossetians") and "*Zanyato*" ("Occupied"); these houses had been pillaged, but not burnt or destroyed. Amnesty International representatives established that some houses belonging to Georgians had indeed been occupied by Ossetians, while some houses belonging to friends or relatives of local Ossetians had been spared by militias. Although chickens could be observed in the yards of some houses, no larger livestock was present. In the neighbouring village of Nuli, Amnesty International representatives observed looters loading up goods and objects onto trucks to be taken away. These observations are consistent with those of a wide range of media reports.<sup>52</sup>

In the village of Eredvi on 26 August Amnesty International representatives witnessed ongoing looting and pillaging, including by armed men. As the looting was ongoing, Russian military equipment continued to pass through Eredvi (due west of Tskhinvali) and Russian checkpoints controlled entry and exit to the village; Amnesty International observed that only ordinary cars, rather than trucks or other large vehicles, were searched and not in all cases. At dusk Amnesty International representatives encountered a group of men in military uniform and was told by one of them, who appeared to be a Russian army officer from North Ossetia, not to report having met them there. When asked why they were not taking action to extinguish fires in the village, they answered "that's the policy" ("*politika takaya*").

#### GEORGIAN-MAJORITY VILLAGES INSIDE SOUTH OSSETIA UNDER DE FACTO SOUTH OSSETIAN ADMINISTRATIVE CONTROL UNTIL THE CONFLICT

Amnesty International observed a very different situation in Georgian-populated villages under the control of the *de facto* South Ossetian authorities. On 26 August, representatives of the organization visited the villages of Nedalti and Akhalsheni in the Znaur district, to the west of Tskhinvali, which saw much less fighting. Akhalsheni has the only Georgian language school operational in South Ossetian-controlled territory. Amnesty International representatives met representatives of the Georgian community of Akhalsheni, who said that while most of the village's population had left for Georgia on the eve of the conflict, not one house had been damaged or looted nor had there been any casualties in the village. Amnesty International representatives did not observe any damage in the town during their visit. According to Georgians in Akhalsheni when looters had attempted to enter the village Znaur district administration officials had prevented them from doing so. However, the village population had serious concerns regarding water supplies, their capacity to harvest their crops and the absence of telecommunications links with Georgian networks, leaving them without direct connections to neighbouring villages.

According to international observers who visited Akhagori (known as Leningori to Ossetians), a town with a mixed Georgian and Ossetian population in the south-east part of South Ossetia, little destruction or looting appears to have taken place there. UNHCR was able to visit Akhagori for the first time on 29 August and was informed by the local military commander that some 40 per cent of the population, including both Georgians and Ossetians, had been displaced; other estimates given to UNHCR put the figure at 80 per cent.<sup>53</sup> According to information in official Georgian sources, as of 26 September 2,254 ethnic Georgians had been displaced to Gori out of Akhagori's total pre-conflict population of 7,894.<sup>54</sup> Overall, however, the relatively calm situation in Akhagori appears to reflect the fact that large-scale, targeted pillaging and arson has been limited to the areas close to Tskhinvali under *de facto* pro-Georgian administrative control prior to the current conflict.

#### GEORGIAN VILLAGES OUTSIDE OF SOUTH OSSETIA IN THE "BUFFER ZONES"

Ethnic Georgian villages beyond the boundaries of the former South Ossetian autonomous region also suffered extensive looting, but less widespread arson and destruction, in the aftermath of military hostilities. Initially limited to opportunistic raids as the Russian army advanced deeper into Georgia, the looting and pillaging by South Ossetian militias appears to have taken on a more regular character in the weeks following the formal cessation of hostilities, particularly in the villages closest to South Ossetia, as Russian forces assumed full control of the "buffer zone". Amnesty International received numerous independent reports in Gori on 29 and 30 August that the security situation in the "buffer zone" between the village of Karaleti, some 6km to the north of Gori and South Ossetia, had deteriorated in the previous few days. Amnesty International was denied access to Karaleti and the villages beyond it by Russian soldiers on two consecutive days on August 29 and 30. Georgian villagers from Karaleti, Tqviavi, Pkhvenisi and Shindisi informed Amnesty International that on the basis of reports from elderly relatives remaining in the villages or those of other relatives visiting on a daily basis, they feared return due to reports of South Ossetian militias in the area and the presence of unexploded ordnance.

UNHCR reported a new influx into Gori of displaced persons from 26 August, consisting in part of those returning from Tbilisi but unable to access their homes in the "buffer zone" and

in part of those who had previously remained in the “buffer zone”, but who were now fleeing in the face of a fresh wave of intimidation by South Ossetian forces and militias. These displaced people told UNHCR that the numbers of Ossetian militias in Georgian villages and the extent of their attacks had significantly increased since 24 August.<sup>55</sup> UNHCR also reported that villagers attempting to return home from Gori to villages in the “buffer zone” were not able to do so, being stopped at Russian checkpoints and advised not to proceed due to lawlessness.<sup>56</sup>

Russia and the South Ossetian administration are responsible for the safety and security of everyone in the areas over which they have control. The serious abuses that have resulted in extensive destruction of homes and property, beatings and even killings are a clear indication that they have failed to live up to this obligation.

The destruction or seizure of property of an adversary is prohibited by international humanitarian law, unless required by imperative military necessity (which clearly was not the case in the cases described above) and can constitute a war crime<sup>57</sup>. Pillage (the forcible taking of private property by an invading or conquering army from the enemy’s subjects for private or personal use] is also prohibited in both international and non international armed conflict<sup>58</sup> and can also constitute a war crime.<sup>59</sup>

## 4. CIVILIAN DETAINEES AND PRISONERS OF WAR

### POWS

Small numbers of prisoners of war (POWs) were held by both the Russian and the Georgian forces. According to the Georgian authorities<sup>60</sup>, Georgia detained five Russian POWs, 27 members of South Ossetian armed forces, and one combatant from the Russian Federation, whilst 39 Georgian servicemen were taken captive by Russian and South Ossetian forces. The Russian and *de facto* South Ossetian authorities did not reply to questions addressed to them by Amnesty International regarding the number and treatment of POWs.

Amnesty International representatives met with one of the Georgian former POWs recovering in hospital in Tbilisi from injuries sustained in the course of the conflict, who stated that he had been taken captive by Russian forces and well treated during his captivity. Amnesty International is not aware of any allegations that Russian or South Ossetian POWs were treated without due regard for their rights by the Georgian authorities.

A number of the Georgian soldiers that were taken captive by South Ossetian forces have alleged that they were tortured and ill-treated during their captivity. Amnesty International delegates spoke to two Georgian soldiers who were recovering from injuries in a hospital in Tbilisi. The index fingers of their right hands had been burnt to the bone. The first, a private, "Malkhaz", alleged that he had been taken captive on 8 August in Tskhinvali and was held together with five other soldiers for nine days by Ossetian militia before being transferred to Russian custody and exchanged. During his captivity he alleged that he was moved and handed over to different captors four times. At one stage, two other captives were also brought in, one of whom he maintained was shot in a next door room and left to lie there for two days before he and his fellow captives were forced to clean the room and bury him. "Malkhaz" reported being transferred to Russian custody, where he was given medical treatment before being hand over to the Georgian authorities. The Georgian authorities allege that two other Georgian servicemen were executed by their South Ossetian captors. Amnesty International has not received any further information regarding the names or service numbers of these three soldiers, nor the results of any investigation into the circumstances of their deaths.

### CIVILIAN DETAINEES

Civilians were detained by both the Georgian and the *de facto* Ossetian authorities in the wake of the conflict.

The Georgian authorities report that 159 Georgian civilians were held by the *de facto* South Ossetian authorities<sup>61</sup>. These were held in the main police station in Tskhinvali for periods of

between three and 10 days before being transferred to the Georgian authorities between 19 and 27 August. On 21 August, Amnesty International delegates spoke to a number of the first group of Georgian detainees to be released. From their accounts, it would appear that the earliest civilian detainees were taken captive around 10 August whilst the hostilities were still ongoing. These were mostly young men. The majority of civilian detainees, however, would appear to have been taken captive after 13 August, that is, after the formal cessation of hostilities and whilst the looting and destruction of the Georgian villages near Tskhinvali was taking place. Most of these later detainees were elderly residents who had not fled during the conflict. Whilst it is arguable that these detainees were removed from their homes for their own safety, the danger attendant on their remaining arose from the criminal actions of Ossetian forces, militia and private citizens engaged in the burning and pillaging of Georgian villages.

From the accounts of detainees, it would appear that they were provided with basic food and tea during their captivity. They were kept, without bedding or blankets, in four cells opening on to an open exercise yard, which became progressively more overcrowded as new detainees arrived. Whilst the detainees spoken to alleged frequent verbal abuse, they did not suggest that they were physically ill-treated during their captivity beyond the obvious hardship, especially for the many elderly captives, of their cramped, hot and uncomfortable accommodation. It was alleged, however, that the more able-bodied detainees were taken from the police station during the day, beaten and made to work on the removal of debris from streets of Tskhinvali.

Amnesty International is aware of a small number of civilians being held by the Georgian authorities. Amnesty International representatives spoke to a young Ossetian man from the village of Khetagurovo, who reported that he had been held together with his wife and mother for three days in Gori and Tbilisi, following his arrest by Georgian soldiers on the 9 August outside his house. The young man maintained that he had not been ill-treated in any way during the course of his detention.

## 5. DISPLACEMENT

### NUMBERS OF THOSE DISPLACED

According to UNHCR some 192,000 people were initially displaced by the conflict, including approximately 127,000 within Georgia, 30,000 within South Ossetia and 35,000 who fled northwards from South Ossetia into North Ossetia in the Russian Federation.<sup>62</sup> The direction of flight divided largely, though not exclusively, along ethnic lines, with Ossetians having fled northwards to the Russian Federation and ethnic Georgians having fled southwards into other regions of Georgia.

### DISPLACEMENT TO THE RUSSIAN FEDERATION

According to information supplied to Amnesty International on 27 August by the Russian Federal Migration Service (FMS) 33,000 people were registered as crossing into Russia as a result of the conflict. Reportedly, several hundred women and children had left South Ossetia prior to 7 August due to increased tensions and incidents around Tskhinvali; most fled South Ossetia after the Georgian military action of 7-8 August. Some of those displaced returned to South Ossetia in the immediate aftermath, so that the figure of 33,000 represents a higher end figure for the conflict at its height.

Most of those fleeing northwards into the Russian Federation held Russian passports; others had Georgian or old Soviet passports. Amnesty International was able to confirm that Georgian passport-holders were also offered humanitarian aid and shelter in North Ossetia. During the last week of August, the FMS and the Ministry of Emergency Situations (EMERCOM) tried to return most of the displaced population back to South Ossetia. Those staying in public buildings, such as a rehabilitation centre for the children of Beslan, were told they had to leave this accommodation on 24-25 August. Transport to South Ossetia was organized by EMERCOM. As of early September, all temporary accommodation centres within the Russian Federation had been closed and the majority of the Ossetians who had fled to the Russian Federation during the conflict had returned. UNHCR reported on 2 September that the "vast majority" of those who had fled to the Russian Federation had returned to their places of origin in South Ossetia.<sup>63</sup> Those who wanted to stay in North Ossetia were able to do only if they had alternative options, such as staying with relatives: some 6,800 are reported by the Russian emergency services to have remained with friends and relatives in North Ossetia.<sup>64</sup>

Amnesty International's observations indicated that the immediate medical and material needs of those temporarily accommodated within the Russian Federation were well met by the Russian emergency services. On their return, the great majority were able to go back to their own homes, which were either still intact or required only minor work such as the replacement of windows. At the time of writing those whose houses in South Ossetia were completely destroyed have been accommodated in a small number of public buildings, or are staying with friends pending further reconstruction work. Reconstruction work and assistance



has already begun, with large amounts of material and many reconstruction workers having arrived from across the Russian Federation. Concerns remain, however, regarding the speed with which badly damaged houses can be made sufficiently habitable as winter approaches.



Beds in a refugee centre in North Ossetia, Russian Federation, 24 August 2008. © Amnesty International

#### DISPLACEMENT WITHIN GEORGIA

The Civil Registry Agency of the Georgian Ministry of Justice had registered a total of 131,169 internally displaced persons as of 2 October.<sup>65</sup> As of 23 October around 24,000 internally displaced persons were still unable to return to their former places of residence in South Ossetia and just under 2000 were still displaced from Upper Abkhazia. About 10,000 had not yet returned to their homes in the former buffer zone, owing to the destruction of their homes or continuing security concerns.<sup>66</sup> Additionally, some 220,000 persons displaced in the early 1990s remain in Georgia, many of whom still live in collective shelters.<sup>67</sup>

The overwhelming majority of displaced Georgians, from both South Ossetia and its surrounding areas and from the Kodori gorge in Abkhazia, were initially accommodated in public buildings in the Georgian capital, Tbilisi. Others were temporarily accommodated in other parts of Georgia, such as Batumi. Most were accommodated in schools and different kinds of institutes, housing between 50 and 200 displaced persons, with one or two families typically sharing a single room. A minority of displaced persons were temporarily accommodated in tented camps and disused public buildings with no running water. Amnesty International observed at the end of the month of August that the distribution of food, clothing and basic medicines was, for the most part, rapid and well organized, with many private individuals and companies being particularly generous with their support. Within a week of the beginning of the conflict most centres were well stocked with

medication for those with special needs, such as diabetes, asthma and low blood pressure.



A camp for displaced people near Gori, Georgia, 29 September 2008. © Amnesty International

Whilst the initial response to the large wave of displacement between 8 and 12 August was generally adequate, serious concerns remain as to the long-term situation of those who remain unable to return. These concerns are focussed on the town of Gori and its surrounds, where, according to Georgian government statistics, 248 tents currently provide shelter for a total of 2 300 internally displaced persons, including over 700 children under 17.<sup>68</sup> Amnesty International representatives visited Gori on 29-30 August, observing conditions in a tent camp established by UNHCR on a football pitch in the centre of town and visiting some of the schools and kindergartens used to provide shelter to those displaced. According to Amnesty International's observations the minimum needs of people sheltered in these locations were being met: representatives observed the distribution of ample quantities of a variety of foodstuffs, and displaced people interviewed indicated that their primary needs were being met. There was concern, however, over growing numbers of displaced persons and the need for longer-term accommodation in view of the imminent beginning of the school year and the onset of autumn and winter weather conditions.

A number of factors accounted for the steady increase in numbers of displaced people concentrated in Gori. During the last week of August there were new arrivals from the "buffer zone" fleeing their homes on account of increased attacks by South Ossetian militia groups. Second, those initially displaced to Tbilisi who sought to return to homes in the "buffer zones" and were unable to do so, remained in Gori. Third, host fatigue in Tbilisi led some displaced persons to return to Gori. Fourth, some of those in Tbilisi returned to Gori in order to find relatives and friends and find accommodation near them. According to UNHCR the

internally displaced population numbered 6,400 on 5 September: of these 1,600 were residing in a tented camp, some 2,400 were staying with host families, with a further 2,400 in collective centres.<sup>69</sup> According to official Georgian sources there were over 10,600 internally displaced persons in Gori as of 2 October (2,300 accommodated in tents; 2,300 accommodated in administrative buildings and kindergartens and 6,000 accommodated in some 1,200 private apartments).<sup>70</sup> By the end of October, however, the tented camp had been dismantled and the number of internally displaced persons in collective shelters in Gori had fallen to around 2700 persons, with about 500 still living with host families. The vast majority of the remaining persons displaced by the recent conflict were still living in Tbilisi, with some 20,000 in collective shelters and a further 10,000 with host families.<sup>71</sup>

Whilst the return of all displaced persons to their original places of residence must remain a priority, solutions must be found for those who remain accommodated in Gori, Tbilisi and elsewhere, and who continue to be unable to return. Amnesty International recognizes the right of every internally displaced person to return to their original place of residence in conditions of safety and dignity, under conditions that allow returnees to live without threats to their security and under economic, social and political conditions compatible with the requirements of human dignity. Any decision to return must be voluntary, free from coercion and based on an informed choice, where the alternatives of local integration or resettlement in another part of the country are available and acceptable. Furthermore, the fulfilment of economic and social rights cannot be put on hold until return becomes politically viable, in particular the Georgian government must ensure that the rights of the displaced to an adequate standard of living, as well as rights to health and education, are fulfilled and respected, while waiting for the moment when return in safety and dignity becomes possible. It is the responsibility of national authorities to ensure that these rights are progressively fulfilled for the duration of displacement without discrimination.

As highlighted repeatedly by the UN Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, three elements must be in place for successful return operations: "(i) ensuring safety for the life and limb of returnees, (ii) returning property to the displaced and reconstructing their houses, and (iii) creating an environment that sustains return and re-integration, that is, which allows life under adequate conditions, including income generation opportunities, non-discrimination and possibilities for political participation."<sup>72</sup>

Some 2,500 people were displaced from the Upper Kodori valley in Abkhazia, the only part of Abkhazia under Georgian control at the outset of hostilities in South Ossetia, as a result of military hostilities between Georgian and Abkhaz forces in the area. UNHCR was not able to gain access to the area until 7 September due to security concerns and advised at that time against return to the area in the light of worsening weather conditions and a lack of subsistence.

Prospects for return may be seen as sharply distinguished between areas falling within the 1990 boundaries of the South Ossetian autonomous region and areas beyond, falling in the so-called "buffer zones". Return to the former, above all to those areas formerly associated with the Tbilisi-backed Dmitri Sanakoev administration, is extremely unlikely. Villages in those areas were subjected to a high level of destruction and pillaging.

With regard to the so-called “buffer zones” adjacent to South Ossetia, although Russia agreed to withdraw its forces to pre-conflict positions in the ceasefire agreement of 13 August, Russian forces and Russian-controlled checkpoints still remained in place by the beginning of September. On 8 September Russian President Medvedev agreed to withdraw Russian forces from Georgian territory outside of South Ossetia (and Abkhazia) within one month upon the deployment of monitors provided by the European Union. By mid-September UNHCR was reporting substantial rates of return to those settlements within the “buffer zone” nearer to Gori; for example, 80 per cent of the inhabitants of the village of Karaleti had returned by 12 September. Return rates in settlements in the northern part of the “buffer zone” were much lower, with, for example, less than 10 per cent having returned to Kitsnisi.<sup>73</sup> On 19 September UNHCR announced that its operation in Georgia was no longer defined as an emergency response, and had shifted to a “stable operational phase”.<sup>74</sup> On 14 October UNHCR reported that up to 20,000 people had returned to their homes in the buffer zones following the Russian withdrawal.<sup>75</sup> This brought the total number of Georgians who had returned to their homes to around 80,000. However, UN Representative on the Human Rights of Internally Displaced Persons, Walter Kälin, visited Georgia in early October and expressed his concern at the lack of effective protection of the population in the “buffer zone”.<sup>76</sup>

Two principal security risks impede the fulfilment of the right of return. As noted above, many Georgians seeking to return to homes in the “buffer zone” were prevented from doing so on account of reported lawlessness and pillaging by South Ossetian militias. This appeared to remain a live threat throughout September in some areas. A further security risk for those seeking to return is the continued presence of unexploded ordnance devices in areas affected by the conflict. Cluster bomb submunitions in particular present a threat to civilians long after their deployment. Accurate information regarding the locations of their use is urgently required in order to facilitate the clearing of these munitions.

A number of humanitarian organizations reported problems with access to the “buffer zones” during August. On 26 August, and again on 29 August, UNHCR reported not being given access to the “buffer zone”; the ICRC also did not have access to those areas for one week.<sup>77</sup> The ICRC reported being able to visit villages around Gori from 27 August.<sup>78</sup> On 4 October, UN Representative Walter Kälin, deplored the lack of unimpeded humanitarian access to Tskhinvali and conflict-affected areas, urging all relevant actors to grant unimpeded access to all areas to humanitarian actors so that they may reach internally displaced persons and other civilians at risk without further delay, and to refrain from any steps that may further impede such access.<sup>79</sup>



Displaced people at a former military institution in Tbilisi that has been turned into a centre for internally displaced persons, Tbilisi, 20 August 2008. © Amnesty International

## 6. INTERNATIONAL MONITORING MISSIONS

Prior to the conflict the only international observers in South Ossetia were eight OSCE military observers based in Tskhinvali. These left early in the conflict and had not been able to return by mid-October. The 134 UN military observers operating in Abkhazia as part of the United Nations Observer Mission in Georgia (UNOMIG) remained in the region throughout the conflict. Their six-month rolling mandate was renewed on a technical basis on 9 October for four months until 15 February 2009.<sup>80</sup> Discussions on revising the format and mandate of UNOMIG in the light of the conflict and the significantly increased Russian military presence are ongoing.

Following the French-brokered six-point ceasefire agreement, the international community invested considerable effort in negotiating the deployment of international observers to areas affected by the conflict. On 19 August the Permanent Council of the OSCE authorized the deployment of a further 20 military observers (in addition to the original eight) to the area adjacent to South Ossetia under Russian control, with the possibility of raising the total number to up to 100 in the weeks to come.<sup>81</sup> On 18 September talks on extending the deployment of OSCE observers to South Ossetia itself and increasing their number finally broke down in the face of a Russian veto.

On 15 September, the member States of the European Union approved an observer mission to be deployed to Georgia by 1 October as previously agreed between the Russian, French and Georgian governments. The number of EU observers deployed as of the second week of October stood at over 200, with recruitment still ongoing at the end of October. The agreement did not provide for the access of EU monitors to South Ossetia itself and they are currently operating only in neighbouring areas, with a mandate to monitor the situation on the ground and promote confidence-building measures. Though the focus of the mission is to monitor the security situation and the implementation of the six principles of the ceasefire agreement, the EU observers were also specifically mandated to monitor the respect for human rights, the rule of law and the return of displaced people and refugees. The mission includes a small number of human rights experts. Neither the OSCE nor the EU missions were required to report publicly on their findings.

Given the ongoing human rights concerns in the areas affected by the conflict, Amnesty International considers it essential that international monitoring missions enjoy access to all areas, including South Ossetia and Abkhazia, and that human rights monitoring and regular periodic public reporting should constitute a prominent part of their mandate.

Other international organizations have deployed a number of *ad hoc* missions to Georgia in response to the conflict. The Secretary-General of the United Nations sent a humanitarian assessment mission to Georgia 17-20 August, led by the UN Office for the Coordination of Humanitarian Affairs and comprising experts from UNHCR, the United Nations Development Programme and the Office of the High Commissioner for Human Rights, which focused on current humanitarian and human rights concerns. The UN Secretary-General's representative on the human rights of internally displaced persons visited Georgia on October 1-4.

The Secretary General of the Council of Europe and the Chairman of the Committee of Ministers, the Swedish Minister of Foreign Affairs, travelled to Tbilisi from 11-13 August. The Council of Europe Commissioner for Human Rights travelled twice to the region, including both North and South Ossetia, in August and September, focusing on the exchange of detainees, and elaborating six principles for urgent human rights and humanitarian protection.<sup>82</sup> The Parliamentary Assembly of the Council of Europe sent a fact-finding mission 22-25 September, resulting in Resolution 1633 calling, among other things, for “an independent international investigation” into the circumstances surrounding the outbreak of the conflict and the conduct of hostilities by all parties.<sup>83</sup> The Parliamentary Assembly's Monitoring Committee will report on the implementation of the Resolution at the Assembly's January 2009 part session, while the Committee on Migration, Refugees and Population will report on the humanitarian consequences of the war between Georgia and Russia.

# 7. ACCOUNTABILITY FOR VIOLATIONS OF INTERNATIONAL HUMANITARIAN HUMAN RIGHTS LAW

## NATIONAL INVESTIGATIONS AND INQUIRIES

The primary responsibility for investigating alleged violations of international humanitarian and human rights law resides with the parties to the conflict. The information presented in this report, together with that from other sources indicates that serious violations of international humanitarian and human rights law were committed by all parties, both during the course of the conflict and in its aftermath. Amnesty International therefore calls on all parties to the conflict to ensure that independent, impartial, prompt and thorough investigations are conducted into all allegations of serious violations of international human rights and humanitarian law committed by any and all forces. Those responsible should be brought to justice in proceedings which meet international standards of fairness and victims must receive adequate reparations.

Both the Georgian and the Russian Prosecutor's Offices have opened investigations into alleged violations committed in the course of the conflict. Neither investigation has as yet resulted in any charges being brought.

On 9 August 2008, the Georgian Office of the Prosecutor announced that it was launching an investigation into the conduct of hostilities under Articles 411 and 413 of the Georgian Penal Code covering deliberate violations of international humanitarian law, including the illegal acquisition and destruction of civilian property. The Office of the Prosecutor has insisted that the investigation is not directed against any one side in the conflict, but covers all allegations of illegal acts regardless of the perpetrator. The Georgian government has stated its intention to co-operate with all national investigations into the conduct of hostilities.

On 14 August 2008, the Russian Investigative Committee of the General Prosecutor's Office announced that it was initiating "a genocide probe based on reports of actions committed by Georgian troops aimed at murdering Russian citizens - ethnic Ossetians - living in South Ossetia."<sup>84</sup> Later in August, Amnesty International was informed that the General Prosecutor's office had opened two cases – the first regarding violations against the civilian population and the second concerning crimes against the Russian military. There has been no indication to date that Russian Prosecutors are also investigating possible violations of international humanitarian and human rights law by Russian forces during the course of the conflict.



The Georgian Parliament established a commission to investigate all aspects of the war, including both its causes and the conduct of all parties to the hostilities on 26 September 2008. The Georgian government has committed itself to being guided by the Commission's findings. In Russia, the Public Chamber, a state institution composed of civil society representatives, created a Public Investigation Commission on War Crimes in South Ossetia and Civilian Victims Aid on 12 August 2008.

## INTERNATIONAL INVESTIGATIONS

Given the allegations of serious violations of international law by all parties to the conflict, and the mutual recriminations that may affect the impartiality of national investigations, Amnesty International has also called on them to agree to, and the international community to deploy, a full fact-finding mission to carry out a thorough investigation of all allegations of serious violations of human rights and humanitarian law in the course of the conflict and to report publicly on its findings.

The Parliamentary Assembly of the Council of Europe has also called for an "independent international investigation" into the circumstances surrounding the outbreak of the conflict and the conduct of hostilities by all parties.<sup>85</sup>

Amnesty International welcomes the fact that the Georgian authorities have stated that they will co-operate with international investigations into all aspects of the war's outbreak and conduct<sup>86</sup>. At least one Russian official has stated that the Russian authorities would not oppose objective and independent investigations into all the circumstances of the conflict<sup>87</sup>.

Amnesty International considers that an international fact finding team should be deployed without further delay. The fact-finding team should carry out its investigations and reporting on the basis of relevant international humanitarian law and human rights standards. In addition, the report of the mission's findings should include recommendations aimed at ending and preventing further violations of international law and at ensuring reparation, including justice for the victims. Such a mission should be adequately resourced. The expert fact-finding team must be given access to all relevant information and persons. All persons who provide information to the investigation should be protected from reprisals. Given the range of human rights abuses alleged to have occurred and complexity of the factual and legal issues involved, members of the fact-finding team should be sufficiently equipped and supported to enable them to carry out a thorough and authoritative inquiry. Among other things the team should be supported by adequate numbers of: experts in both international humanitarian and human rights law; military and criminal justice investigators; weapons and ballistic experts; forensic experts; and experts in the protection of victims and witnesses, including women and children.

Although the Secretary-General of the United Nations has raised the possibility of an in depth UN fact-finding mission to the region<sup>88</sup>, as of mid October 2008, Amnesty International was not aware of any concrete proposals for an independent international investigation that had been made public by the UN or any other international organization or mechanism.

## PROCEEDINGS BEFORE INTERNATIONAL COURTS

A number of complaints alleging violations of international human rights law in the context of the conflict have been filed in international courts.

On 12 August 2008 Georgia lodged a complaint against Russia with the International Court of Justice (ICJ) alleging violations of the International Convention on the Elimination of all forms of Racial Discrimination by supporting the ethnic cleansing of Georgians during the present conflict and during the 1990s. Two days later, Georgia submitted a request for the indication of provisional measures. On 15 October the ICJ ordered provisional measures to be taken by both the Russian Federation and Georgia to refrain from engaging in, or sponsoring, any act of racial discrimination and to protect the property and ensure the security and freedom of movement all persons regardless of the national or ethnic origin. The case remains pending.

On 11 August Georgia applied to the European Court of Human Rights (ECtHR) with a request for interim measures to the effect that the Russian government should refrain from taking any measures which may threaten the life or state of health of the civilian population. On 12 August 2008, considering that the situation gave rise to a real and continuing risk of serious violations of the ECHR and with a view to preventing such violations the President of the Court called upon both Georgia and Russia to comply with their obligations under the ECtHR, particularly in respect to their obligations to respect the right to life and the prohibition against torture and other inhuman or degrading treatment or punishment. The President of the Court also requested both parties to provide the Court with information relating to their Convention obligations. The interim measures were prolonged twice by the Court, on 26 August and 16 September respectively. The Georgian authorities have indicated that they are preparing an inter-state application to the ECtHR against Russia alleging that Russia has violated its obligations under the ECHR. On 6 October the President of the ECtHR announced that the court had received around 2,000 individual complaints from South Ossetians alleging human rights violations by the Georgia authorities in the course of the conflict.<sup>89</sup>

All of these proceedings concern state liability and not the individual criminal responsibility of leaders, commanders or combatants for specific violations of international humanitarian or human rights law. International humanitarian law and international human rights law also require that those responsible for such abuses be brought to justice in fair proceedings.

As noted above, the primary responsibility for bringing individual perpetrators of war crimes to justice lies with the authorities of the warring parties. Any war crimes and crimes against humanity committed during the conflict fall within the jurisdiction of the International Criminal Court. Under Articles 15 and 17 of the Rome Statute of the International Criminal Court (Rome Statute), the Prosecutor can seek to open an investigation of these crimes committed on the territory of Georgia, whether committed by Georgians or by Russians, even though Russia has not yet ratified the Rome Statute, if national police and prosecutors are not able and willing to investigate and prosecute these crimes genuinely.<sup>90</sup> Based on the information that the Prosecutor has received so far, including thousands of allegations of crimes forwarded by the Russian Ministry of Foreign Affairs, the Prosecutor has begun a preliminary analysis.<sup>91</sup> This is the first step in making a determination whether to seek authorization from the Pre-Trial Chamber to open a formal investigation. He stated that the

Office of the Prosecutor “will proceed to seek further information from all actors concerned”. Amnesty International believes that whenever there is evidence of crimes of the magnitude of those committed in Georgia then, if states are unable or unwilling genuinely to investigate and prosecute them, the Prosecutor should use his powers to seek authorization to open an investigation. In addition, Amnesty International notes that all states which are party to the Geneva Conventions of 1949 have an obligation to exercise universal jurisdiction over any person suspected of committing a grave breach, regardless where it was committed.

## 8. CONCLUSIONS AND RECOMMENDATIONS

The five-day war between Georgian, Russian and South Ossetian forces caused large-scale destruction of Ossetian- and Georgian-majority settlements in the conflict zone. Civilians paid a heavy price for military operations in terms of deaths, injuries, displacement and the destruction of infrastructure and property.

Based on its research and analysis Amnesty International is concerned that all parties to the conflict may have committed serious violations of international human rights and humanitarian law. Amnesty International is concerned that Georgian forces do not appear to have adopted necessary precautionary measures to protect civilians in their 7 August assault on Tskhinvali, using weapons known for their limited accuracy to attack areas with concentrations of civilians and civilian objects. Dozens of civilians died and many more were injured in these attacks, which also caused extensive damage to civilian homes and property. The Georgian government has admitted using cluster munitions on military targets, but in areas and at a time with a high risk of affecting civilians. Cluster munitions also create an enduring hazard for civilians requiring operations to clear the relevant areas from unexploded ordnance.

Russian attacks on Georgian settlements may have failed to distinguish between military objectives and civilians, causing civilian deaths and the destruction of civilian objects. Certain attacks by the Russian military, such as the bombing of the town centre in Gori and other attacks recorded in this report, do not appear to have targeted particular military objectives, raising concerns that civilians and civilian objects may have been directly attacked. The strong evidence pointing to the use by Russian forces of cluster munitions in civilian populated areas is also a serious concern.

Armed groups of disparate and unclear composition but loyal to the *de facto* administration of South Ossetia attacked ethnically Georgian-majority settlements in South Ossetia that had been under *de facto* pro-Georgian administrative control until the onset of the conflict and were under Russian military control at the time. Militia groups carried out targeted pillaging and arson of Georgian homes, particularly in those villages associated with the Tbilisi-backed alternative *de facto* administration headed by Dmitri Sanakoev. In some cases reported to Amnesty International by eye-witnesses Georgian civilians were also beaten and killed by South Ossetian militia groups. These attacks violated the prohibition under international humanitarian law on wilful killing, wanton destruction of property, and pillage. The Russian armed forces took control of territory administered by the pro-Georgian *de facto* authority in South Ossetia, as well as undisputed Georgian territory in the so-called "buffer zones". As the occupying power, Russian armed forces failed to ensure and protect the human rights of the ethnic Georgian populations living there. Russian military forces did not uphold their

obligation to maintain law and order and prevent looting by South Ossetian militia groups in areas under their control, and Russia must assume responsibility for human rights violations committed in these circumstances.

The conflict further resulted in the displacement of over 190,000 people. On the whole the Russian and Georgian authorities appear to have responded effectively to the immediate needs for shelter, food and water of the displaced. However, although many have already returned to their former places of residence tens of thousands have been unable to do so, and in the light of the deliberate destruction of their homes and property in some areas many Georgians face no prospect of return for the foreseeable future. Providing for the economic, social and cultural rights of those displaced by this conflict over the long-term will remain an enduring concern in Georgia.

The fact that information documented by Amnesty International and others indicates that serious violations of international humanitarian law have been committed by Georgian and Russian forces, and by groups loyal to South Ossetia, demands investigation and remedial action. Georgia and Russia are conducting investigations into alleged violations of international humanitarian law. Amnesty International is calling for these investigations to cover all illegal acts and omissions and to be conducted promptly, independently, impartially and thoroughly, in accordance with international standards for such investigations. The results of these investigations must be made public, and perpetrators of serious violations of international humanitarian law be brought to justice. Amnesty International further calls upon the South Ossetian authorities to ensure the independent, impartial and transparent investigation of alleged violations of international humanitarian law perpetrated by their armed forces.

## RECOMMENDATIONS

### **Amnesty International calls upon the Georgian and Russian governments:**

- To ensure the security of all those residing in areas affected by the conflict and those displaced and wishing to return to territories under their effective control, without regard for their ethnic affiliation;
- To ensure the prompt, independent, thorough and impartial investigation, in accordance with international standards, into allegations that their respective forces committed serious violations of international human rights and humanitarian law during the conflict, including war crimes. This should include crimes of omission, for instance, the failure to prevent killings, beatings looting, and arson in areas under their control;
- Wherever there is sufficient admissible evidence, to ensure prosecution of anyone suspected of violations of national and/or international law in proceedings which comply fully with international fair trial standards;
- To provide without delay detailed maps of all areas affected by the conflict into which cluster bombs were fired, so as to facilitate the clearance of cluster weapon munitions and make these areas safe for civilians; both governments should also ensure that the public is made aware of the dangers of unexploded ordnance through public information campaigns. Where appropriate consideration should be given to closing off areas where such ordnance may be located until it has been cleared;

- To announce a moratorium on the use of all cluster weapons; and ratify the Cluster Weapons Convention;
- To agree to the deployment of and co-operate fully with any international investigation of violations of international human rights and humanitarian law during the conflict and its aftermath;
- To agree to the establishment of, and fully co-operate with, a mechanism which determines the form of, and ensures, full reparations for unlawful acts and omissions, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition;
- To provide full reparations to victims of human rights violations for the consequences of unlawful acts and omissions of their respective forces;
- To co-operate fully with any international monitors of human rights deployed in the region.

**In addition, Amnesty International calls upon the Georgian government:**

- Ensure that internally displaced persons are fully informed as to their rights to return or to resettlement or integration with local society if they so wish;
- To take steps to ensure the right of those internally displaced by the conflict to genuinely participate in decisions affecting the exercise of their human rights;
- To ensure that the internally displaced are also availed of their rights to integration or permanent resettlement elsewhere in the country, as according to each individual's voluntary choice.

**In addition, Amnesty International calls upon the Russian government:**

- To co-operate fully with all international monitoring force(s)/teams deployed in the area so as to facilitate the prompt return of all displaced persons as soon as possible in conditions of dignity;
- To facilitate the access of international human rights monitors to all conflicted affected areas;
- To ensure the rights of refugees displaced from conflict zone to the Russian Federation are fully respected and provided for;
- As long as Russian armed forces continue to exercise effective control in South Ossetia, to ensure that these forces comply with international human rights law and take appropriate measures to protect human rights.

**Amnesty International calls upon the South Ossetian administration:**

- To take all necessary lawful action- including through public statements and law enforcement measures conducted in a manner that respects and protects human rights, to ensure that there are no further attacks, including the unlawful seizure and destruction of property and looting, against ethnic Georgians on the territory of the former South Ossetian autonomous region under *de facto* pro-Georgian administrative control prior to the conflict;

- To investigate violations and abuses of international human rights and humanitarian law committed by all South Ossetian forces, militia and individuals;
- To agree to the deployment of and co-operate fully with international investigations of alleged violations of international human rights and humanitarian law which occurred during the conflict and its aftermath;
- To agree to the deployment of international human rights monitors to South Ossetia, and to co-operate fully with them;
- To agree to the establishment of, and fully co-operate with, a mechanism which determines the form of, and ensures, full reparations for unlawful acts and omissions, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition;
- Provide full reparations for the consequences of the unlawful acts and omissions carried out by South Ossetian forces;
- To ensure the safe, durable return in dignity of all those displaced from the territory of the former South Ossetian autonomous region now under its control in conditions of dignity and security, and publicly affirming the right of return of those displaced;
- To ensure the adequate and equal access to rehabilitation assistance and aid, both material and financial, to all residents without discrimination.

**Amnesty International calls upon the international community:**

- To ensure that an international team with necessary expertise, resources and authority is established and mandated to investigate allegations of violations of international human rights and humanitarian and law committed by all parties during the conflict and its immediate aftermath; the team should make recommendations for addressing impunity for violations and preventing violations in the future;
- To ensure that a mechanism is established to determine the form of, and ensure reparations for violations, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition;
- To end the use, stockpiling and transfer of all cluster weapons, by private companies and individuals as well as states, and support the Cluster Weapons Convention;
- To ensure that states exercise jurisdiction, including, where necessary, universal jurisdiction, over suspects of crimes under international law, including war crimes committed in the context of this conflict;
- To ensure full deployment of human rights monitors throughout South Ossetia and Georgia.

<sup>1</sup> A bi-lateral agreement between Russia and Georgia was signed in Sochi in June 1992 setting the terms of the ceasefire in South Ossetia. The Sochi agreement set up a Joint Control Commission (JCC) to monitor its observance. The JCC was a quadrilateral body with Georgian, Russian, North and South Ossetian representatives, plus participation from the Organization for Security and Co-operation in Europe (OSCE). It provided for the creation of Joint Peacekeeping Forces composed of Russian, South Ossetian and Georgian battalions of no more than 500 men each. Georgia had long expressed its dissatisfaction with the format of the JCC, and since 2004 the structure's decisions have not been implemented by either side. Georgia sought to change the format of the negotiating structure to introduce direct bilateral talks between Georgia and South Ossetia, a format opposed by the South Ossetians.

<sup>2</sup> For background see the following reports published by the International Crisis Group: *Georgia's South Ossetia conflict: Make haste slowly*, Europe Report No. 183, 7 June 2007; *Georgia: Avoiding War in South Ossetia*, Europe Report No. 159, 26 November 2004.

<sup>3</sup> Other states, such as Venezuela, have indicated their approval of Russia's recognition of South Ossetia and Abkhazia, but have, so far, stopped short of formally recognizing them as independent.

<sup>4</sup> Georgia, *Russian Invasion of Georgia. Facts and Figures October 2 2008*, p.9; available at <http://georgiaupdate.gov.ge>

<sup>5</sup> In 2006 Dmitri Sanakoev won an alternative presidential election held in those parts of South Ossetia under Georgian control, and, with Tbilisi's endorsement, administered the Georgian-controlled districts of South Ossetia.

<sup>6</sup> Dmitri Solovyov, "Russia urges Georgia to halt clashes in regions", Reuters, 4 July 2008; *RFE/RL Newswire*, "Four Georgian soldiers being held in South Ossetia", 8 July 2008; *RFE/RL Newswire*, "Georgia says Russian jets violated airspace", 9 July 2008.

<sup>7</sup> The JCC is composed of representatives from Georgia, Russia, South Ossetia and North Ossetia. Since 2004 the Georgian side has sought to revise this format, which it sees as biased against Georgia.

<sup>8</sup> "Countdown in the Caucasus: Seven days that brought Russia and Georgia to war", *Financial Times*, 26 August 2008.

<sup>9</sup> *RIA Novosti*, 4 August.

<sup>10</sup> "Six dead in Georgia standoff", *Financial Times*, 4 August 2008.

<sup>11</sup> "Evacuees from South Ossetia arrive at Russian border", *ITAR-TASS*, 3 August 2008.

<sup>12</sup> Dmitry Avaliani, Sopho Bukia, Alan Tskhurbayev and Thomas de Waal, "How the Georgian war began: IWPR-trained reporters investigate the tragic sequence of events that triggered a war in South Ossetia", Institute for War and Peace Reporting, *Caucasus Reporting Service*, No. 456, 22 August 2008.

<sup>13</sup> *Financial Times*, "Countdown in the Caucasus".

<sup>14</sup> Luke Harding and Mitch Prothero, "Russia signs ceasefire deal but troops stay in Georgia", *The Observer*, 17 August 2008;



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- <sup>15</sup> "Death toll in South Ossetia reached 2,000", *Russia Today*, 10 August 2008, <http://www.russiatoday.com/news/news/28732>; "Georgian troops burn South Ossetian Refugees alive", *Pravda.ru*, 10 August 2008, <http://english.pravda.ru/hotspots/conflicts/10-08-2008/106050-georgia-0>. Human Rights Watch questioned these figures in an early statement issued on 10 August. Human Rights Watch, "Georgia/Russia: Update on Casualties and Displaced Civilians", [http://hrw.org/english/docs/2008/08/10/georgi19581\\_txt.html](http://hrw.org/english/docs/2008/08/10/georgi19581_txt.html)
- <sup>16</sup> Caucasian Knot, "Authorities of South Ossetia report about 1492 casualties of Georgia's attack", <http://eng.kavkaz-uzel.ru/newstext/engnews/id/1227624.html>
- <sup>17</sup> Peter Wilson, "Death toll in South Ossetia a tenth of initial Russian claims", *The Australian*, 22 August 2008, <http://www.theaustralian.news.com.au/story/0,25197,24219963-2703,00.html>
- <sup>18</sup> Interview with Alexander Bastykin, Head of the Investigative Committee of the Office of General Prosecutor of the Russian Federation; *Sueddeutsche Zeitung*, 12 October 2008, available at <http://www.sueddeutsche.de/politik/746/313652/text/>
- <sup>19</sup> "Georgian government publishes latest data on casualties during Russian invasion", *Kavkas-Press*, as reported by the BBC, 12 September 2008.
- <sup>20</sup> [Information](#) supplied to Amnesty International by the Georgian Ministry of Foreign Affairs, 7 October 2008.
- <sup>21</sup> "Georgian government publishes latest data on casualties during Russian invasion", *Kavkas-Press*, as reported by the BBC, 12 September 2008. The total number of wounded is consistent with information supplied to Amnesty International by the Georgian Ministry of Foreign Affairs as of 7 October 2008.
- <sup>22</sup> See Jean-Marie Henckaerts and Louise Doswald Beck, *Customary International Humanitarian Law*, ICRC, 2005.
- <sup>23</sup> Article 8(2)(b)(i).
- <sup>24</sup> The authoritative ICRC Commentary on the Additional Protocols to the Geneva Conventions interprets the expression "definite military advantage anticipated" by stating that "it is not legitimate to launch an attack which only offers potential or indeterminate advantages."
- <sup>25</sup> Rome Statute of the International Criminal Court, Article 8(2)(b)(iv).
- <sup>26</sup> ICRC, *Customary International Humanitarian Law*, Vol. I: rules; Rule 156, p.589. Article 8(2)(b)(i).
- <sup>27</sup> Rome Statute of the International Criminal Court, Article 8(2)(a)(iv).
- <sup>28</sup> UN DOC E/CN.4/1998/53/Add.2
- <sup>29</sup> UN General Assembly GA Resolution A/60/L.1 para 132.
- <sup>30</sup> UN DOC E/CN.4/1998/53/Add.2 Guiding Principles on International Displacement, Principles 28 and 29.
- <sup>31</sup> Human Rights Committee, General Comment No. 31 [80] Nature of the General Legal

Obligation Imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para11.

<sup>32</sup> Human Rights Committee, General Comment No. 31 [80] Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para10.

<sup>33</sup> Committee on Economic, Social and Cultural Rights, General Comment 7, Forced evictions, and the right to adequate housing (Sixteenth session, 1997), UN Doc. E/1998/22, annex IV at 113 (1997), para4.

<sup>34</sup> Committee on Economic, Social and Cultural Rights, General Comment 7, Forced evictions, and the right to adequate housing (Sixteenth session, 1997), UN Doc. E/1998/22, annex IV at 113 (1997), para7.

<sup>35</sup> General Assembly Resolution, Responsibility of States for Internationally Wrongful Acts, UN Doc: A/Res/56/83 (28 January 2002), para3.

<sup>36</sup> See, for example, the ICCPR, Article 2(3), and the Arab Charter on Human Rights, Article 9.

<sup>37</sup> Volume I Rules (Cambridge University Press 2005).

<sup>38</sup> On the request of interviewees, pseudonyms have been used in a number places in this report to protect their identity. These are marked with inverted commas. Names referred to without inverted commas are the real names of the interviewees.

<sup>39</sup> Information supplied to Amnesty International by the Georgian Ministry of Foreign Affairs, 7 October 2007.

<sup>40</sup> American Association for the Advancement of Science and Amnesty International, *High-Resolution Satellite Imagery and the Conflict in South Ossetia*, 9 October 2008, [http://shr.aaas.org/geotech/aaas\\_georgia\\_9oct2008.pdf](http://shr.aaas.org/geotech/aaas_georgia_9oct2008.pdf)

<sup>41</sup> *Attacks damaged or destroyed 70% of buildings - Tskhinvali mayor*, RIA-Novosti, 12 August 2008, <http://en.rian.ru/world/20080812/115983262.html>

<sup>42</sup> Georgia, *Russian Invasion of Georgia. Facts and Figures October 2 2008*, p.2; available at <http://georgiaupdate.gov.ge>

<sup>43</sup> Human Rights Watch, "Georgia: Join Treaty Banning Cluster Munitions", 1 September 2008, <http://www.hrw.org/english/docs/2008/09/01/georgi19722.htm>

<sup>44</sup> Information supplied to Amnesty International by the Georgian Ministry of Foreign Affairs, 7 October 2007.

<sup>45</sup> Expert Meeting Report: "Humanitarian, Military, Technical and Legal Challenges of Cluster Munitions", Montreux, 18-20 April 2007, available at [http://icrc.org/Web/Eng/siteeng0.nsf/htmlall/p0915/\\$File/ICRC\\_002\\_0915.PDF!Open](http://icrc.org/Web/Eng/siteeng0.nsf/htmlall/p0915/$File/ICRC_002_0915.PDF!Open)

<sup>46</sup> See Landmine Action: Ban the "M 85" cluster bomb: Fact sheet, available at [http://www.landmineaction.org/resources/ActionPacks/m85\\_factsheet.pdf](http://www.landmineaction.org/resources/ActionPacks/m85_factsheet.pdf)

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<sup>47</sup> See Human Rights Watch: Georgia: Russian Cluster Bombs Kill Civilians, available at <http://www.hrw.org/english/docs/2008/08/14/georgi19625.htm>

<sup>48</sup> Pavel Felgenhauer, "Ossetian separatists are provoking a major Russian intervention", Jamestown Foundation, *Eurasia Daily Monitor*, Volume 5, No. 151, [http://www.jamestown.org/edm/article.php?article\\_id=2373294](http://www.jamestown.org/edm/article.php?article_id=2373294)

<sup>49</sup> For satellite imagery of the damage to these villages see UNOSAT, 'Village damage summary: Kekhvi to Tskhinvali, South Ossetia, Georgia, [http://unosat.web.cern.ch/unosat/freeproducts/Georgia/Russia\\_ConflictAug08/UNOSAT\\_GEO\\_Village\\_Damage\\_Summary\\_Tskhinvali\\_19aug08\\_Lowres.pdf](http://unosat.web.cern.ch/unosat/freeproducts/Georgia/Russia_ConflictAug08/UNOSAT_GEO_Village_Damage_Summary_Tskhinvali_19aug08_Lowres.pdf)

<sup>50</sup> Georgia, *Russian Invasion of Georgia. Facts and Figures October 2 2008*, p.9; available at <http://georgiaupdate.gov.ge>

<sup>51</sup> American Association for the Advancement of Science and Amnesty International, *High-Resolution Satellite Imagery and the Conflict in South Ossetia*, p.19.

<sup>52</sup> For example, "Yugoosetinskiy spetsnats i opolchentsy zachistili gruzinskoe selo" [South Ossetian special forces and militias cleanse Georgian village], *Novye Izvestiya*, 13 August 2008; "Georgian villagers flee amid claims of atrocities by armed militias arriving from South Ossetia", *The Guardian*, 15 August 2008; Catherin Belton, "Georgian Refugees tell of Attacks and Looting", *Financial Times*, 18 August 2008.

<sup>53</sup> UNHCR, "UNHCR continues monitoring the villages North East of Gori, Emergency Operation in Georgia Update, 29 August 2008, <http://www.unhcr.org/news/NEWS/48bba2ed4.html>

<sup>54</sup> Georgia, *Russian Invasion of Georgia. Facts and Figures October 2 2008*, p.10; available at <http://georgiaupdate.gov.ge>. The 7,894 total population reportedly consisted of approximately 7,194 Georgians and 700 Ossetians.

<sup>55</sup> UNHCR, 'New Humanitarian tragedy unfolding in Gori', Emergency Operation in Georgia Update, 26 August 2008, <http://www.unhcr.org/news/NEWS/48b431254.pdf>

<sup>56</sup> UNHCR, 'Situation north of Gori is deteriorating', Emergency Operation in Georgia Update, 27 August 2008, <http://www.unhcr.org/news/NEWS/48b55da74.pdf>; Amnesty International interview with UNHCR ground staff, Gori, 30 August 2008.

<sup>57</sup> Article 8 (2) (b) (xiii) of the Statute of Rome of the International Criminal Court.

<sup>58</sup> Article 33 of Fourth Geneva Convention prohibits pillaging in international armed conflicts, while Article 4 (2)(g) of Protocol II prohibits pillaging in non-international armed conflict. (Article 33, Fourth Geneva Convention) and in non-international armed conflict (Article 4 (2)(g), Protocol II) armed conflict.

<sup>59</sup> Under Article 8 (2) (b) (xvi) of the Statute of Rome of the International Criminal Court, for international armed conflict, and Article 8 (2) (e) (v) for non-international armed conflicts.

<sup>60</sup> Information supplied to Amnesty International by the Georgian Ministry of Foreign Affairs, 7 October 2007.

<sup>61</sup> Information supplied to Amnesty International by the Georgian Ministry of Foreign Affairs,

7 October 2007.

<sup>62</sup> UNHCR, "Revised figures push number of Georgia displaced up to 192,000," 12 September 2008, available: <http://www.unhcr.org/georgia.html?page=news&id=48ca8d804>

<sup>63</sup> UNHCR, "UNHCR concern as shelter capacity in Georgia town of Gori is exhausted", 2 September 2008, <http://www.unhcr.org/georgia.html?page=news&id=48bd56044>

<sup>64</sup> OCHA, Situation Report No. 11 on the Situation in Georgia 05 Sep 2008  
<http://www.reliefweb.int/rw/rwb.nsf/db900SID/KKAA-7J83FJ?OpenDocument>

<sup>65</sup> Georgia, *Russian Invasion of Georgia. Facts and Figures October 2 2008*, p.11; available at <http://georgiaupdate.gov.ge>

<sup>66</sup> Information supplied to Amnesty International by the Georgian Ministry of Refugees and Accommodation and the UNHCR, 23 October 2008.

<sup>67</sup> UNHCR, "Reports of lawlessness creating new forcible displacement in Georgia" 26 August 2008; UN OHCHR, "Georgia: UN Expert on Internally Displaced Persons says security is key to return," 4 October 2008.

<sup>68</sup> Georgia, "Russian Invasion of Georgia: Refugees and displaced persons," 8 October 2008, available: <http://georgiaupdate.gov.ge>

<sup>69</sup> UNHCR, "New arrivals and increased need for coordination", *Emergency Operation in Georgia*, 5 September 2008; <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=NEWS&id=48c1463c4>

<sup>70</sup> Georgia, *Russian Invasion of Georgia. Facts and Figures October 2 2008*, p.13; available at <http://georgiaupdate.gov.ge>

<sup>71</sup> Information supplied to Amnesty International by the Georgian Ministry of Refugees and Accommodation and the UNHCR, 23 October 2008.

<sup>72</sup> Walter Kälin, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, "Legal aspects of return of internally displaced persons and refugees to Abkhazia, Georgia", 29 November 2007.

<sup>73</sup> UNHCR, "First UNHCR assessment mission to "buffer zone"", *Emergency Operation in Georgia*, 12 September 2008, <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=NEWS&id=48cfafe44>

<sup>74</sup> UNHCR, "Last Update on Emergency Operation in Georgia", *Emergency Operation in Georgia*, 19 September 2008, available at <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=NEWS&id=48d3beb42f6>

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<sup>77</sup> UNHCR, "New humanitarian tragedy"; Amnesty International interview with UNHCR ground staff, 29 August 2008. PUBLISHED?

<sup>78</sup> ICRC, "Georgia/Russian Federation: ICRC shifts focus to long-term recovery", 3 September

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2008, <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/georgia-update-030908>

<sup>79</sup> UN OHCHR, "Georgia: UN Expert on Internally Displaced Persons says security is key to return," 4 October 2008.

<sup>80</sup> S/RES/1839

<sup>81</sup> OSCE Permanent Council Decision No 861 on increasing the number of military officers in the OSCE mission to Georgia.

<sup>82</sup> *HUMAN RIGHTS IN AREAS AFFECTED BY THE SOUTH OSSETIA CONFLICT. SPECIAL MISSION TO GEORGIA AND RUSSIAN FEDERATION*, BY THOMAS HAMMARBERG, COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS

<sup>83</sup> PACE, *The consequences of the war between Georgia and Russia*, Resolution 1633 (2008), <http://assembly.coe.int/Documents/AdoptedText/ta08/ERES1633.htm>

<sup>84</sup> Igor Komissarov, Deputy Chairman of the Investigative Committee of the General Prosecutor's Office. Reported by *RIA Novosti*, 14 August 2008.

<sup>85</sup> PACE, *The consequences of the war between Georgia and Russia*, Resolution 1633 (2008).

<sup>86</sup> Information supplied to Amnesty International by the Georgian Minister of Foreign Affairs, October 7, 2008.

<sup>87</sup> Such as the Permanent Representative of the Russian Federation to the United Nations, speaking to the OSCE Parliamentary Assembly, reported on 20 September 2008 by *RIA Novosti*.

<sup>88</sup> [Statement of 16 September 2008m, attributable to the Spokesperson for the Secretary-General on UN Mission to South Ossetia](http://www.un.org/apps/sg/sgstats.asp?nid=3403): <http://www.un.org/apps/sg/sgstats.asp?nid=3403>

<sup>89</sup> Luke Baker, "South Ossetia floods court with Georgia writs", *Reuters India*, 6 October 2008, <http://in.reuters.com/article/worldNews/idINIndia-35825220081006>.

<sup>90</sup> Russia has, however, signed the Rome Statute and, therefore, is bound not to take any action which would defeat its object and purpose.

<sup>91</sup> The Prosecutor has stated:

"Georgia is a State Party to the Rome Statute" he said. "My Office considers carefully all information relating to alleged crimes within its jurisdiction – war crimes, crimes against humanity and genocide - committed on the territory of States Parties or by nationals of States Parties, regardless of the individuals or groups alleged to have committed the crimes. The Office is *inter alia* analyzing information alleging attacks on the civilians."

"ICC Prosecutor confirms situation in Georgia under analysis", The Hague, 20 August 2008, ICC-OTP-20080820-PR346 ENG.











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# CIVILIANS IN THE LINE OF FIRE

## THE GEORGIA-RUSSIA CONFLICT

More civilians were killed than soldiers in the five-day war in August 2008 for control of South Ossetia, Georgia. Schools, hospitals and homes were bombed and shelled, and some civilians reported being bombed while fleeing their villages. The conflict displaced nearly 200,000 people and leaves a legacy of long-term displacement for thousands unable to return to their homes.

In their military operations both Georgian and Russian armed forces failed to observe core principles of international humanitarian law, resulting in 350 civilian deaths and thousands of injuries. In the aftermath of the conflict, in territory under Russian military control, militia groups loyal to South Ossetia carried out large-scale pillaging and arson of Georgian-majority settlements.

This report presents the findings of several fact-finding missions conducted by Amnesty International to the conflict zone. Serious violations of both international human rights law and international humanitarian law were reported to Amnesty International's researchers. The organization is calling for thorough investigations of the violations of the laws of war committed by all parties during and after the conflict. Perpetrators of such violations, which include war crimes, must be brought to justice and reparations made to the victims.

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November 2008

**AMNESTY**  
INTERNATIONAL





**Office for Democratic Institutions and Human Rights**

# **HUMAN RIGHTS IN THE WAR-AFFECTED AREAS FOLLOWING THE CONFLICT IN GEORGIA**



**Warsaw  
27 November 2008**

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## 1. LETTER TO THE OSCE CHAIRMAN-IN-OFFICE



### Office for Democratic Institutions and Human Rights

The Director

Warsaw, 27 November 2008

H.E. Minister Alexander Stubb  
OSCE Chairman-in-Office  
Helsinki

Excellency,

In response to your request of 17 September 2008, the ODIHR has prepared a report, attached to this letter, on the human rights situation following the armed conflict in Georgia. It is based primarily on information gathered by a Human Rights Assessment Mission, a joint undertaking by the ODIHR and the HCNM, during recent visits to the war-affected areas.

The information contained in the report makes clear that there are serious concerns in regard to human rights and minority issues in the war-affected areas. The direct effects of the war – including, in particular, killings of civilians, extensive damage to homes and other civilian property, as well as the displacement of a large portion of the population – continue to have a serious adverse impact on tens of thousands of individuals. Displaced persons have not been allowed to return in dignity and safety to their former places of residence in South Ossetia, as required by OSCE commitments and other international obligations, while many who fled from the Kodori region of Abkhazia have feared to return because of the uncertain security situation.

Another troubling result of the conflict is the restrictions on movement to and from areas controlled by the *de facto* authorities in South Ossetia and Abkhazia. These restrictions have the effect of exacerbating both political and ethnic tensions, as well as causing hardship to countless individuals and families. Ethnic Georgian communities in the Gali region of Abkhazia do not enjoy all rights guaranteed to them by OSCE commitments.

Providing adequately for the needs of persons still displaced by the conflict and others who lost their homes in the conflict remains an urgent priority. I am heartened by the efforts of the Government of Georgia, as well as other authorities and international humanitarian agencies to provide essential humanitarian assistance to a large number of displaced persons and others in need. At the same time, however, the conditions in which many victims of the conflict are living require substantial improvement. Much remains to be

done to establish adequate conditions for them and to involve them in decision-making on their future.

There is an urgent need to establish accountability for individuals responsible for human rights violations during the conflict and its aftermath and to provide compensation for the victims.

I appeal to the parties to take bold steps towards reconciliation and a political settlement to the conflict that will ensure that all persons can fully enjoy all of their human rights and fundamental freedoms, and that the rights and interests of minority communities will be fully respected in accordance with international obligations and OSCE commitments.

The ODIHR is committed to remaining engaged with relevant authorities to assist in the important task of protecting the human rights of all persons affected by the conflict and its aftermath.

Sincerely,

A handwritten signature in black ink, appearing to read 'Janez Lenarčič', with a large, stylized flourish at the end.

Janez Lenarčič  
Ambassador

CC: H.E. Ambassador Knut Vollebaek, High Commissioner on National Minorities, The Hague

H.E. Ambassador Marc Perrin de Brichambaut, OSCE Secretary General, Vienna



## 2. EXECUTIVE SUMMARY

- This report was prepared at the request of the OSCE Chairman-in-Office. Much of the information it contains was gathered by a Human Rights Assessment Mission (HRAM) of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Office of the OSCE High Commissioner on National Minorities (HCNM). Information from other reliable sources was also included.
- The ODIHR assessment of the human rights situation in the war-affected areas following the August 2008 armed conflict in Georgia found that a number of serious human and minority rights concerns remain in its aftermath, including in particular the continuing problems of displaced persons, restrictions on movement, access to justice, dangers from unexploded ordnance (UXO) and instances of lawlessness.
- The most urgent human rights concern is the grave situation facing tens of thousands of persons displaced by the conflict who have not yet been able to return to their former places of residence, as well as the dire conditions facing persons who remained in or have returned to homes and villages that were destroyed or heavily damaged during the conflict and its aftermath.
- It is clear that the *de facto* authorities in South Ossetia and Abkhazia<sup>1</sup>, including Russian military authorities, have not taken steps to facilitate and ensure that displaced persons can return voluntarily to their former places of residence in safety and dignity, in line with obligations under international standards. Moreover, new restrictions on crossing the administrative boundaries are dividing families and creating economic and social hardships for sizeable portions of the population.
- The Government of Georgia has made efforts under difficult circumstances to meet the needs of a large, new population of displaced persons. Despite these efforts, as well as those of international and national humanitarian organizations, many displaced persons are still living in very difficult conditions and have not yet been provided with adequate assistance or shelter as winter approaches. The *de facto* authorities in South Ossetia have provided some assistance for war-affected persons in territories under their control, but others continue to face arduous conditions and depend on international assistance.
- Although many of the more than 130,000 persons displaced by the conflict have returned to their former places of residence, mainly in the “buffer zone”, over 20,000 persons, overwhelmingly ethnic Georgians, have been prevented from returning to their former places of residence in South Ossetia due to fear of insecurity, damage to their homes, or restrictions placed on their return, while many who fled from the Kodori region of Abkhazia fear to return because of uncertainties about the security situation. The vast majority of the

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<sup>1</sup> The use of the terms “South Ossetia” and “Abkhazia” in this report should not be construed as any pronouncement by the ODIHR on the status of these territories.



more than 30,000 persons who found refuge in Russia during the conflict have returned to their homes in South Ossetia. Some 60,000 persons remain in need of humanitarian assistance.

- Some displaced persons appear to have been pressured by Georgian authorities to return to their former places of residence in the areas adjacent to South Ossetia before conditions were in place to guarantee their security or an adequate standard of living, in contravention of OSCE commitments and other international standards.
- It appears that in most instances, displaced persons have not been adequately consulted on planning for their futures in regard to housing, rehabilitation, resettlement or return, or adequately informed about government intentions on these or other issues that affect them.
- The issue of compensation for homes and other property lost during the conflict remains unresolved.
- Interviews with displaced persons and others affected by the conflict make clear that many remain deeply affected and traumatized by their experiences during the conflict. Many were caught in conflict zones where they witnessed deaths, ill-treatment, and experienced human rights violations. Many lost their homes and possessions.
- Within South Ossetia, many villages close to Tskhinvali that were predominantly inhabited by ethnic Georgians were nearly completely destroyed. These villages were pillaged and then set afire following the withdrawal of Georgian forces; these actions appear to have been condoned by the *de facto* authorities. Only a small number of inhabitants now live in these villages, facing dire conditions. In some areas within South Ossetia, including parts of the town of Tskhinvali, the homes of many civilians were destroyed or damaged as a result of bombardment, leaving the residents in difficult circumstances. In the Akhalkori area, which recently came under the control of the *de facto* South Ossetian authorities, the population lives in fear following an influx of military personnel. If the *de facto* authorities proceed with plans to restrict access to this area from the south, it may create significant human rights issues and problems of a humanitarian nature including the supply of basic necessities.
- In the areas adjacent to South Ossetia, in the so-called “buffer-zone”, many ethnic Georgian villages were also systematically looted and burned. While general calm has returned to most of these areas, the situation in some places remains tense and lawlessness remains a concern on both sides of the administrative boundary. Returned villagers whose homes were damaged or destroyed face difficult conditions.
- The situation for ethnic Georgians in Abkhazia is increasingly precarious. The closure of the administrative boundary has left families divided and is having a serious negative effect on economic and social conditions. Moves by the *de facto* authorities to encourage residents of Gali to give up their Georgian

citizenship appear coercive and discriminatory and are further exacerbating the situation of the Georgian community in the district.

- International and national humanitarian organizations face unreasonable restrictions on their access to South Ossetia and Abkhazia. In particular, insistence by the *de facto* South Ossetian authorities that international access to the territory must be through the Russian Federation aggravates the situation of the local population and hampers the work of humanitarian organizations.
- Few, if any of those responsible for unlawful acts during the conflict are being held accountable or brought to justice. To date, there has been no thorough national or international investigation of human rights violations during or in the aftermath of the conflict.
- The final chapter of this report includes a list of recommendations, foremost among them the need for parties to the conflict to meet their OSCE and other human rights commitments and obligations, to restore freedom of movement and create conditions for the voluntary return of displaced persons in safety and dignity, to provide adequately for the needs of the displaced until they can return, to investigate human rights violations that occurred during the conflict and its aftermath and to hold accountable the individuals responsible for human rights violations, and to begin a process of promoting reconciliation and confidence-building as a step towards a political solution to the conflict.

### 3. LIST OF ABBREVIATIONS

CERD	Convention on the Elimination of all Forms of Racial Discrimination
CoE	Council of Europe
CoE CHR	Council of Europe Commissioner for Human Rights
CRC	Convention on the Rights of the Child
IDP	Internally displaced person
ECHR	European Convention on Human Rights
HCNM	OSCE High Commissioner on National Minorities
HRAM	Human Rights Assessment Mission
ICJ	International Court of Justice
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
IDPs	Internally Displaced Persons
NGO	Non-governmental organization
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
SGBV	Sexual and gender-based violence
UXO	Unexploded ordnance
UDHR	Universal Declaration of Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNOMIG	United Nations Observer Mission to Georgia

### 4. ACKNOWLEDGEMENTS

The ODIHR wishes to thank all who facilitated the preparation of this report. The report would not have been possible without the co-operation of the Governments of Georgia and the Russian Federation as well as of the *de facto* authorities in both Abkhazia and South Ossetia. Despite repeated requests, access by the HRAM to South Ossetia from the south was, however, denied. The OSCE Mission to Georgia provided invaluable logistical support and substantive briefings. The United Nations Observer Mission to Georgia (UNOMIG) facilitated access for the HRAM to Abkhazia.

The ODIHR is particularly grateful to the many individuals who provided personal accounts of their experiences during the conflict and its aftermath, as well as to international and national organizations which shared their information with the HRAM.

The Director of the ODIHR also wishes to acknowledge the dedicated efforts of those who participated in various phases of the HRAM, including experts from the Office of the High Commissioner on National Minorities, in particular for their work in the field, often in challenging circumstances.

5. MAP



## 6. INTRODUCTION

### *BACKGROUND TO THE REPORT*

This report was prepared at the request of the OSCE Chairman-in-Office. On 17 September 2008, the Chairman-in-Office addressed letters to the Director of the ODIHR and to the HCNM requesting them to assess the human rights and minorities situation in the war-affected areas in Georgia in accordance with their mandates and to provide him with an assessment and recommendations before the Helsinki Ministerial Council. The request by the Chairman-in-Office followed the Joint Declaration of the Council of Europe (CoE) and OSCE High-Level “2+2” Meeting of 15 September 2008, which called for the CoE Commissioner for Human Rights (CoE CHR), the ODIHR and the HCNM “to continue to assess the overall human rights situation in the war-affected areas, including South Ossetia and Abkhazia.”<sup>2</sup>

### *METHODOLOGY*

A Human Rights Assessment Mission (HRAM) from the OSCE/ODIHR and the OSCE HCNM was in the field for most of the period between 11 October and 10 November 2008 to assess the human rights situation in the areas affected by the recent conflict. The Director of the ODIHR joined the Mission on 16-18 October. A total of 16 persons participated in various stages of the HRAM, working in teams of two to collect information with regard to the current situation of war-affected persons, including in particular persons displaced by the conflict.

Most of the information in this report is based on individual accounts provided in interviews with the HRAM and observations of the HRAM experts. The report also incorporates information collected in meetings with governmental officials at all levels, elected representatives, national and international non-governmental organizations (NGOs), international organizations including international humanitarian organizations, and others.<sup>3</sup>

The ODIHR developed a set of tools and questions to guide the work of the HRAM, based on previous ODIHR experience in assessing human rights conditions. Mission members also drew on the *Basic Principles of Human Rights Monitoring*<sup>4</sup> as the basis for their information gathering and interviewing. Special attention was devoted to vulnerable groups such as displaced persons, returnees, the elderly, children, and minority communities.

The HRAM focused on the following rights and freedoms during its information gathering and assessment:

- Personal security, including right to life, freedom from torture and ill treatment, arbitrary detention, and policing and ensuring the safety of persons;

<sup>2</sup> Joint Declaration of the Council of Europe and OSCE High-level “2+2” Meeting, Brussels, 15 September 2008, [www.osce.org/documents/pdf\\_documents/2008/09/32999-1.pdf](http://www.osce.org/documents/pdf_documents/2008/09/32999-1.pdf).

<sup>3</sup> See Annex III for a listing of key meetings.

<sup>4</sup> From the *UN Training Manual on Human Rights Monitoring*, retrievable at [www1.umn.edu/humanrts/monitoring/index.html](http://www1.umn.edu/humanrts/monitoring/index.html).

- Property rights and compensation;
- Freedom of movement including the right to return;
- Right to education;
- Economic, social and cultural rights;
- Rights of persons belonging to minorities.

The HRAM also identified other human rights issues of concern, including access to justice and citizenship problems.

HRAM teams were deployed on:

- 13-24 October in and around Tbilisi (two teams), in and around Gori and in the areas adjacent to the administrative boundary of the former Autonomous District of South Ossetia (henceforth, the “buffer zone”) (two teams). One team visited Kutaisi on 22 October.
- 17-24 October in Abkhazia, including Sukhumi, the Kodori gorge area and the Gali district (one team); and
- 7-10 November in South Ossetia (one team).

The teams conducted 172 interviews with individuals (100 women and 72 men) affected by the conflict from 55 different locations.<sup>5</sup> Besides individual interviews, teams also conducted a number of group interviews.

When interviewing war-affected individuals, the HRAM guaranteed full confidentiality for the identity of the interviewees. The HRAM endeavoured to include among those interviewed a representative sample of the population (men and women, different age groups, individuals from different areas). The first-hand accounts given by war-affected individuals were, when possible, cross-checked with information from other individuals and other sources to maximize accuracy.

The HRAM was not able to obtain free and unimpeded access to South Ossetia in a timely manner. On 18 October, the ODIHR Director was advised by members of the Russian army at the checkpoints near Ergneti and Akhagori that access to South Ossetia had not been granted. Following consultations, including with the Government of Georgia, the HRAM was ultimately able to send a team to the area for several days, accessing it from the Russian Federation. The HRAM was able to visit areas in Abkhazia including the southern part of the Gali region. Because of security considerations, travel within South Ossetia and the Kodori gorge was conducted with armed escorts provided by the *de facto* authorities and the armed forces of the Russian Federation (Kodori gorge), as requested by the HRAM. The HRAM teams were free to choose where to stop and interview individuals. The presence of armed soldiers nearby however may have had an intimidating effect on some of those interviewed.

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<sup>5</sup> List of towns and villages (boldface indicates those visited by HRAM): **Achabeti, Adzvi, Ajara, Akhagori**, Akhalubani, **Avnevi**, Beloti, Charebi, **Chkhalt**a, Disevi, **Dmenisi, Dvani, Dzria, Eredvi, Ergneti, Gentsvishi, Gori**, Gorinta, Gorisa, Ikoti, **Java, Kaspi, Karaleti, Kekhvi, Kere, Khelchua, Khetagurovo**, Knolevi, **Kobrisi, Koshka, Ksuisi, Kvemo Khviti, Kurta, Kvabchara, Lamiskana, Megvrekisi, Medzvriskhevi, Mukhrani, Nogkau, Nuli, Okona, Plavi, Plavismani**, Ptishi, Sakeni, **Satskheneti, Tamarasheni** (two villages), **Tirdznisi, Tskhinvali, Vajari, Vanati, Zemo Nikozi** and **Zemo Khviti, Prisi, Znauri**.

## ***FOCUS OF THE HUMAN RIGHTS ASSESSMENT***

The focus of this report is primarily on the current situation of human rights in the areas affected by the conflict. The information it contains relates in most instances to events and conditions in South Ossetia, the “buffer zone” and the Kodori gorge and Gali district of Abkhazia.

This report is not intended to provide a comprehensive compilation of human rights issues during the conflict or its aftermath, or to assign responsibility for human rights violations. Nonetheless, the report does provide a compendium of information from personal accounts and other information that demonstrate patterns of serious human rights violations in the war-affected areas.

The issues set out in the report merit further and more detailed investigation. The human rights and minorities issues arising from the conflict are continuing to impact the lives of tens of thousands of individuals in the war-affected areas and beyond. As set out in the recommendations section of the report, there is a need for urgent action to deal with the impact of the conflict and its aftermath on human rights and, in particular, on the rights of minority communities.

## ***HUMAN RIGHTS STANDARDS***

The primary human rights and minorities standards employed for the HRAM and in the preparation of this report are the human dimension commitments of the OSCE, all of which are binding on the parties to the conflict. The parties to the conflict are also bound by their international legal obligations under such human rights treaties as the *International Covenant on Civil and Political Rights* (ICCPR), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the *European Convention on Human Rights* (ECHR), the *Framework Convention for the Protection of National Minorities* and the many other treaties to which they are parties, including the Geneva Conventions on the protection of victims of war. The parties are also bound by the provisional measures ordered by the International Court of Justice (ICJ) in the “Case Concerning Application of the International Convention on the Elimination of all Forms of Racial Discrimination” (*Georgia v. Russian Federation*)<sup>6</sup> and by the interim measures indicated to both Georgia and the Russian Federation on 12 August 2008 under Rule 39 of the Rules of Court of the European Court of Human Rights.<sup>7</sup> In addition, a number of other international standards are applicable to the conflict and its aftermath, notably the *UN Guiding Principles on Internal Displacement*, which the OSCE participating States have recognized as a framework

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<sup>6</sup> International Court of Justice, Order of 15 October 2008 on the “Case concerning Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation)”.

<sup>7</sup> The text of this binding order (retrievable at [www.echr.coe.int](http://www.echr.coe.int) under ‘press releases’) is as follows: “On 12 August 2008 the President of the Court, acting as President of Chamber, decided to apply Rule 39 of the Rules of Court (interim measures) considering that the current situation gives rise to a real and continuing risk of serious violations of the Convention. With a view to preventing such violations and pursuant to Rule 39, the President calls upon both the High Contracting Parties concerned to comply with their engagements under the Convention particularly in respect of Articles 2 and 3 of the Convention. In accordance with Rule 39 § 3, the President further requests both Governments concerned to inform the Court of the measures taken to ensure that the Convention is fully complied with.”

for dealing with internal displacement,<sup>8</sup> and the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.<sup>9</sup>

Ensuring the protection of human rights is primarily the responsibility of governments. The governmental authorities in the war-affected areas, in particular the Governments of Georgia and the Russian Federation, therefore bear responsibility for the protection of human rights in the war-affected areas in which they exercise effective control. It is, in this context, pertinent to recall that both state and non-state actors bear responsibilities with regard to the implementation of international human rights law. Because of the international aspects of the conflict, it is also worth recalling that parties to human rights treaties are responsible to secure the human rights of all individuals under their effective control, not just to individuals within their borders.<sup>10</sup> Human rights must be ensured without distinction or discrimination of any kind.

### ***STRUCTURE OF THE REPORT***

The chapter of this report that sets out the HRAM's assessment of the human rights and minorities situation in the war-affected areas (Chapter 7) is arranged geographically, in recognition of that fact that different regions were affected to different extents and in different ways by the conflict and its aftermath. The nature, extent and severity of human rights issues varied substantially from region to region. The human rights assessment is thus broken down into three geographic sections, separately covering developments in (1) the areas adjacent to the administrative boundary of the former Autonomous District of South Ossetia (the "buffer zone"), (2) within South Ossetia,<sup>11</sup> and (3) within Abkhazia, in particular the Kodori gorge and the Gali district.

The report ends with a general analysis of the findings and a list of recommendations for national authorities and international actors.

### ***BACKGROUND TO THE CONFLICT***

The situation in the conflict zones in 2008 had deteriorated for several months before the August conflict.

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<sup>8</sup> Maastricht Ministerial Council decision 4/03, §13.

<sup>9</sup> Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

<sup>10</sup> ICCPR article 2.1, ECHR article 1. The European Court of Human Rights has held that the responsibility of a contracting party "may also arise when as a consequence of military action – whether lawful or unlawful – it exercises effective control of an area outside its national territory". Such control may be exercised directly, through its armed forces, or through a subordinate local administration (see *Loizidou v. Turkey (Preliminary Objection)*, Judgment of 23 March 1995, para. 62; and likewise judgments in the cases of *Ilascu and Others v. Moldova and Russia*, Judgment of 8 July 2004, and *Cyprus v. Turkey*, Judgment of 10 May 2001). The UN Human Rights Committee has held in a number of cases that the ICCPR can apply to actions undertaken by States outside their borders; see *Sergio Euben Lopez Burgos v. Uruguay*, Communication No. R.12/52, UN Doc. Supp. No. 40 (A/36/40) at 176 (1981), para. 12.3; cf. *Lilian Celiberti de Casariego v. Uruguay*, Communication No. 56/1979, U.N. Doc. CCPR/C/OP/1 at 92 (1984).

<sup>11</sup> Also includes the situation of persons displaced from South Ossetia temporarily residing in collective centres in Gori and Tbilisi.



In the Georgian-Abkhaz context, there had been a gradual build-up of tension since March, when the Russian Federation withdrew from a Commonwealth of Independent States agreement limiting relations with the Abkhaz *de facto* authorities and consequently decreed the formal recognition of Abkhaz and South Ossetian *de facto* laws, documents and juridical persons. The military posturing of all parties subsequently increased. Further escalation of tension occurred after several armed incidents and explosions on the ground as well as over-flights by Georgian unmanned aerial vehicles over Abkhazia and the shooting down of at least one by a fighter plane concluded by the UN to belong to the Russian Federation.<sup>12</sup>

In the Georgian-Ossetian context, the security situation gradually deteriorated in 2008. The number and intensity of exchanges of fire between Georgian and South Ossetian controlled areas as well as explosions of improvised explosive devices increased during this period.

On the evening and night of 1-2 August 2008, a series of intense exchanges of fire – including reported mortar shelling – occurred between Georgian and South Ossetian controlled areas, which caused fatalities and casualties. The OSCE Mission to Georgia assessed these exchanges as the most serious outbreak since the conflict in 2004. Less intensive exchanges of fire took place also during the nights of 2-3 and 3-4 August.<sup>13</sup> The situation deteriorated further on the afternoon of 6 August, when fire was exchanged along almost the entire line of contact between the Georgian and South Ossetian sides. Firing from mortars and artillery continued into 7 August. On the evening of 7 August, President Mikheil Saakashvili announced a unilateral cease-fire in a televised address, which apparently was also observed by the South Ossetian side for several hours until fire reportedly was exchanged again. Close to midnight firing began anew, with the centre of Tskhinvali also coming under heavy fire and shelling.<sup>14</sup>

The conflict escalated over the next several days, with both ground fighting and aerial bombardment. Georgian ground forces entered South Ossetia in the morning of 8 August. Additional Russian forces moved into South Ossetia from the north. Later they moved further south beyond the former administrative boundary and occupied adjacent areas including the town of Gori. Russian and South Ossetian forces moved into parts of the Akhgori area of South Ossetia, which had been under Georgian control and administered by an adjacent Georgian region. Russian forces also entered Abkhazia, and subsequently crossed the administrative boundary to enter Zugdidi, Poti and Senaki.

Efforts by the French President Nicolas Sarkozy on behalf of the European Union (EU), and talks he had in Moscow on 12 August 2008 with Russian President Dmitry Medvedev, resulted in six cease-fire principles.

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<sup>12</sup> Report of the UN Secretary-General on the Situation in Abkhazia, Georgia, 23 July 2008, S/2008/480, p. 4.

<sup>13</sup> OSCE Mission to Georgia, *Spot Report: Latest developments in the zone of the Georgian-Ossetian conflict*, Vienna, 4 August 2008.

<sup>14</sup> OSCE Mission to Georgia, *Spot Report on the situation in the zone of the Georgian-Ossetian conflict: Update No. 1 (11:00 Tbilisi time)*, 8 August 2008.

On 22-23 August, the Russian forces announced that the southernmost positions within the unilaterally declared ‘security zone’ adjacent to South Ossetia would largely run along the southern boundary of the former area of responsibility of the Joint Peacekeeping Force and encompassed a network of villages that, prior to the conflict, had an estimated population of 24,000.<sup>15</sup>

On 26 August 2008, Russian President Medvedev signed decrees in which the Russian Federation recognized the independence of South Ossetia and Abkhazia.<sup>16</sup> Two days after the Russian decree was issued, the Georgian Parliament adopted a resolution declaring that Abkhazia and South Ossetia were territories occupied by the Russian Federation and labeling the Russian peacekeepers an occupying force.<sup>17</sup> This position was later turned into a Law on Occupied Territories, which was signed by the President of Georgia on 31 October.

On 8 September the Presidents Sarkozy and Medvedev met again in Moscow and clarified further measures to be implemented with a view to the full implementation of the 12 August principles. According to the additional measures agreed, the Russian forces withdrew for the most part from the “buffer zones” on 8 and 9 October following the deployment of EU monitors on 1 October.

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<sup>15</sup> United Nations, Georgia Crisis Flash Appeal, October 2008, p. 4.

<sup>16</sup> Statement by Ambassador Anvar Azimov, Permanent Representative of the Russian Federation to the OSCE, Special meeting of the OSCE Permanent Council, 28 August 2008.

<sup>17</sup> Report of the United Nations Secretary-General on the Situation in Abkhazia, Georgia, 3 October 2008, S/2008/631, p.. 3.

## 7. HUMAN RIGHTS ASSESSMENT

### OVERVIEW

In general, the HRAM's findings confirm that human rights violations and issues remain a substantial concern in the war-affected areas since the end of the August conflict. These issues are in most instances a direct legacy of the conflict. Information collected by the HRAM, including in particular from individual interviews with displaced persons, suggests grave human rights violations were committed during the period of conflict; the violations included killings, ill-treatment, destruction of property, and failure to protect civilians in the war zones.

One of the most profound effects of the conflict was the displacement of a substantial portion of the population of the war-affected areas. Many civilians fled from the combat. Many of those who remained were subsequently subject to threats and mistreatment that induced them to depart or ultimately departed because they feared for their safety. According to reports of humanitarian organizations, some 130,000 persons were displaced during the conflict or in its aftermath.<sup>18</sup> Of those who fled, a substantial number have been able to return to their former places of residence in the "buffer zone". As of the first week of October 2008, however, some 60,000 persons remain in need of humanitarian assistance.<sup>19</sup> Most of these remain in collective centres established by the Government of Georgia to accommodate displaced persons many of which are in kindergartens, administrative buildings and hospitals. In addition, some 36,000 persons fled to North Ossetia (Russian Federation) during the conflict, most of whom are now reported to have returned to their homes.<sup>20</sup> An estimated 2,000 persons, many of whom may have Russian citizenship, have chosen to remain in North Ossetia.

The continuing problems faced by displaced persons are a direct consequence of the conflict and its aftermath. The HRAM found that many displaced persons were afraid to return to their former places of residence in the "buffer zone" and were either afraid of or prevented from returning to their former places of residence in South Ossetia. Many have confirmed through friends or neighbours that their homes have been destroyed; others are convinced their homes have been destroyed even if they have not been able to obtain confirmation. Disturbingly, the HRAM collected information from displaced persons that indicates there was systematic destruction and looting of houses by both uniformed and civilian Ossetians in the "buffer zone" and in South Ossetia.<sup>21</sup> In addition to this major disincentive to return, many ethnic Georgian displaced persons believe they would face personal danger if they returned to South Ossetia or the Kodori region of Abkhazia. Clearly, the *de facto* authorities in South Ossetia and Abkhazia have not created the conditions necessary to enable and encourage displaced persons to return to their former places of residence. Worse, as set out in the sections below, the *de facto* authorities in South Ossetia have made

<sup>18</sup> Unless otherwise indicated the figures used are from United Nations, Georgia Crisis Flash Appeal, October 2008, pp. 4-5.

<sup>19</sup> "Displacement Figures and Estimates – 'Georgia Crisis'", UN Georgia, 3 October 2008.

<sup>20</sup> "Special Follow Up Mission to the Areas Affected by the South Ossetia Conflict," Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, 21 October 2008, CommDH (2008), p. 7.

<sup>21</sup> See "Property rights" in the two relevant sections, below.

statements and taken steps that indicate they do not intend to let displaced persons return. The United Nations estimates that because of these circumstances, there will be some 30,000 long-term displaced persons as a result of the conflict.<sup>22</sup> OSCE commitments prohibit mass expulsions and require States to facilitate the voluntary return of displaced persons in dignity and safety.<sup>23</sup> The *United Nations Guiding Principles on Internal Displacement* include the same stipulation, making it clear also that all competent authorities, irrespective of their legal status, have the duty and responsibility to establish conditions and provide the means for the displaced persons to return to their homes in safety and dignity.<sup>24</sup>

Some of the key conflict-related human rights violations identified by the HRAM in interviews with displaced persons include killings of civilians, forced expulsions, forced returns, danger to personal security, and the confiscation, looting or destruction of their personal property. As a result of the timing of the displacement, many of the displaced persons were not able to harvest their crops, which spoiled in the orchards and fields; this will have severe consequences for their livelihoods. Many also reported that they lost cattle and other farm animals to looters, which will have a long-term negative effect on their ability to support themselves and on their standard of living. In addition to persons who are still displaced, many returnees also face dire circumstances of life throughout the various areas of conflict, including South Ossetia, the “buffer zone” and the Kodori area of Abkhazia, where some are suffering from lack of food or shelter, as well as other concerns. This includes Ossetians whose homes were destroyed or damaged during bombardments by the Georgian military.

As set out and documented in the sections below, many of the displaced persons currently in collective centres established by the Government of Georgia are living in extremely difficult conditions and without basic necessities, despite efforts by the Government and international humanitarian agencies to assist them. The Government, which bears the responsibility to create adequate conditions for return as per the *UN Guiding Principles on Internal Displacement*, has not consulted adequately with displaced persons on their preferences for the future and has not provided adequate information to them about its own plans. Far smaller numbers of displaced persons or persons whose homes were damaged or destroyed are living in collective centres established by the *de facto* authorities in South Ossetia, where conditions also appear to be difficult.

The August conflict had clear minority implications. Ethnic Ossetians and Abkhaz are minority communities within Georgia, while as of the writing of this report ethnic Georgians are, in fact, minority communities in both South Ossetia and Abkhazia. The conflict unfolded to a significant degree along ethnic lines. In general, therefore, the human rights concerns resulting from the conflict are compounded by their implications as minority issues. In addition, a number of specific issues of discrimination and failure to protect the rights of persons belonging to minority communities have arisen or worsened in the aftermath of the conflict, especially with regard to the southern Gali district of Abkhazia. OSCE participating States have undertaken extensive commitments to protect the rights of persons belonging to

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<sup>22</sup> United Nations, Georgia Crisis Flash Appeal, October 2008, p. 15.

<sup>23</sup> Charter for European Security (1990), §22.

<sup>24</sup> Guiding Principles on Internal Displacement, §§2.1 and 28.1.

national minorities, not least of which requires them to refrain from resettling persons with the aim of changing the ethnic composition of areas.<sup>25</sup> Both Georgia and the Russian Federation are parties to the Council of Europe's *Framework Convention for the Protection of National Minorities* which imposes further obligations for the protection of minorities. In addition, both Governments are bound by the ICJ order on provisional measures of 15 October 2008, to "do all in their power...to ensure, without distinction as to national or ethnic origin, (i) security of persons; (ii) the right of persons to freedom of movement and residence within the border of the State; (iii) the protection of the property of displaced persons and of refugees."<sup>26</sup>

The HRAM did not gather comprehensive information on sexual and gender-based violence (SGBV). Although the issue of SGBV was raised in interviews with individuals, it did not feature prominently, which may well be because the subject is still considered largely taboo in much of Georgia and victims may face a very real potential for social ostracization. In addition, many of the interviews were carried out in circumstances – such as the lack of privacy – which were not conducive to discussing this issue.

### ***ONGOING CONCERNS***

Although human rights violations committed during the conflict and its aftermath affected different areas to different extents and in different ways, the HRAM found a number of trends applicable to more than one area.

Since the end of hostilities, and since the completion of the withdrawal of Russian armed forces from the "buffer zone", an increasing calm has returned to many of the war-affected areas. To some extent, however, the calm is misleading since it, at least partially, results from the forced departure of large numbers of persons – primarily ethnic Georgians – from South Ossetia and the Kodori region of Abkhazia. As noted above, the responsible authorities have not yet fulfilled their obligation to ensure conditions for the return of displaced persons. A problem of lawlessness exists on both sides of the administrative boundary with South Ossetia, causing considerable concern to residents. Increased restrictions on movement across the administrative boundaries of both South Ossetia and Abkhazia are negatively affecting populations living along the boundaries and well beyond.

In all areas, civilians have suffered trauma from the effects of the conflict and its aftermath. It is not clear that adequate facilities have been put in place to deal with the physical or psychological effects of the conflict on the civilian population. There is a special need to ensure attention to potentially vulnerable segments of the population, including the elderly, children, female-headed households, and persons belonging to ethnic minorities. Persons displaced by the conflict have not been officially registered as displaced persons by the Government of Georgia, leaving them without the same protections and benefits available to persons previously displaced.

The international aspects of the conflict have complicated the problem of access to justice for persons whose human rights were violated in the course of the conflict and

<sup>25</sup> Helsinki document (1992), §27.

<sup>26</sup> ICJ, Order of 15 October 2008, *supra* note 6, p. 41.

in its aftermath. The continuing *de facto* physical division of the areas affected by the conflict has impeded the efforts of various authorities to address violations or abuses that occurred during the conflict and in its aftermath. It has not been possible through national legal procedures to date to bring to justice and to hold accountable any individuals responsible for human rights violations. A large number of cases has been submitted to the European Court of Human Rights and more are under preparation.<sup>27</sup>

The question of compensation for lost property remains an important outstanding issue. OSCE commitments require States to ensure that everyone has the right to peacefully enjoy his property and that no one may be deprived of his property except under conditions provided for by law and in accordance with standards that are judicially enforceable.<sup>28</sup> The ECHR (Protocol No. 1) as well as the *UN Guiding Principles on Internal Displacement* make clear that the property and possessions of internally displaced persons, including any property they leave behind, must be protected in all circumstances.<sup>29</sup>

The problem of unexploded ordnance (UXO) from the conflict continues to impact many areas affected by the conflict. According to reports from humanitarian organizations and displaced persons there are large amounts of UXO remaining from the conflict.<sup>30</sup> Efforts are underway to clear UXO, especially in urban areas. The danger from UXO remains acute, however, in rural areas and may severely impact rural populations as they attempt to work in the fields. An international NGO working on de-mining in Georgia has reported that both sides in the conflict used cluster bombs; as a result, cluster bomb sub-munitions form a part of the UXO problem.<sup>31</sup>

Although the HRAM was not in a position to gather detailed information on freedom of expression, it appears that the conflict and its aftermath have had negative effects on freedom of expression and other international commitments and obligations of the parties in regard to the media and journalists.<sup>32</sup> Two journalists were killed during the fighting in Tskhinvali on 10 August and another was killed during fighting on 12 August in Gori.<sup>33</sup> In addition, at least 12 journalists were injured. The Gori-based premises of the television station Trialeti were looted during the Russian occupation of Gori; after the Russian withdrawal, the staff returned to discover that the equipment

<sup>27</sup> For example, a press release by the registrar of the European Court of Human Rights stated that the Court had already received over 2,700 applications by 10 October 2008.

<sup>28</sup> Moscow document (1991), §24; Copenhagen document (1990), §9.6.

<sup>29</sup> Guiding Principles on Internal Displacement, §21.2.

<sup>30</sup> HRAM meeting with international organization. See also HALO Trust [www.halotrust.org/georgia.html/](http://www.halotrust.org/georgia.html/)

<sup>31</sup> OSCE Mission to Georgia, Daily Patrol Report for 28 October 2008, p. 2.

<sup>32</sup> The freedom of expression is guaranteed by many OSCE commitments (including, e.g., Moscow document, §28.9, Copenhagen document, §9.1, and Budapest document, §34) as well as other international human rights instruments such as the ICCPR (article 19) and the ECHR (article 10). OSCE participating States have expressed their deep concern about the exploitation of media in areas of conflict to foment hatred and ethnic tension (Istanbul Summit Declaration, §27). They have also committed themselves to adopt all feasible measures to protect journalists engaged in dangerous professional missions, particularly in cases of armed conflict (Moscow document, §26).

<sup>33</sup> Unless otherwise noted, the information in this paragraph is based on HRAM meeting with the OSCE Mission in Georgia and the RFOM Press Release 22 September 2008 available at [www.osce.org/fom/item\\_1\\_33089.html](http://www.osce.org/fom/item_1_33089.html).

and furniture was destroyed. The station remains off the air. During the conflict, Russian television broadcast hate speech against Georgian authorities, while Rustavi-II television carried a clip insulting to Russians. These broadcasts have exacerbated inter-ethnic tensions. According to an NGO, the Georgian media continues to create and enforce stereotypes of Russians.<sup>34</sup> Access to South Ossetia remains severely restricted for both Georgian and international journalists.

## ***THE “BUFFER ZONE”***

### **General situation**

The August conflict resulted in the temporary displacement of most of the ethnic Georgian population from the “buffer zone”. Entire villages were emptied of people as military forces from Russia and South Ossetia advanced into the “buffer zone”. Many villagers were forced out under threat or fear of physical violence. There were extensive cases of intimidation, looting and pillage in the “buffer zone”, as well as detentions and some reported killings, all of which sparked the exodus of the population. The displaced persons, who were overwhelmingly ethnic Georgians, either went to live with friends or relatives or were temporarily settled in collective centres set up by Georgian authorities, which were often established in schools or kindergartens. Conditions in the different collective centres varied a great deal but were often inadequate. In some cases the residents of collective centres did not have adequate access to proper water or sanitation facilities. In some cases the facilities and services at the collective centres fell far short of the minimum standards required for care of displaced persons.<sup>35</sup> It should be acknowledged, however, that the Government of Georgia was making efforts, in co-operation with international humanitarian agencies, to provide assistance to very large numbers of displaced persons under difficult circumstances.

As described and documented in the following sections of this report, most of those affected by the conflict in the “buffer zone” have returned to their original places of residence. In many instances, however, the returns were not assessed as entirely voluntary. The residents of some collective centres were reluctant to return – especially to villages close to the administrative boundary with the former Autonomous District of South Ossetia – because of fears of continuing insecurity and instances of lawlessness in these areas. They were nonetheless told by officials to return to their villages. Many were loaded onto buses and taken back to their villages. Some found when they arrived that their houses had been destroyed as a result of military combat or burned and there was no shelter available for them. Delivery of relief supplies to persons who have returned to their original places of residence in the “buffer zones” has been erratic; some returnees reported to the HRAM that they were receiving sufficient supplies and assistance while others said they were not. The manner in which some people were returned to their original places of residence appears to have been at odds with the requirement that displaced persons be protected against forcible return.<sup>36</sup>

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<sup>34</sup> HRAM interview with NGO.

<sup>35</sup> Guiding Principles on Internal Displacement, §18.

<sup>36</sup> Ibid., 15 and 28.1.

According to most reports from international organizations as well as HRAM observations, the Georgian police returned to the “buffer zone” on 10 October.<sup>37</sup> This has greatly improved the security situation, although, as set out below, some individuals in villages close to the administrative boundary complained to the HRAM that insecurity continued, since marauders from South Ossetia still cross the administrative boundary at night to harass inhabitants.

The Government of Georgia established an effective system of replacing lost identity documents and displaced persons recorded only a few complaints on this score to the HRAM. Identity documents are often vital to enable displaced persons to gain access to essential social services. In contrast, the system of documentation for property and land ownership is far more complex. The absence of such documentation could complicate or interfere with the rights of some displaced persons to reclaim their property, to obtain compensation for losses, or create difficulties in the event disputes arise. Since displaced persons from the conflict have not been officially registered as such by the Government of Georgia, they do not enjoy the same protections and benefits available to persons previously displaced.

### **Specific human rights concerns**

#### ***Right to life***

*The right to life is enshrined in many international human rights documents binding on the parties to the conflict, including the ICCPR and the ECHR,<sup>38</sup> and as such is incorporated also into OSCE commitments.<sup>39</sup> In a situation of armed conflict, the Geneva Conventions also apply to the parties.*

According to individual accounts collected by the HRAM, the security situation in the “buffer zone” began to deteriorate in early August, with increased instances of shots being fired across the administrative boundary and occasional reports of the movement of armed men from South Ossetia into the “buffer zone”. Even at this early stage, the sense of insecurity was sufficient that some residents of the area decided to depart for their own safety.<sup>40</sup> Witnesses reported that active military hostilities began on 7-8 August and continued as late as 12 August, depending on the particular village in question.<sup>41</sup>

The initial hostilities took the form of aerial bombardment, which was reported by witnesses to have come from the Russian Air Force.<sup>42</sup> Although some of the bombing was aimed at military targets, much of it appeared to fall indiscriminately on civilian villages. In the village of Kaspi, for example, eight women reportedly died in one house that was hit by a bomb, while others were injured.<sup>43</sup> According to eyewitness

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<sup>37</sup> HRAM meeting with Deputy Chief of Police in Gori, Shalva Tramakidze; HRAM meeting with international organization.

<sup>38</sup> ICCPR article 6, ECHR article 2.1.

<sup>39</sup> Helsinki document (1975) section 1.(a) Declaration on Principles Guiding Relations between participating States – Principle X.

<sup>40</sup> HRAM individual interview 27.

<sup>41</sup> HRAM individual interviews 20, 22, 110.

<sup>42</sup> E.g., HRAM individual interview 33.

<sup>43</sup> HRAM individual interview 70.



reports by villagers, at least two persons were killed by bombs in the village of Megvrekisi,<sup>44</sup> at least two in Tirdznisi,<sup>45</sup> three in Zemo Nikozi,<sup>46</sup> six in Ergneti,<sup>47</sup> and eight in Gori.<sup>48</sup> The bodies of ten civilians killed by bombs were delivered to the military hospital in Gori.<sup>49</sup> It should be emphasized that these reported killings are based on the eyewitness accounts of a relatively small sample of displaced persons interviewed by the HRAM and therefore do not represent a full overview of total civilian deaths from aerial bombardment in the “buffer zone”. The death toll from bombing was certainly higher than indicated by the illustrative figures provided above. A pattern of why certain villages were bombed, and others not, is not apparent from the information thus far collected; while some villages suffered deaths and damage from bombing, others did not.

In addition to deaths, there were substantial numbers of civilians injured by aerial bombardment. For example, between 8 and 11 August, 114 wounded civilians were admitted to Gori Hospital.<sup>50</sup> An additional 41 civilians were admitted on 12 August when Gori was attacked.<sup>51</sup> Doctors at the hospital reported to the HRAM that the large majority of those admitted were wounded by bombs or artillery; very few of those admitted suffered from gunshot wounds.<sup>52</sup> Many civilians hid in basements or in the fields during the bombing, although substantial numbers fled from the combat areas.

A new phase of the hostilities began with the advance of ground forces into the “buffer zone”, following which there were numerous reported attacks on civilians. The advancing military forces were variously described by displaced persons as “Ossetians” and “Russians;”<sup>53</sup> in many cases civilians were not able to distinguish clearly between the two. Displaced persons witnessed killings of unarmed civilians by incoming military forces in Gori and in the villages of Megvrekisi, Tirdznisi, Ergneti, and Karaleti.<sup>54</sup> In Ergneti, for example, a villager described to the HRAM how he saw a group of ten “Ossetians” in Russian uniforms hit an 80-year old man in the back and then shoot him.<sup>55</sup> The victim, according to the villager, crawled into a building, said “I’ve been shot,” and then fell down and died. In Karaleti, a villager reported, a car with four “Ossetians” dressed in military uniforms entered the village and shot and killed one of his neighbours with an automatic weapon.<sup>56</sup>

A number of civilians were injured by UXO in the “buffer zone” during this period.<sup>57</sup> Three persons were admitted to Gori hospital in October after stepping on UXO.<sup>58</sup> A

<sup>44</sup> HRAM individual interviews 7, 8, 9.

<sup>45</sup> HRAM individual interview 12.

<sup>46</sup> HRAM individual interview 25.

<sup>47</sup> HRAM meeting with Chief Doctor of Gori City Hospital, Paata Khavabadze.

<sup>48</sup> HRAM individual interview 5.

<sup>49</sup> HRAM meeting with Chief Doctor of Gori City Hospital, Paata Khavabadze.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> E.g., HRAM individual interviews 112, 34.

<sup>54</sup> Ibid., HRAM individual interviews 7, 9, 11, 37.

<sup>55</sup> HRAM individual interview 21.

<sup>56</sup> HRAM individual interview 37.

<sup>57</sup> E.g., HRAM meeting with Chief Doctor of Gori City Hospital, Paata Khavabadze.

<sup>58</sup> Ibid.

young boy was reportedly killed by a landmine or other UXO in Ergneti village.<sup>59</sup> The Government of Georgia is making efforts to clear UXO in the “buffer zone”, in co-operation with an international NGO. However, the large quantity of UXO in the “buffer zone”, particularly in agricultural areas, continues to pose a significant threat to the lives of villagers. Fears of UXO are also contributing to the reluctance of some displaced persons to return to their former places of residence in the “buffer zone”. An international humanitarian agency reported that the Government of Georgia had issued a list of villages in the “buffer zone” that were “safe” for civilian returns, which included all the villages in the “buffer zone” but two, although UXO is still a problem throughout much of the area.<sup>60</sup> An NGO working on demining told the HRAM that it had identified 18 villages in the “buffer zone” affected by cluster munitions and another nine with a UXO threat.<sup>61</sup>

According to one NGO, the Government of Georgia began in August to make payments to families of persons killed in the conflict.<sup>62</sup> Each family was to receive 10,000 Georgian Lari (GEL) (about EUR 4,800) if a civilian family member was killed or GEL 15,000 (about EUR 7,200) if a soldier was killed. The NGO heard of 14 such compensation payments but said it had not heard of any further payments since August.

### ***Freedom from torture and ill-treatment***

*OSCE participating States have adopted numerous commitments prohibiting torture or ill treatment.<sup>63</sup> In addition, the parties to the conflict have legal obligations to prevent torture and ill treatment, including under provisions of the ICCPR,<sup>64</sup> the Convention against Torture, the ECHR<sup>65</sup> and other instruments.*

A few incidents of ill-treatment were reported to the HRAM. According to one individual, a man was beaten to death by “Ossetians” in the village of Tirdznisi.<sup>66</sup> A woman from the village of Karaleti reported to the HRAM that “Ossetians” were preventing people from extinguishing fires under threat of being killed.<sup>67</sup> The Chief Doctor of Gori hospital reported that two patients complained of having been beaten by “Ossetians” but added that these individuals did not have clear signs of mistreatment.<sup>68</sup>

A Tbilisi-based NGO specializing in assistance to victims of torture told the HRAM that they have identified 50 torture cases related to the conflict for long-term follow-up.<sup>69</sup> One case of rape was also documented and another identified but the victim

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<sup>59</sup> HRAM individual interview 22.

<sup>60</sup> HRAM interview with international organization.

<sup>61</sup> HRAM report from coordination meeting of humanitarian organizations operating in the Gori region.

<sup>62</sup> HRAM interview with NGO.

<sup>63</sup> E.g., Charter for European Security (1990), §21.

<sup>64</sup> Article 7.

<sup>65</sup> Article 3.

<sup>66</sup> HRAM individual interview 11.

<sup>67</sup> HRAM individual interview 22.

<sup>68</sup> HRAM meeting with Chief Doctor of Gori City Hospital, Paata Khavabadze.

<sup>69</sup> HRAM interview with NGO.

declined assistance.<sup>70</sup> Another NGO working on the same issues reported that it has not found evidence that rape occurred frequently during the conflict, but there were some instances.<sup>71</sup> In particular, the NGO had evidence of a case in which a woman who was hiding in a church in Gori was gang-raped; a woman who was held in custody in Tskhinvali was taken out by guards and repeatedly raped; a girl kidnapped in Gori was raped; and a Georgian male soldier on whom the NGO's doctors found physical evidence indicative of rape.<sup>72</sup>

### ***Arbitrary detention***

*OSCE commitments prohibit arbitrary arrest or detention,<sup>73</sup> as do the ICCPR<sup>74</sup>, the ECHR<sup>75</sup> and other instruments.*

Several villagers from the “buffer zone” reported instances of arbitrary detention to the HRAM, some of them terming it “kidnapping.”<sup>76</sup> For example, several residents of the village of Megvrekisi were detained while trying to flee from the village, but all were eventually returned.<sup>77</sup> A resident of Zemo Nikozi was reportedly arrested by agents of the *de facto* Ministry of Interior of South Ossetia but was released after the intervention of a senior official.<sup>78</sup> In Zemo Khviti, three men were detained and brought to Tskhinvali but were released within a few hours.<sup>79</sup>

According to an NGO, 14 Ossetians, including two teenagers, were detained by Georgian police following Russian withdrawal from the “buffer zone” and were held incommunicado.<sup>80</sup>

### ***Policing and ensuring the safety of persons***

*OSCE participating States are committed to abide by the rule of law<sup>81</sup> and to take necessary measures to ensure that law enforcement personnel act in the public interest.<sup>82</sup> The ICCPR and the ECHR each stipulate that everyone has the right to security of the person.<sup>83</sup>*

Residents began to flee from the “buffer zone” amid heightened security concerns even before the onset of hostilities.<sup>84</sup> Many more fled once the bombing began.<sup>85</sup> Most of those who remained through the bombing fled after the arrival of Ossetian

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<sup>70</sup> Ibid.

<sup>71</sup> HRAM interview with NGO.

<sup>72</sup> HRAM interview with NGO.

<sup>73</sup> Vienna document (1989), §23.

<sup>74</sup> Article 9.

<sup>75</sup> Article 5.

<sup>76</sup> E.g., HRAM individual interviews 43, 7, 8.

<sup>77</sup> HRAM individual interviews 7, 8, 9.

<sup>78</sup> HRAM individual interview 26.

<sup>79</sup> Ibid.

<sup>80</sup> HRAM meeting with NGOs.

<sup>81</sup> E.g., Copenhagen document (1990), §2.

<sup>82</sup> Moscow document (1991), §21.1

<sup>83</sup> ICCPR article 9, ECHR article 5.

<sup>84</sup> E.g., HRAM individual interview 27.

<sup>85</sup> E.g., HRAM individual interviews 2, 20, 22, 24.

and Russian forces in the “buffer zone”.<sup>86</sup> According to many reports by displaced persons, the arrival of these forces resulted in direct threats to the population, instructions to leave, looting and house burning (see “property rights,” below). The arrival of Russian troops reportedly caused great initial anxiety among the population.<sup>87</sup>

While many villagers reported killings, looting and other grave human rights violations by the arriving Ossetian and Russian armed forces, a number of villagers singled out the Russian forces for good behaviour. In Ergneti, for example, villagers told of Russian soldiers paying for food and wine obtained from villagers. In Zemo Nikozi, according to a villager who remained, Russian forces prevented Ossetians from detaining the 11 elderly people who remained in the village, escorted them to an apartment and provided protection for them until the Russian withdrawal from the village. During the day, Russians accompanied them to their houses to allow them to feed the chickens. One of the villagers mentioned that a Russian general gave a telephone number where he could be contacted if the Ossetians should start to harm the village population or their property.<sup>88</sup> Another woman who stayed in the village, an ethnic Ossetian, provided a similar account of a Russian General providing a number to call if anything went wrong in the village.<sup>89</sup> Another villager told the HRAM that Russian troops brought food to the church, which was divided among the villagers; it was the Ossetians, she said, who were responsible for the looting and burning that took place.<sup>90</sup> A few other villagers from the “buffer zone” provided similar accounts of Russian good behaviour. One person interviewed by the HRAM said that the Ossetian forces were generally well-behaved but were not trusted by the villagers, in contrast to the Russians, who behaved well and were more trusted.<sup>91</sup> The Deputy Director of the Gori military hospital told the HRAM that the Russians treated hospital staff fairly and that Russians transported injured Georgian civilians to the hospital.<sup>92</sup>

Even after the withdrawal of Russian and Ossetian forces in October, many displaced persons were fearful of returning to their former places of residence in the “buffer zones”. They generally acknowledge, however, that with the return of Georgian police forces to the “buffer zone”, the security situation has improved appreciably. Nonetheless, there is still a risk to people living close to the administrative boundary from criminal gangs who operate across the administrative boundary of the former Autonomous District of South Ossetia.<sup>93</sup>

### ***Property rights and compensation***

*OSCE commitments guarantee everyone the right peacefully to enjoy his property and stipulate that no one may be deprived of his property except in the public interest and subject to the conditions provided for by law and consistent with international*

<sup>86</sup> E.g., HRAM individual interviews 34, 44.

<sup>87</sup> E.g. HRAM individual interviews 36, 37.

<sup>88</sup> HRAM individual interview 26.

<sup>89</sup> HRAM individual interview 27.

<sup>90</sup> HRAM individual interview 28.

<sup>91</sup> HRAM individual interview 45.

<sup>92</sup> HRAM meeting with Deputy Director of Military Hospital in Gori, Tornike Arsenashvili.

<sup>93</sup> HRAM meeting with representative of the OSCE Mission to Georgia.

*commitments and obligations.*<sup>94</sup> *The Fourth Geneva Convention prohibits pillage.*<sup>95</sup> *Protocol 1 of the ECHR stipulates that no person shall be deprived of his possessions except in the public interest and through a process of law.*<sup>96</sup> *Many human rights treaties include provisions giving victims of human rights violations the right to a remedy, including, for example, ECHR Article 13 and CERD Article 6. The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law set out in more detail the rights of victims to restitution, compensation and rehabilitation.*<sup>97</sup>

Many residents of the “buffer zone” lost their homes, their livestock, their vehicles and other property during the conflict. The most disturbing aspect of property loss was the apparently widespread, deliberate burning of houses by those whom villagers described as “Ossetians”. Members of the HRAM observed first hand the destruction in some areas of the “buffer zone” that resulted from deliberate arson. During the travel of HRAM members in the “buffer zone”, they counted approximately 140 destroyed houses that were recently burned, none of which showed traces of combat activity. In many of these houses, the locks had been “shot out” with small arms as a means to gain access. In all of the cases observed, the homes appear to have been looted of valuable items prior to their having been set on fire, as evidenced by the absence of remains of major items such as appliances or televisions.<sup>98</sup> International humanitarian agencies estimate that some 300 to 500 houses in the “buffer zone” were deliberately burned and that about 2,000 houses were otherwise damaged in the course of the conflict.<sup>99</sup>

Many displaced persons witnessed the deliberate burning of houses. In Megvrekisi village, for example, witnesses reported that 15 houses were burned.<sup>100</sup> In Tirdznisi village about 20 houses were burned.<sup>101</sup> Among the worst affected villages was Ergneti, where displaced persons reported that about 100 houses were completely destroyed by fire and another 30 were damaged.<sup>102</sup> One displaced person described seeing Ossetians and Russians looting his house in Ergneti and then setting it afire.<sup>103</sup> Another woman in Ergneti described how “Ossetians” set her house on fire -- one of them threw her into the fire but she was pulled out by another.<sup>104</sup> Zemo Khviti is another village in which the majority of houses were reported to have been deliberately burned.<sup>105</sup> A villager from Plavi described to the HRAM seeing her house and store set afire by men who spoke Ossetian and who threatened to kill anyone who attempted to extinguish the flames.<sup>106</sup> Several houses and apartment

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<sup>94</sup> Copenhagen document (1990), §9.6.

<sup>95</sup> Fourth Geneva Convention (1949), article 33.

<sup>96</sup> ECHR Protocol 1, Article 1.

<sup>97</sup> United Nations General Assembly Resolution 60/147.

<sup>98</sup> HRAM observations made during visit to the “buffer zone”.

<sup>99</sup> HRAM interview with international organization.

<sup>100</sup> HRAM individual interviews 7, 8, 9.

<sup>101</sup> Ibid.

<sup>102</sup> HRAM individual interviews 23, 24.

<sup>103</sup> HRAM individual interview 24.

<sup>104</sup> HRAM individual interview 17.

<sup>105</sup> HRAM individual interviews 41, 42.

<sup>106</sup> HRAM individual interview 34..

buildings in the village of Karaleti were burned, but others were spared. In contrast, there were no allegations of deliberate arson in the villages of Kere or Kvemo Khviti, where some villagers returned to find their homes largely intact.<sup>107</sup>

A survey conducted in the “buffer zone” by the Government of Georgia Prosecutor’s Office between 10 and 13 October 2008 found that 463 houses had been burned in the Gori district and 115 in the Kareli district.<sup>108</sup>

Some houses were also destroyed as a result of aerial bombardment or small arms fire. Members of the HRAM observed several houses in the “buffer zone” that had been destroyed by small arms or mortar fire.<sup>109</sup> The villages of Dvani, Kvemo Nikozi, Zemo Nikozi, Zemo Khviti, Megvrekisi, and Ergneti were among those where members of the HRAM saw damage to houses from bombs or small arms.<sup>110</sup>

Another major problem that affected the “buffer zone” during the conflict and in the days that immediately followed was widespread looting and pillage. For example, one individual described how he was beaten by “Ossetians” who then stole all the items of value from his house including the television, refrigerator and washing machine; the looters even dismantled and removed the doors from the house before setting the building on fire.<sup>111</sup> Another individual from the same village reported seeing “Ossetians” collecting a large number of cows from the village and leading them away.<sup>112</sup> Another family reported that some of their crops were stolen, as well as their car and their furniture. An NGO reported to the HRAM that in the village of Tkviavi, a Russian tank destroyed the wall of a shop; the soldiers then helped themselves to the inventory and told villagers to feel free to take what remained.<sup>113</sup> A displaced person from the village of Zemo Nikozi described to the HRAM how after the Russian army entered the village, they were followed by Ossetians who looted several houses.<sup>114</sup> Another woman from the same village reported that looters stole satellite dishes, televisions, and a tractor, as well as other household goods. She witnessed the looting, which was carried out by soldiers with machine guns who threatened her.<sup>115</sup> Other displaced persons from the same village provided corroborating accounts of their experiences. A displaced person from the village of Zemo Khviti told a similar story of having her house and her neighbour’s house looted in front of her by four “Ossetians” who threatened her with a gun.<sup>116</sup>

Although most of the individuals who spoke with the HRAM identified the looters as “Ossetians”, a few identified the perpetrators as Russian soldiers. Many civilians were

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<sup>107</sup> HRAM individual interviews 45, 32.

<sup>108</sup> HRAM meetings with Regional Prosecutor, Davit Sakvarelidze; Regional Deputy Chief of Police in Gori, Shalva Tramakidze; Deputy Director of Military Hospital in Gori, Tornike Arsenashvili; Chief Doctor, Gori City Hospital, Paata Khavabadze.

<sup>109</sup> HRAM observations made during visit to the “buffer zone”.

<sup>110</sup> Ibid.

<sup>111</sup> HRAM individual interview 15.

<sup>112</sup> HRAM individual interview 21.

<sup>113</sup> HRAM meeting with NGOs.

<sup>114</sup> HRAM individual interview 26.

<sup>115</sup> Ibid.

<sup>116</sup> HRAM individual interview 42.

unable to distinguish between Ossetian and Russian forces or could not reliably distinguish between the two.

Displaced persons from the “buffer zone” generally reported to the HRAM that none of them had received compensation for lost or destroyed property.<sup>117</sup> A few asserted that the Government had promised they would receive compensation.<sup>118</sup> A few said they had received Government visits to assess needs for assistance to reconstruct damaged housing. According to an NGO, Government officials have gone to at least some villages to assess the damage to houses and have already begun to make payments up to 12,600 GEL (about EUR 6,050) to repair damaged homes; payments for more greatly damaged homes may as much as double that amount.<sup>119</sup>

### ***Freedom of movement, including the right to return***

*OSCE participating States are committed to removing all legal and other restrictions with respect to travel within their territories and with respect to residence for those entitled to permanent residence within their territories.<sup>120</sup> They are further committed to facilitate the voluntary return in safety and dignity, of internally displaced persons, in accordance with international standards, recognizing also that the reintegration of people to their places of origin must be pursued without discrimination.<sup>121</sup> The OSCE has recognized the UN Guiding Principles on Internal Displacement as the relevant framework.<sup>122</sup> The cease-fire agreement entered into by the Governments of Georgia and the Russian Federation on 12 August requires the parties to the conflict to permit free access to humanitarian assistance and to all the return of refugees.<sup>123</sup>*

Among the most disruptive aspects of the conflict were the constraints it imposed on freedom of movement. Many people were forced to flee from their homes and many have not been able to return. Others felt pressured to return before they considered conditions safe or facilities adequate in their original places of residence. Moreover, the closure of the administrative boundary of the former Autonomous District of South Ossetia is now more strictly enforced than previously by Russian and Ossetian forces, impeding the movement of citizens and causing great hardships and disruptions, including the division of families and communities. (See also section on South Ossetia, below.)

In the “buffer zone”, the large majority of displaced persons have returned to their homes since the withdrawal of Russian forces on 8-9 October, most of them in the immediate wake of the withdrawal. As the Russian forces began to withdraw, the Government of Georgia reportedly announced that it would provide three days of free transportation (9-11 October) for displaced persons to return to their villages. In a meeting with HRAM, the Deputy Minister for Refugees and Accommodation confirmed that as soon as the Russian forces began to withdraw from the “buffer

<sup>117</sup> E.g., HRAM group interview 2.

<sup>118</sup> E.g., HRAM group interview 2.

<sup>119</sup> HRAM report of coordination meeting of humanitarian organization operating in the Gori region.

<sup>120</sup> Moscow document (1991), §33.

<sup>121</sup> Lisbon document (1996), §10.

<sup>122</sup> Maastricht Ministerial Council decision 4/03, §13.

<sup>123</sup> Point 3. Available at

[www.elysee.fr/documents/index.php?lang=fr&mode=view&cat\\_id=8&press\\_id=1738](http://www.elysee.fr/documents/index.php?lang=fr&mode=view&cat_id=8&press_id=1738)

zone”, the Government started organizing returns of displaced persons, for those who were able and willing to go back. The Deputy Minister further stated that those displaced persons whose houses were completely destroyed in the “buffer zone” would wait to go back until their houses are reconstructed.<sup>124</sup> In some instances, residents of collective centres considered that they were required or forced to return. A displaced person from Megvrekisi village, for example, reported to the HRAM that the Government enforced the return of displaced persons from Tbilisi to the village on 11 October.<sup>125</sup> A villager from Kere reported that the displaced persons from the village were “forced out” of Tbilisi and returned to the village.<sup>126</sup> In Plavi, the villagers were also returned together. In Zemo Nikozi, one of the villages that suffered heavy war damage, all the inhabitants had returned by mid-October, even though many of their houses had been destroyed.<sup>127</sup> There was a similar situation in Zemo Khviti, where villagers whose houses were destroyed were staying with their neighbours.<sup>128</sup> A number of international humanitarian organizations shared their view with the HRAM that these returns were not voluntary.<sup>129</sup> Forced returns are contrary to OSCE commitments.

### ***Right to education***

*International legal instruments including the ICESCR, the Convention on the Rights of the Child and the ECHR set out the right of everyone to an education.*<sup>130</sup>

It appears that most children have now returned to school in the “buffer zone”, although education continues to be disrupted to some extent as a result of the conflict. In Tirdznisi village, for example, the local school was partly destroyed and then looted of computers, copy machines and televisions. The Minister of Education visited the school and promised assistance to repair the school building; school was scheduled to begin on 20 October.<sup>131</sup> In Dzria, which is very close to the administrative boundary and only about one kilometre away from a Russian checkpoint, villagers told the HRAM they were afraid to send their children to a school in the village of Perevi (controlled by Russian forces).<sup>132</sup> A woman from the village of Knolevi told the HRAM that the school director in her village called her and told her that it would not be safe for her son to come back to school yet.<sup>133</sup> The Deputy Governor of Gori confirmed to the HRAM that although the school year has begun, some schools remain closed.<sup>134</sup> Many schools reopened during the two-week period that the HRAM was visiting villages in the “buffer zone”.

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<sup>124</sup> HRAM meeting with Deputy Minister for Refugees and Accommodation, Beso Tserediani.

<sup>125</sup> HRAM individual interview 9.

<sup>126</sup> HRAM individual interview 31.

<sup>127</sup> HRAM individual interview 25.

<sup>128</sup> HRAM individual interview 41.

<sup>129</sup> HRAM meetings with international organizations.

<sup>130</sup> ICESCR article 13, CRC article 28, ECHR article 2, Protocol 1.

<sup>131</sup> HRAM individual interview 11.

<sup>132</sup> HRAM group interview 3.

<sup>133</sup> HRAM individual interview 29.

<sup>134</sup> HRAM meeting with Deputy Governor in Gori, Kaspi, Kareli and Khashuri Municipalities, Zurab Chinchilakashvili.



The situation is better in some other villages. In Megvrekisi, for example, the local school suffered no physical damage and the school director hid the school's computers so that they would not be stolen. Although some sports equipment and books were stolen, this was not expected to disrupt the opening of school.<sup>135</sup> Where schools were able to reopen, this served as a powerful incentive for persons to return willingly to their homes.

### ***Economic, social and cultural rights***

*The parties to the conflict are bound by the provisions of the ICESCR, which recognizes the right of everyone to social security, the highest attainable standard of physical and mental health and to an adequate standard of living including adequate food, clothing and housing.*<sup>136</sup>

Many of the civilians most affected by the conflict in the “buffer zone” were not people of great means even before the conflict; in its aftermath, many are in financial and social distress and in need of substantial assistance. Many displaced persons returned to their former places of residence to find destroyed and looted houses. Because they were displaced at harvest time, most people were unable to harvest their crops. In addition, during their displacement many found that living conditions in collective centres were rudimentary or sub-standard.

By most accounts, the Government of Georgia made, and continues to make, commendable efforts under difficult circumstances to assist war-affected persons, in co-operation with national and international humanitarian organizations. One apparent failing of this effort has been to consult adequately with displaced persons on their future or to inform them adequately of Government plans. The Deputy Minister for Refugees and Accommodation acknowledged that access to information for IDPs and returnees remained an issue that was not addressed adequately and informed about plans to produce and disseminate leaflets on their rights and entitlements, and to further work with NGOs to provide information to them. In interviews, the HRAM found there was a consistent pattern of displaced persons not knowing what was in store for them or what sort of assistance they could expect.<sup>137</sup> In some villages, Government representatives had appeared and offered vague assurances that assistance was on the way; in other villages the HRAM was told that no Government representative had visited. The *UN Guiding Principles on Internal Displacement* stipulate that special efforts should be made to ensure the full participation of displaced persons in the planning and management of their return or resettlement and reintegration.<sup>138</sup>

Villagers who have returned to their former places of residence in the “buffer zone” are in some cases facing extremely difficult conditions and some complain that they are receiving little or no assistance from either the Government or international agencies. In Ergneti village, for example, which was one of the “buffer zone” villages most damaged by the conflict, villagers told the HRAM that they had not received any

<sup>135</sup> HRAM individual interview 10.

<sup>136</sup> ICESCR articles 9, 11, 12.

<sup>137</sup> This concern was expressed repeatedly in witness interviews, e.g., in HRAM individual interviews 70, 44, 112.

<sup>138</sup> Guiding Principles on Internal Displacement, §28.2.

food assistance since their return.<sup>139</sup> Another villager complained that there were no medicines available at the hospital.<sup>140</sup> A returnee to Koshka expressed concern that she had nothing to eat or drink and feared freezing as winter approached.<sup>141</sup> A villager in Zemo Khviti complained of her ruined house, commenting that she and her family now sleep in the open.<sup>142</sup> In Megvrekisi village, the HRAM observed a family of eight was staying in the shed previously used to keep cattle.<sup>143</sup> In Zemo Khviti, the HRAM found that basic food supplies were being provided by the church and humanitarian groups, while the Government had provided materials (but not workers) to rebuild some houses. In Zemo Nikozi, governmental engineering and construction teams have visited and promised quick action; some villagers, however, were becoming wary of promises of quick assistance.<sup>144</sup>

Among the most serious consequences of the conflict for many villagers was that they were displaced at harvest time and that their crops spoiled in the fields and orchards. The loss of crops meant not only the loss of a source of food, but also of livelihood, since much of the crop was usually sold for cash. This concern, which was expressed repeatedly to the HRAM,<sup>145</sup> will result in continuing hardship for villagers and will mean that they must rely on the availability of long-term assistance, at least until next year's harvest.

Many persons also complained about the conditions they had experienced in collective centres before their return to the villages, or were continuing to experience in collective centres. Villagers from Ergneti, for example, asserted that they were never visited by Government representatives at their collective centre, that they were cold and did not have warm clothes, and that they did not receive medicine.<sup>146</sup> A collective centre in Gori lacked blankets, kitchen equipment, heating and indoor water.<sup>147</sup> The HRAM visited another collective centre building that was in extremely poor condition, with holes in the walls and no proper windows. Although doctors were supposed to visit the collective centres daily, this system was not working.<sup>148</sup> The Military Hospital in Gori, which was normally open to civilians, was closed to civilians because of the number of military casualties.<sup>149</sup> Some displaced persons were initially housed in tent cities until other accommodations were available. Conditions in some other collective centres were reported to be substantially better. A displaced person from Kere, for example, was satisfied with the conditions at her collective centre and praised the Government for all the assistance it had provided to her.<sup>150</sup>

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<sup>139</sup> HRAM individual interviews 14, 15, 16, 17, 18.

<sup>140</sup> HRAM individual interview 21.

<sup>141</sup> HRAM individual interview 33.

<sup>142</sup> HRAM individual interview 41.

<sup>143</sup> HRAM group interview 1.

<sup>144</sup> HRAM individual interview 25.

<sup>145</sup> E.g., with regard to Kere, Plavi, Plavismani, Zemo Khviti and many other villages.

<sup>146</sup> HRAM individual interviews 23, 24.

<sup>147</sup> HRAM individual interview 1.

<sup>148</sup> HRAM meeting with Chief Doctor of Gori Hospital, Paata Khavabadze.

<sup>149</sup> HRAM meeting with Deputy Director of the Military Hospital in Gori, Tornike Arsenashvili.

<sup>150</sup> HRAM individual interview 31.

Most of the displaced persons interviewed by the HRAM still had their identity documents or were able to obtain new ones without difficulty. This is particularly important since identity documents are often needed to obtain social services. Elderly displaced persons generally reported also that they continued to receive their pensions. According to information provided to the HRAM, however, it appears that the persons displaced from the “buffer zone”, most of whom have now returned to their villages, were never officially registered as displaced persons and that they therefore may not be entitled to the benefits and protection accorded to displaced persons.

## ***SOUTH OSSETIA***

### **General situation**

As detailed below, residents reported to the HRAM that tensions in South Ossetia heightened appreciably in early August, with increased insecurity and many instances of shooting and lawlessness. This escalated into a military conflict that had a grave effect on the civilian population, resulting in deaths, injuries, arbitrary detention, destruction of homes and public buildings and other abuses. The conflict, including the military operation launched by Georgian forces in the Tskhinvali area, which included the shelling of civilian populated areas, led to the displacement of an estimated 36,000 civilians, overwhelmingly ethnic Ossetians, across the border to the Russian Federation.<sup>151</sup> Aerial bombardment by the Russian Air Force and the advance of Russian ground troops into the district after 7 August led to the forced displacement of about 23,000 persons, the vast majority of whom were ethnic Georgian.<sup>152</sup> Many of these displaced persons fled from the advancing Russian and Ossetian forces out of fear for their lives, particularly after the aerial bombardment of villages began. Many others, however, were forced out violently or under threat of violence, as described below. Many of their homes were systematically destroyed by arson and their belongings were looted. The HRAM witnessed ongoing pillaging in several villages during its 7-10 November visit to South Ossetia.

Following the cease-fire, virtually all of the ethnic Ossetians who fled to the Russian Federation have returned. The majority of those whose homes were destroyed during the conflict are living with relatives. The ethnic Georgians who fled have been prevented by the Russian and South Ossetian forces from returning. The Government of Georgia has been caring for these displaced persons in collective centres, with assistance from international humanitarian agencies. The Government has undertaken a crash programme of housing construction to accommodate them.

The Akhgori area of eastern South Ossetia was not directly affected by combat operations but its residents face personal and social dislocation as a result of the conflict and, more specifically, as a result of the stricter administrative border crossing regime instituted by the Russian and *de facto* authorities following the conflict.

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<sup>151</sup> “Special Follow Up Mission to the Areas Affected by the South Ossetia Conflict”, Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, 21 October 2008, CommDH (2008), p. 7.

<sup>152</sup> United Nations, Georgia Crisis Flash Appeal, October 2008.

## Specific human rights concerns

### *Right to life*

*The right to life is enshrined in many international human rights documents binding on the parties to the conflict, including the ICCPR and the ECHR,<sup>153</sup> and as such is incorporated also into OSCE commitments.<sup>154</sup> In a situation of armed conflict, the Geneva Conventions also apply to the parties.*

There was a substantial loss of life in South Ossetia during the conflict and its aftermath. According to the *de facto* Minister of Foreign Affairs of South Ossetia, ten people were killed by Georgian snipers during the period 1 to 7 August.<sup>155</sup> Residents of Tskhinvali told the HRAM that the Georgians fired unguided rockets at densely populated areas of the city on 7, 8 and 9 August.<sup>156</sup> The HRAM's own observations of the damage done and the munitions remnants remaining provide strong indications that these accounts are accurate. For example, several houses on Molodezhnaja, Koblav, Tasoev, Oktyabrskaya Streets were destroyed. One family on Molodezhnaja Street lost a son when a rocket hit their house on 9 August.<sup>157</sup> A rocket also hit a civilian home at Koblava 72, seriously injuring an old man.<sup>158</sup> In addition to rockets and shelling, residents of Tskhinvali reported that Georgian Air Force planes ("SU-25s") dropped bombs on residential areas of some villages, such as Nogkau.<sup>159</sup> Bombs or rockets also hit civilian targets in other villages, including Khetagurovo, where several houses were hit by bombs and a woman was killed,<sup>160</sup> and Khelchua, where villagers said a rocket hit a house on 7 August and killed the owner.<sup>161</sup> According to the *de facto* authorities, 700 families had a member killed during the hostilities.<sup>162</sup>

More civilian deaths followed the entry of Georgian ground forces into South Ossetia. A family from Nogkau recounted to the HRAM how Georgian tanks fired on houses on 8 August and how they saw dead civilians along the Dzari road to Java.<sup>163</sup> Another resident reported seeing an ambulance targeted, preventing it from taking a wounded woman to the hospital.<sup>164</sup> In the village of Znauri, one civilian was killed by sniper fire and another was wounded.<sup>165</sup>

On 8 August, Russian Air Force planes began bombing raids over South Ossetia, inflicting damage to houses and causing many civilian casualties in the villages that

<sup>153</sup> ICCPR article 6, ECHR article 2.1.

<sup>154</sup> Helsinki document (1975) section 1.(a) Declaration on Principles Guiding Relations between participating States – Principle X.

<sup>155</sup> HRAM meeting with *de facto* Foreign Minister, Murat Kuzmich Jioev.

<sup>156</sup> HRAM individual interview 22.

<sup>157</sup> HRAM individual interviews 174, 175.

<sup>158</sup> HRAM individual interview 176.

<sup>159</sup> HRAM individual interviews 170, 171.

<sup>160</sup> HRAM individual interviews 164, 165.

<sup>161</sup> HRAM group interview 10.

<sup>162</sup> HRAM meeting with *de facto* Deputy Minister for Special Affairs, Kasbek Karsanov. It is understood that these figures also include military casualties.

<sup>163</sup> HRAM individual interview 173.

<sup>164</sup> HRAM interview with NGO.

<sup>165</sup> HRAM meeting with Head of Regional Administration of Znaur Region, Slava Bitsoev.

were predominantly inhabited by ethnic Georgians. While some of the air strikes were aimed at military targets, civilian villages were also bombed. Further civilian deaths followed the entry of new Russian ground troops into the district, followed by Ossetian forces. Displaced persons, mainly ethnic Georgians, provided the HRAM with many first-hand accounts of the killing of civilians by Russian and Ossetian forces, as detailed below.

One of the worst hit villages was Eredvi. Several former residents of Eredvi provided similar accounts to the HRAM of their experiences there. The aerial bombardment began at noontime on 8 August. One resident reported seeing dead bodies in the street after the Russian planes passed over.<sup>166</sup> Two residents separately reported seeing two aircraft bomb the village, resulting in at least six persons killed.<sup>167</sup> The bombing was followed by a ground attack, during which the village sustained fire from small arms and Russian tanks. The Russians were joined by Ossetian militia, who also fired on the population. Once the troops were inside the village, some civilians were threatened with firearms.

Kekhvi village was also bombed from the air and shelled with tank fire and artillery. A witness saw two women killed when a bomb fell on a car.<sup>168</sup> Another resident of the village reported seeing three people who were killed in the bombing, one of them an acquaintance that she helped to bury. An elderly man reported to the HRAM that bombs fell in front and in back of his house.<sup>169</sup> Russian soldiers came to his house soon afterwards, searching for weapons. He saw his cousin dead amongst some ruins and helped bury the body. Soldiers in Russian uniforms were wandering in the neighbourhood. Yet another resident of Kekhvi told how the village was bombarded from the air and with mortars through much of the night. She personally saw two dead as a result of the bombing but knew of four more that died. Yet another displaced person from Kekhvi recalled how she saw a neighbour's arm emerging out of the ruins of a house and saw another man killed by a bomb.<sup>170</sup> She later met a Russian/Ossetian military patrol who told her she had to leave the village. Nuli village was also bombed, resulting in at least ten civilian deaths.<sup>171</sup>

According to individuals interviewed, a disturbing pattern of killings of unarmed civilians continued in a large number of villages after the bombardment ended. Witnesses reported that the perpetrators were often Ossetians – some of whom were described as soldiers and others as civilians – who followed the Russian forces into the villages that were under Georgian administration prior to the August conflict. In Charebi village, for example, two separate witnesses reported that a group of “Ossetians” murdered two village residents in their house.<sup>172</sup> Citizens of Disevi village reported a murder by an “Ossetian” from a nearby village, in addition to deaths from bombing.<sup>173</sup> In Vanati, a displaced couple reported to the HRAM that one of their friends was killed by soldiers. They wanted to bury him but they were

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<sup>166</sup> HRAM individual interview 68.

<sup>167</sup> HRAM individual interview 69.

<sup>168</sup> HRAM individual interview 90.

<sup>169</sup> HRAM individual interview 99.

<sup>170</sup> HRAM individual interview 91.

<sup>171</sup> HRAM individual interview 107.

<sup>172</sup> HRAM individual interview 100.

<sup>173</sup> HRAM individual interview 59.

not allowed to since it was too late in the day and the Russian army had imposed a curfew.<sup>174</sup> Also in Vanati, a schoolteacher was reportedly killed and his wife, a nurse, was wounded; her house was then set on fire leaving her to die inside.<sup>175</sup> In Ksuisi village, a witness described how when he went outside after the bombing ended he came under sniper fire from an Ossetian village.<sup>176</sup> In Satskheneti a woman witnessed a man shot and killed by an “Ossetian” when he refused to hand over his cows and another man shot dead in a quarrel over a car.<sup>177</sup> In Avnevi, a man was killed when he refused to let marauders into his house.<sup>178</sup>

In contrast to the reports of Russian troops participating in misdeeds, several villagers told how some Russian troops intervened to assist the local population or to protect them from Ossetians. A woman from Tamarasheni, for example, recounted how Russian soldiers asked if she needed food and brought her three day’s supply of bread, butter, and canned meat.<sup>179</sup> When a woman in Eredvi was harassed by an Ossetian, a Russian soldier nearby intervened, hit the Ossetian man with the butt of his gun and made him go away.<sup>180</sup> In Charebi, Russian soldiers came and removed an unexploded bomb from a villager’s garden.<sup>181</sup> In Nuli, Russian troops handed out white armbands to the population to protect them from “Ossetians”.<sup>182</sup> Villagers from Kekhvi,<sup>183</sup> Satskheneti<sup>184</sup> and Ikoti<sup>185</sup> reported that Russian troops did no harm in their villages.

According to the Georgian Prosecutor’s Office, three Georgian soldiers captured during the conflict were executed by their captors.<sup>186</sup>

### ***Freedom from torture and ill-treatment***

*OSCE participating States have adopted numerous commitments prohibiting torture or ill-treatment.<sup>187</sup> In addition, the parties to the conflict have legal obligations to prevent torture and ill-treatment, including under provisions of the ICCPR,<sup>188</sup> the Convention against Torture, the ECHR<sup>189</sup> and other instruments.*

The HRAM heard many accounts of ill-treatment and allegations of torture that occurred in South Ossetia following the takeover by Russian and Ossetian forces. Most of the perpetrators were reported to be Ossetians.

<sup>174</sup> HRAM individual interviews 66, 67.

<sup>175</sup> HRAM individual interview 158.

<sup>176</sup> HRAM individual interview 82.

<sup>177</sup> HRAM individual interview 102.

<sup>178</sup> HRAM individual interview 166.

<sup>179</sup> HRAM individual interview 64.

<sup>180</sup> HRAM individual interview 85.

<sup>181</sup> HRAM individual interview 101.

<sup>182</sup> HRAM individual interviews 107, 108.

<sup>183</sup> HRAM individual interview 113, 91.

<sup>184</sup> HRAM individual interview 102.

<sup>185</sup> HRAM individual interview 121.

<sup>186</sup> HRAM meeting with Head of the Human Rights Protection Unit, Office of the Prosecutor General of Georgia, Archil Giorgadze.

<sup>187</sup> E.g., Charter for European Security (1990), §21.

<sup>188</sup> Article 7.

<sup>189</sup> Article 3.

Several displaced persons reported specific incidents to the HRAM. A villager from Ksuisi, for example, was threatened and then cut on the face with a knife after he refused to leave the village. Another had his ear cut with a knife and his jaw broken by a blow from a gun.<sup>190</sup> Three villagers who returned to Ksuisi after having fled the village were beaten.<sup>191</sup> A woman from Tamarasheni described being beaten by seven “Ossetian” women while soldiers stood by and did not interfere.<sup>192</sup> A villager from Disevi was hiding in the bushes when armed men set his house on fire. As he ran out to try to extinguish the flames, he was shot and wounded.<sup>193</sup>

The Office of the Prosecutor General of Georgia told the HRAM that while there was no evidence of systematic rape during the conflict, there were at least four or five rapes related to the conflict. These included a girl who was taken from a minibus near Akhalsopeli (Shida Kartli) and raped several times, and a woman who was kept in detention alone in a house and was reportedly raped by four persons.<sup>194</sup>

According to the Office of the Prosecutor General of Georgia, as many as 30 Georgian soldiers who were detained during and after the conflict were subject to torture and ill-treatment, including being beaten with rifles, burned with cigarettes and subject to electric shocks.<sup>195</sup> An NGO provided the HRAM with an account of a Georgian soldier who was beaten and tortured with a lighter while in captivity.<sup>196</sup>

The South Ossetian *de facto* Minister for Special Affairs asserted to the HRAM that Ossetians were beaten while detained by Georgians; he mentioned in particular the case of one policeman who was beaten and said that others also were.<sup>197</sup> The *de facto* Prosecutor General said that some persons detained by the Georgians were badly tortured, but provided no specifics.<sup>198</sup> A NGO director in Tskhinvali said she had looked for evidence of sexual and gender-based violence by Georgian forces but had not been able to confirm any.<sup>199</sup>

### ***Arbitrary detention***

*OSCE commitments prohibit arbitrary arrest or detention,<sup>200</sup> as do the ICCPR<sup>201</sup>, the ECHR<sup>202</sup> and other instruments.*

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<sup>190</sup> HRAM individual interview 82.

<sup>191</sup> HRAM individual interview 88.

<sup>192</sup> HRAM individual interview 64.

<sup>193</sup> HRAM individual interview 62.

<sup>194</sup> HRAM meeting with Head of the Human Rights Protection Unit, Office of the Prosecutor General of Georgia, Archil Giorgadze.

<sup>195</sup> HRAM meeting with Head of the Human Rights Protection Unit, Office of the Prosecutor General of Georgia, Archil Giorgadze.

<sup>196</sup> HRAM interview with NGO.

<sup>197</sup> HRAM meeting with *de facto* Deputy Minister for Special Affairs, Kazbek Karsanov.

<sup>198</sup> HRAM meeting with *de facto* Prosecutor General, Tejmuraz Khugaev.

<sup>199</sup> HRAM interview with NGO.

<sup>200</sup> Vienna document (1989), §23.

<sup>201</sup> Article 9.

<sup>202</sup> Article 5.

A substantial number of civilians were arbitrarily detained in South Ossetia, primarily by armed Ossetian forces. Many were taken to places of detention in Tskhinvali.

The HRAM interviewed several displaced persons who had been arbitrarily detained and were subsequently released, each of whom provided extensive details. A villager from Tamarasheni, for example, was arrested by Ossetian militiamen while he was trying to extinguish a fire in a pigpen. His wife was also detained. They were given no reason or explanation for their detention. They were taken to Tskhinvali and held in a compound composed of a small room and a big yard. They were not handcuffed or physically abused, but they had to sleep on the floor and were given only bread and water.<sup>203</sup> Two other women from the same village were detained under similar circumstances. One of them recalled sitting for ten days in the detention centre, since there were no beds and just one open toilet for the use of both men and women. There was no access to doctors, but some medicines were distributed. She remembered seeing “Russians acting as supervisors” of the detention centre.<sup>204</sup>

Two villagers from Java described being taken to a makeshift prison in Tskhinvali, located in a three storey building next to a drugstore. Five or six rooms were crowded with 95 detainees; detainees also had access to a paved courtyard surrounded by a solid metal fence. The detention centre was guarded by men in military uniforms. The detainees were fed small meals of buckwheat and bread once or twice a day, with tea. The two villagers were assigned separately to work details. One spent four days sweeping streets and loading trucks; the other was forced to bury bodies. While on work details, they were guarded by Ossetians. Neither was physically abused. Their release was arranged by the ICRC on 27 August.<sup>205</sup>

The HRAM also interviewed a woman from Kekhvi, who was detained with many other villagers by Ossetian police. Their place of detention was a building in the centre of Tskhinvali, in front of a well-known drugstore, perhaps the same one described by the two men from Java (above). She and the other villagers were detained for nine days. There were 161 people in the detention centre; men and women were held together. “We lived like dogs, animals. There was a toilet next to us and I was lying on the floor with no mattress, sleeping next to the toilet, choking because of the smell. We only got a small piece of bread to eat, no tea. It was only hot water without sugar. Some of the guys among the prisoners went upstairs and brought the food down but we had no contact with prison staff.”<sup>206</sup> The detainees had no access to a lawyer and did not see a doctor until their fifth day of detention, when an ICRC representative visited the prison. Some of the young male prisoners were forced to bury bodies.<sup>207</sup> Another resident of the same village gave a very similar account.<sup>208</sup>

A detainee described being detained with his neighbours by “Ossetians” and driven to Tskhinvali, where the group was held in a dirty basement. After entering the building, they were forced to wipe their feet on a Georgian flag and then spit on it. The detainee

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<sup>203</sup> HRAM individual interview 63.

<sup>204</sup> HRAM individual interview 64.

<sup>205</sup> HRAM individual interviews 86, 87.

<sup>206</sup> HRAM individual interview 113.

<sup>207</sup> HRAM individual interview 113.

<sup>208</sup> HRAM individual interview 94.



described how he was then taken into a room where he was strip searched, robbed and beaten with rifles and fists. The conditions in the detention centre were very bad. There was very little food – “for twenty people, we received three loaves of bread; and per person one small glass of boiled buckwheat and one glass of red tea with no sugar” – and the water was from a barrel in the toilet. The detainees were forced to work in teams burying bodies; the villager said he personally buried 44. After about ten days, the women and about 15 old men were released, but the young men were held for another week. A day or two after the women were released the detainees were visited by Georgian church officials, who brought food, and then by the ICRC, which brought clothes and blankets. The interviewee surmised that his captors deliberately released the women before allowing the Red Cross to visit so that an international organization would not see women being held in such conditions. The interviewee, together with 84 other detainees, was released in a prisoner exchange on 27 August, after 16 days in detention.<sup>209</sup>

The accounts above are broadly reflective of other information gathered by the HRAM on the issue of arbitrary detention by Ossetian militia. In addition, the HRAM heard many reports of kidnapping of villagers who were then held for ransom. For example, a family of four was kidnapped in Gogeti; the wife and two children were released and asked to bring money in exchange for the husband.<sup>210</sup>

Georgian authorities detained a number of Ossetians and Russians during the conflict and its aftermath. The *de facto* Prosecutor General of South Ossetia asserted to the HRAM that there are currently up to 100 South Ossetian civilians detained in Georgia.<sup>211</sup> The *de facto* Minister of Interior said that 16 Ossetians are currently detained in Georgia for crossing the administrative boundary illegally.<sup>212</sup> He added that there is not a single Georgian currently detained in South Ossetia. The Ministry of Interior provided the HRAM with a list of 14 persons detained and still held by Georgian special forces. A senior Russian military officer expressed serious concern that the Georgian authorities are not providing information about the whereabouts of people they have detained. He added that 12 Ossetians and two Ossetian peacekeepers were apprehended by Georgians between 10 and 12 October.<sup>213</sup>

South Ossetian *de facto* authorities also complained to the HRAM about the kidnapping of Ossetians by Georgians. The *de facto* Ombudsman provided a list of 18 persons, the majority of which were kidnapped after 8 October and still held by Georgians, adding that they were detained on false charges.<sup>214</sup> The *de facto* Prosecutor General asserted that 15 people have been kidnapped along the border under false pretexts since the end of the conflict.<sup>215</sup> The *de facto* Minister of Interior also expressed concerns that Ossetians were being kidnapped with no word to either

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<sup>209</sup> HRAM individual interview 152.

<sup>210</sup> HRAM meeting NGOs.

<sup>211</sup> HRAM meeting with *de facto* Prosecutor General, Tejmuraz Khugaev.

<sup>212</sup> HRAM meeting with *de facto* Minister of Interior, Mikhail Majramovich Mindzaev.

<sup>213</sup> HRAM meeting with “Commandant of Tskhinvali”, Colonel Anatoly Tarasov of the Russian Federation Armed Forces.

<sup>214</sup> HRAM meeting with *de facto* Ombudsman, David Sanakoev.

<sup>215</sup> HRAM meeting with *de facto* Prosecutor General, Tejmuraz Khugaev.

their relatives or to the authorities.<sup>216</sup> A woman in Khelchua village told the HRAM that her father had been kidnapped.<sup>217</sup>

The *de facto* Ombudsman told the HRAM since the conflict broke out, 179 Georgians and 43 bodies were handed over to the Georgians by Ossetians. The Georgians have handed over 41 Ossetians and 2 bodies.<sup>218</sup>

### ***Policing and ensuring the safety of persons***

*OSCE participating States are committed to abide by the rule of law<sup>219</sup> and to take necessary measures to ensure that law enforcement personnel act in the public interest.<sup>220</sup> The ICCPR and the ECHR each stipulate that everyone has the right to security of person.<sup>221</sup>*

The situation along the administrative boundary has remained tense since the conflict, with instances of lawlessness. The *de facto* Minister of Foreign Affairs, for example, told the HRAM that the situation on the border is volatile, mentioning that an Ossetian had been killed just two days earlier.<sup>222</sup> The *de facto* Prosecutor General also complained about lawlessness along the administrative boundary.<sup>223</sup> In the village of Khelchua, residents complained to the HRAM that there are constant shootings at night in the village.<sup>224</sup> The HRAM was advised not to go the village of Disevi because of security concerns there. In the village of Lopani, which is predominantly ethnic Georgian, an NGO leader told the HRAM that the police rarely visit the village and that there are serious concerns about the safety of the people.<sup>225</sup> In the Akhlagori region of eastern South Ossetia, the HRAM found that the influx of increased military personnel and equipment since October had left the population in a state of fear and apprehension. Local residents complained that military personnel enter shops, cafés and farms and require the proprietors to provide them with food and supplies without offering compensation.<sup>226</sup> Another significant security problem witnessed by the HRAM was ongoing looting in some villages (see Property rights and compensation, below).

### ***Property rights and compensation***

*OSCE commitments guarantee everyone the right peacefully to enjoy his property and stipulate that no one may be deprived of his property except in the public interest and subject to the conditions provided for by law and consistent with international commitments and obligations.<sup>227</sup> The Fourth Geneva Convention prohibits pillage.<sup>228</sup>*

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<sup>216</sup> HRAM meeting with *de facto* Minister of Interior, Mikhail Majramovich Mindzaev.

<sup>217</sup> HRAM individual interview 160.

<sup>218</sup> HRAM meeting with *de facto* Ombudsman, David Sanakoev.

<sup>219</sup> E.g., Copenhagen document (1990), §2.

<sup>220</sup> Moscow document (1991), §21.1

<sup>221</sup> ICCPR article 9, ECHR article 5.

<sup>222</sup> HRAM meeting with *de facto* Minister of Foreign Affairs, Murat Kuzmich Jioev.

<sup>223</sup> HRAM meeting with *de facto* Prosecutor General, Tejmuraz Khugaev.

<sup>224</sup> HRAM individual interview 160.

<sup>225</sup> HRAM interview with NGO.

<sup>226</sup> HRAM group interviews 11.

<sup>227</sup> Copenhagen document (1990), §9.6.

*Protocol 1 of the ECHR stipulates that no person shall be deprived of his possessions except in the public interest and through a process of law.<sup>229</sup> Many human rights treaties include provisions giving victims of human rights violations the right to a remedy, including, for example, ECHR Article 13 and CERD Article 6. The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law set out in more detail the rights of victims to restitution, compensation and rehabilitation.<sup>230</sup>*

There was substantial damage to civilian houses and infrastructure within South Ossetia as a result of the conflict. As already noted (see above, Right to life), the shelling, rocketing and bombing by both sides caused damage to civilian targets. The Georgian bombardment of Tskhinvali, for example, left extensive damage to houses and blocks of flats, both from the explosion of munitions and from the resulting fires that in many cases would appear to have spread from building to building.<sup>231</sup> The South Ossetian *de facto* authorities told the HRAM that 850 families in Tskhinvali lost their homes as a result of the Georgian bombardment, as did another 170 families in the Tskhinvali region but outside the city proper.<sup>232</sup> The HRAM also observed first hand the destruction caused to many civilian public buildings in Tskhinvali, including the university, a library, the “parliament building” and other “governmental offices” in the same complex. A police station and the “presidential” administration were also damaged.<sup>233</sup> The HRAM also confirmed first hand that seven houses in the village of Nogkau were totally or partially destroyed by bombs and tank fire and that homes in the mostly ethnic Ossetian village of Khetagurovo were damaged by small arms and artillery fire. The OSCE Field Office in Tskhinvali was also damaged during the conflict and a significant part of its inventory was looted.<sup>234</sup>

Displaced persons interviewed by the HRAM told of intensive and destructive bombing raids on their villages by the Russian Air Force during the conflict. Eredvi village, for example, suffered heavy damage from the bombing,<sup>235</sup> as did Kekhvi.<sup>236</sup> Among the building destroyed by bombs in Kekhvi was the kindergarten; the children were not in attendance at the time.<sup>237</sup> Kurta, the home village of Dimitri Sanakoev, the former Head of the Temporary Administrative Unit of Tskhinvali Region – appointed by Tbilisi, was also heavily bombed, particularly in the neighbourhood of Mr. Sanakoev’s home.<sup>238</sup> Bombs also fell on civilian targets in Tamarasheni,<sup>239</sup> Charebi and Nuli. Other villages reported to be heavily damaged by aerial bombing included Zemo Achabeti, Kvemo Achabeti, Dzartsevni, Kheiti, Avnevi, and Okona.<sup>240</sup>

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<sup>228</sup> Fourth Geneva Convention (1949), article 33.

<sup>229</sup> ECHR Protocol 1, Article 1.

<sup>230</sup> United Nations General Assembly Resolution 60/147.

<sup>231</sup> HRAM observation.

<sup>232</sup> Ibid.

<sup>233</sup> HRAM observation.

<sup>234</sup> OSCE Mission to Georgia, Spot Report: OSCE Material Losses in Tskhinvali, Vienna, 25 September 2008.

<sup>235</sup> HRAM individual interview 68.

<sup>236</sup> HRAM individual interview 92.

<sup>237</sup> HRAM individual interview 90.

<sup>238</sup> HRAM individual interview 96.

<sup>239</sup> HRAM individual interviews 63, 64.

<sup>240</sup> HRAM individual interviews 100, 153.

The South Ossetian *de facto* authorities confirm the destruction of some villages during the conflict by Ossetian and Russian forces but assert that the Georgian forces were using these villages as military positions.<sup>241</sup>

After the bombing, South Ossetians in uniform as well as Ossetian civilians that followed the Russian forces' advance undertook what appears to have been a systematic campaign of arson against homes and other civilian buildings in villages populated predominantly by ethnic Georgians. A man from Eredvi described to the HRAM how "Ossetians" forced his wife's elderly parents out of their house and then burned it down before their eyes.<sup>242</sup> Several other displaced persons from the same village provided nearly identical accounts of their own experiences and of the near total destruction of the village. The perpetrators in Eredvi, according to all accounts, were Ossetians wearing white arm bands. Many witnesses described how the fires were often started by putting a flammable red substance on the beds and then setting it ablaze. The damage to the village from deliberate arson was so complete that one displaced person commented that "now, there is no village called Eredvi."<sup>243</sup> The HRAM visited Eredvi and confirmed extensive damage to the village.

Displaced persons from village after village recounted similar experiences of deliberate destruction of their villages by Ossetians who followed the arrival of Russian armed forces. In many cases the perpetrators wore military uniforms, although some wore civilian clothes. The village of Disevi was among those almost totally destroyed by arson, according to several individuals who gave nearly identical accounts.<sup>244</sup> One resident reported that of about 300 houses in the village, all but seven were burned; the seven houses spared belonged to ethnic Ossetians.<sup>245</sup> An NGO reported to the HRAM that the destruction in Disevi included cultural monuments dating from 14<sup>th</sup> century and earlier.<sup>246</sup> Destruction of historic monuments is a violation of the Geneva Conventions.<sup>247</sup> The HRAM was advised not to try to visit Disevi because of the continuing conditions of insecurity there.

In the village of Kurta, which had suffered heavy bomb damage, the destruction was reportedly completed by Ossetian arsonists.<sup>248</sup> In Vanati, according to a villager, Russian troops and tanks stood by while "Ossetians" set fire to most houses in the village.<sup>249</sup> Tamarasheni village, according to one individual, had so many burning houses that it was impossible to count them.<sup>250</sup> In Ksuisi, a witness told the HRAM, all but about five houses were deliberately set afire.<sup>251</sup> One resident of Ksuisi told the HRAM that he saw individuals in civilian clothing setting fire to houses;<sup>252</sup> another

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<sup>241</sup> HRAM meeting with *de facto* Prosecutor General, Tejmuraz Khugaev.

<sup>242</sup> HRAM individual interview 71.

<sup>243</sup> HRAM individual interview 72.

<sup>244</sup> HRAM individual interviews 54, 55, 56, 58, 59, 61.

<sup>245</sup> HRAM individual interview 59.

<sup>246</sup> HRAM interview with NGOs.

<sup>247</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, §53.

<sup>248</sup> HRAM individual interview 97.

<sup>249</sup> HRAM individual interviews 66, 67.

<sup>250</sup> HRAM individual interview 104.

<sup>251</sup> HRAM individual interview 82.

<sup>252</sup> HRAM individual interview 162.

displaced person from Ksuisi reported that Russians participated in the arson.<sup>253</sup> Kekhvi village, according to a former resident, was “a mass of burnt ruins” by the time she left.<sup>254</sup> In Satskheneti, a former resident said, only three houses were left standing.<sup>255</sup> Nuli village was also systematically burned; one witness reported that Russians troops were accompanying Ossetians and helping to set the fires.<sup>256</sup> The HRAM visited all these villages and confirmed the destruction. In some villages some houses had apparently been razed by bulldozers or other heavy tracked equipment.

As displaced persons fled their homes in the wake of the destruction, many witnessed that other villages had suffered fates similar to their own. A villager from Vanati described extensive damage from fire in Beloti, Satskheneti, and Atriskhevi.<sup>257</sup> A villager from Kurta reported that as he drove along the main road through Achabeti and Tamarasheni to Tskhinvali, every house along the road had been burned.<sup>258</sup> According to the Office of the Prosecutor General of Georgia the villages of Tamarasheni, Kurta, Avnevi, Nuli and Prisi no longer exist.<sup>259</sup> The HRAM visited all the villages mentioned by the Prosecutor and found that Prisi was heavily damaged and the others were largely destroyed.

Many other villages also suffered house burnings and other wanton destruction, including Kvemo Achabeti and Zemo Achabeti. Schools were reported to have been deliberately burned in Charebi,<sup>260</sup> Beloti<sup>261</sup> and Nuli.<sup>262</sup> The sports hall in Ksuisi was burned.<sup>263</sup> Only a handful of inhabitants living in very poor conditions remain in the the village of Ksuisi. In the village of Avnevi which appeared almost totally burned, an Ossetian woman standing in front of her burnt house told HRAM that houses belonging to Ossetian families were also burned.

The *de facto* leadership of South Ossetia has reportedly acknowledged deliberate destruction of civilian homes in order to impede the return of the ethnic Georgian population, which, if true, would be a grave violation of international law.<sup>264</sup>

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<sup>253</sup> HRAM individual interview 83.

<sup>254</sup> HRAM individual interview 93.

<sup>255</sup> HRAM individual interview 102.

<sup>256</sup> HRAM individual interview 107.

<sup>257</sup> HRAM individual interviews 66, 67.

<sup>258</sup> HRAM individual interview 100.

<sup>259</sup> HRAM meeting with Regional Prosecutor, David Sakvarelidze.

<sup>260</sup> HRAM individual interview 100.

<sup>261</sup> HRAM individual interview 123.

<sup>262</sup> HRAM Individual interview 106.

<sup>263</sup> HRAM individual interview 81.

<sup>264</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, article 52. On 15 August, the *de facto* President of South Ossetia, Eduard Kokoity, when asked by a correspondent of a Russian newspaper what was going on in Georgian enclaves in South Ossetia, reportedly said: “Nothing special. We have in fact levelled everything there.” “Kommersant”, No. 144 (3961), 15 August 2008, retrievable at <http://www.kommersant.ru/doc.aspx?DocsID=1011783>. Another official, the *de facto* Chairman of Parliament, Znaur Gasiev, reportedly stated: “The war will not start again... We did a nasty thing, I know. But Georgians will not return here anymore – we burnt all their houses in the enclaves. There was no other way to stop this war and cut the knot.” “Komsomolskaia Pravda”, 22 August 2008, retrievable at <http://www.kp.ru/daily/24150/366813/>.

In many instances, the destruction of homes was preceded by pillage and looting. In Ksuisi, for example, an individual reported that soon after the bombing ended, “Ossetians” began to roam around the village pillaging the houses and farms.<sup>265</sup> A displaced person from Ksuisi recalled that a car driven by a Russian and an excavator driven by an “Ossetian” came into the village and took the heating system from the school.<sup>266</sup> Another woman from the same village described how the marauders made off with her car, her tractor, cash, and barrels of wine. The same woman saw an “Ossetian” man kill two of her neighbour’s pigs and put them in his car, as well as stealing construction materials from the neighbour’s garden.<sup>267</sup> Yet a third witness from the village told how his cattle and his harvest were looted.<sup>268</sup>

Villagers from Kekhvi told a very similar tale of “Ossetians” looting houses of all their valuables before setting them afire.<sup>269</sup> One displaced person from Kekhvi recounted how her house was looted before her eyes by a group of “Ossetians” wearing military uniforms with white arm bands. She recognized one of the perpetrators as a relative of a person who lived in the village. In addition to looting her house, the men also stole her car and loaded it with furniture from a neighbour’s house before driving away. As she fled the village, the woman saw “Ossetian” soldiers pillaging shops as well as houses, and loading cars with appliances such as refrigerators and washing machines. The Ossetians also looted fruit and vegetables from people’s gardens and dismantled and took away anything metal they could find. The Russians, she said, were protecting the “Ossetian” looters.<sup>270</sup> Another displaced person from Kekhvi told the HRAM that “Ossetian” looters had stolen her refrigerator and television before setting fire to her house. The looters also took her iron gate and whatever other metal they could detach. She owned a shop that was emptied of its inventory of food and clothing. She knew the looters were Ossetian, she said, since they were driving cars with Ossetian license plates.<sup>271</sup>

Individuals from Eredvi also recounted to the HRAM how houses were pillaged before they were burned.<sup>272</sup> Many people left with only the clothes they were wearing, losing all other possessions. One man lamented that not only were his furniture and appliances taken, but the looters also took his tractor, crops and cheese. He and his wife spent the night in a nearby field where they witnessed the village ablaze. “Ossetians”, he said, were leading many plundered cows out of the village and stealing cars. The couple saw tanks and cars loaded with furniture and other booty leaving the village. The looters seemed to want everything made of metal, including pipes and gates.<sup>273</sup>

The village of Kurta met the same fate. Residents described South Ossetian civilians and militia – some of whom appeared to be drunk – entering houses, emerging with furniture and televisions, then returning to set the homes ablaze. A few of the men

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<sup>265</sup> HRAM individual interview 84.

<sup>266</sup> HRAM individual interview 81.

<sup>267</sup> HRAM individual interview 83.

<sup>268</sup> HRAM individual interview 88.

<sup>269</sup> HRAM individual interview 90.

<sup>270</sup> HRAM individual interview 93.

<sup>271</sup> HRAM individual interview 93.

<sup>272</sup> HRAM individual interview 71.

<sup>273</sup> HRAM individual interviews 72, 73.

went running after chickens. They had a truck parked nearby on which they loaded their booty, which included also construction materials and whatever metal they could find. One villager recalled asking the looters why they were taking iron gates and gas pipes; the answer was that they could be sold for cash at the market in Vladikavkaz (in North Ossetia).<sup>274</sup> The looters were armed and threatened the villagers if they protested.<sup>275</sup>

According to witnesses, the same tales of systematic pillage were repeated in ethnic Georgian villages in several areas of South Ossetia. In Charebi, “people with guns” came to a witness’s house, shot at her husband, set her house afire and stole all her animals.<sup>276</sup> Another witness from Charebi told how after the bombing ended people would come to the village at night and take away the pigs and cows. The villagers were too afraid to try and stop them.<sup>277</sup> In Satskheneti, “the Ossetians” also looted and burned, taking away cows, bulls and pigs, and pillaging the crops and stocks of cheese.<sup>278</sup> In Kekhvi, South Ossetian militia looted residents’ houses while they watched, taking furniture, appliances, cars and animals.<sup>279</sup> In Ikoti, according to a witness, the houses were spared from arson, but about 15 homes were looted and computers were stolen from schools and other locations.<sup>280</sup> Another witness’s home was looted but not burned, but her garden was destroyed.<sup>281</sup> In Vanati, witnesses recalled that once Russian tanks arrived in the village, Ossetians began to pillage and the Russians “just let them.” The witnesses said that the looters led away cows and pigs, and stole chickens. What the looters could not take, they burned.<sup>282</sup> In Nuli, pillagers took animals, furniture and gas pipes, and emptied the fields of fruit. They even dismantled and took away the roof of the village school.<sup>283</sup> Another witness from Nuli reported that Russian armed forces and “Ossetians” were looting together, sharing the plunder from houses. Over a period of five days, the town was picked clean and at least 200 cows were taken away.<sup>284</sup>

The HRAM witnessed that in several of the villages it visited, looting is still going on. For example, the HRAM witnessed looting underway in the village of Avnevi during the day time, in the presence of a police post at the main crossroads. The HRAM asked the police whether they patrol against looters and they replied that they did, but they made no attempt to stop the looting that was underway. The HRAM also saw looting underway in Nuli, as well as in villages north of Tskhinvali, where a military vehicle stood less than 200 meters away and the occupants did not intervene.

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<sup>274</sup> HRAM individual interviews 98, 99.

<sup>275</sup> HRAM individual interviews 98, 99.

<sup>276</sup> HRAM individual interview 100.

<sup>277</sup> HRAM individual interview 101.

<sup>278</sup> HRAM individual interview 102.

<sup>279</sup> HRAM individual interview 113.

<sup>280</sup> HRAM individual interview 121.

<sup>281</sup> HRAM individual interview 122.

<sup>282</sup> HRAM individual interviews 66, 67.

<sup>283</sup> HRAM individual interview 106.

<sup>284</sup> HRAM individual interview 107.

The Commandant of the Russian armed forces in South Ossetia mentioned that the armed forces were aware of cases of burning and looting but said that the army could not effectively stop the looters.<sup>285</sup>

The Georgian Government's claim to the European Court of Human Rights will include allegations of destruction of religious sites, as well as other property.<sup>286</sup>

The HRAM received only one report of looting by Georgian forces. This was in the village of Znauri, where several villagers interviewed said Georgian soldiers had entered their homes and stolen electronic devices.<sup>287</sup> The owner of one house in the village reported that Georgian troops occupied the house on 7-8 August. He left the village and when he returned he found all his valuables had been stolen.<sup>288</sup> An Ossetian villager in Prisi, in contrast, commented that when Georgian troops were in their village, they did not enter any private houses.<sup>289</sup> In the village of Khetagurovo, Georgian troops reportedly entered the houses but did no harm.<sup>290</sup>

There is no clarity whether or how displaced persons will receive compensation for lost houses and possessions. The Government of Georgia is engaged in an ambitious programme to build houses for those who cannot return to their former places of residence (see Economic, social and cultural rights, below). Within South Ossetia, the *de facto* authorities described to the HRAM a programme in place to provide families who lost their homes a one-time payment of 50,000 Russian rubles (about EUR 1,500); those whose houses were damaged will receive smaller payments.<sup>291</sup> The authorities say they have already registered all damage to houses and have begun to make payments.<sup>292</sup> Some residents of Tskhinvali confirmed to the HRAM that they have already received their payments.<sup>293</sup> The *de facto* authorities appear to consider these payments as humanitarian assistance rather than compensation.<sup>294</sup> One official commented that the compensation issue will have to be resolved in complex negotiations between South Ossetia and Georgia.<sup>295</sup>

### ***Freedom of movement, including right to return***

*OSCE participating States are committed to removing all legal and other restrictions with respect to travel within their territories and with respect to residence for those entitled to permanent residence within their territories.<sup>296</sup> They are further committed to facilitate the voluntary return in safety and dignity, of internally displaced persons,*

<sup>285</sup> HRAM meeting with the "Commandant of Tskhinvali", Colonel Anatoly Tarasov of the Russian Federation.

<sup>286</sup> HRAM meeting with Head of the International Relations Division, Ministry of Justice of Georgia, Levan Meskhoradze.

<sup>287</sup> HRAM group interview 12.

<sup>288</sup> HRAM individual interview 168.

<sup>289</sup> HRAM individual interview 154.

<sup>290</sup> HRAM individual interview 165.

<sup>291</sup> HRAM meeting with *de facto* Deputy Minister for Special Affairs, Kazbek Karsanov.

<sup>292</sup> Ibid.

<sup>293</sup> HRAM group interview 15.

<sup>294</sup> HRAM meeting with Head of the State Commission on Humanitarian Assistance, Kosta Georgievich Dzugavaev.

<sup>295</sup> Ibid.

<sup>296</sup> Moscow document (1991), §33.



*in accordance with international standards, recognizing also that the reintegration of people to their places of origin must be pursued without discrimination.*<sup>297</sup> *The OSCE has recognized the UN Guiding Principles on Internal Displacement as the relevant framework.*<sup>298</sup> *The cease-fire agreement entered into by the Governments of Georgia and the Russian Federation on 12 August requires the parties to the conflict to permit free access to humanitarian assistance and to all the return of refugees.*<sup>299</sup>

As noted above, the August conflict led to the displacement of tens of thousands of people resident in South Ossetia. The HRAM interviewed a number of displaced persons who reported being forced from their homes as a result of the aerial bombardment of their villages by Russian planes or because they feared harm from advancing forces. In Eredvi,<sup>300</sup> Ksuisi,<sup>301</sup> Kekhvi,<sup>302</sup> and Nuli,<sup>303</sup> for example, the population began to flee as the bombs began to fall. Other villagers fled as Russian and Ossetian forces began to arrive in their villages, for example in Vanati<sup>304</sup> and Akhlagori<sup>305</sup> and the town of Tskhinvali.<sup>306</sup> Many villagers fled through the forests,<sup>307</sup> while a few reported that they were assisted to safe refuge by the ICRC.<sup>308</sup>

Many of the villagers interviewed by the HRAM said that they did not leave their homes until they were told to do so, although it was not always clear who told them to leave or why. In Eredvi, according to villagers, groups of Ossetians in military uniforms told the inhabitants they had to leave;<sup>309</sup> in at least one instance these Ossetians told the villagers that “if you don’t leave, you will be killed.”<sup>310</sup> Another villager from Eredvi reported to the HRAM that one old couple was threatened by “Russians and Ossetians” and forced to leave.<sup>311</sup> Yet another reported that the Georgian police warned residents before the Russian bombing began that they should leave as soon as possible because they would be killed if they stayed.<sup>312</sup> Other villagers were warned by relatives or neighbours that they had to leave.

A large number of ethnic Ossetians were also forced from their homes by the conflict. As noted previously, over 30,000 fled to North Ossetia, the large majority of whom have since returned. The *de facto* authorities told the HRAM that there were about 3,000 forcibly displaced persons in South Ossetia.<sup>313</sup>

<sup>297</sup> Lisbon document (1996), §10.

<sup>298</sup> Maastricht Ministerial Council decision 4/2003, §13.

<sup>299</sup> Point 3. Available at

[www.elysee.fr/documents/index.php?lang=fr&mode=view&cat\\_id=8&press\\_id=1738](http://www.elysee.fr/documents/index.php?lang=fr&mode=view&cat_id=8&press_id=1738).

<sup>300</sup> HRAM individual interview 68.

<sup>301</sup> HRAM individual interview 81.

<sup>302</sup> HRAM individual interview 90.

<sup>303</sup> HRAM individual interview 106.

<sup>304</sup> HRAM individual interviews 66, 67.

<sup>305</sup> HRAM individual interview 119.

<sup>306</sup> HRAM individual interview 103.

<sup>307</sup> E.g., HRAM individual interviews 93, 102.

<sup>308</sup> E.g., HRAM individual interviews 102, 103.

<sup>309</sup> HRAM individual interview 75.

<sup>310</sup> HRAM individual interview 72.

<sup>311</sup> HRAM individual interviews 72, 73.

<sup>312</sup> HRAM individual interview 77.

<sup>313</sup> HRAM meeting with *de facto* Deputy Minister for Special Affairs, Kazbek Karsanov.

On the other hand, many of the ethnic Georgians who fled their villages in South Ossetia during the conflict and its immediate aftermath have not been able to return. Mr. Kokoity reportedly made a statement in mid-September that Georgian “refugees” holding South Ossetian citizenship can freely return to their former places of residence. Displaced Georgians will be allowed to come back if they are ready to renounce Georgian citizenship and acquire South Ossetian citizenship.<sup>314</sup> This is contrary to international standards and obligations, as recognized also by the provisional measures ordered by the ICJ on 15 October 2008, which require the parties to “do all in their power, whenever and wherever possible, to ensure, without distinction as to national or ethnic origin...the right of persons to freedom of movement and residence...”<sup>315</sup>

Other *de facto* South Ossetian officials have expressed similar views. The *de facto* Minister of Interior, for example, told the HRAM that he has found records of 4,000 ethnic Georgians living in South Ossetia who had been issued weapons since 2006 and that if these people tried to return they would be prosecuted. Others, he said, would only be allowed to return if they renounce their Georgian citizenship.<sup>316</sup> The Deputy Chairperson of the *de facto* Council of Ministers (the *de facto* Deputy Prime Minister) told the HRAM: “If a Georgian who decides to remain in South Ossetia does not meet our expectations, they will be expelled.... I don’t want Georgians to return to the northern villages of Tamarasheni and others, and they won’t be able to.” She then added, however, that “those not stained with blood are welcome to come back.”<sup>317</sup> The Commandant of the Russian Armed Forces in South Ossetia told the HRAM that it is too early to speak about the return of displaced persons.<sup>318</sup>

Many displaced ethnic Georgians told the HRAM that they were unable to return to their former places of residence. A displaced person from Disevi village, for example, told the HRAM that she tried to return to Disevi but was prevented from doing so by Russian soldiers.<sup>319</sup> Another concurred in a separate interview that “it is impossible to get through the Russian-Ossetian check points” and that it was not safe to return to tend the fields.<sup>320</sup> One villager from Disevi reported that she has been back to the village twice, by making her way through the forest, but she found that Disevi was still occupied by armed Ossetians.<sup>321</sup>

A displaced couple from Vanati told the HRAM they have not been able to return to their house because police stop people from entering that area.<sup>322</sup> A villager who tried to return to Ksuisi village said he was turned back at a checkpoint after being told he should apply for a Russian passport and citizenship if he wanted to return to the

<sup>314</sup> “Эдуард Коккойты: Грузинские беженцы могут беспрепятственно возвратиться на места своего проживания” (“Eduard Kokoity: Georgian refugees can come back freely to their places of residence”), the State Committee on Information and Press of South Ossetia, 19 September 2008, available at [cominf.org/2008/09/19/1166478311.html](http://cominf.org/2008/09/19/1166478311.html).

<sup>315</sup> ICJ Order of 15 October 2008, *supra* note 6, §149.

<sup>316</sup> HRAM meeting with *de facto* Minister of Interior, Mikhail Majramovich Mindzaev.

<sup>317</sup> HRAM meeting with Deputy Chairman of the *de facto* Council of Ministers, Elenora Bedoeva.

<sup>318</sup> HRAM meeting with the “Commandant of Tskhinvali”, Colonel Anatoly Tarasov of the Russian Federation.

<sup>319</sup> HRAM individual interview 57.

<sup>320</sup> HRAM meeting with NGOs.

<sup>321</sup> HRAM individual interview 58.

<sup>322</sup> HRAM individual interviews 66, 67.

village.<sup>323</sup> Other villagers reported they were afraid to go back to their villages after their experiences there, for example, in Khetagurovo<sup>324</sup> and Akhalgori.<sup>325</sup> A villager from Okona said she would not return to her village as long as the Russians are there.<sup>326</sup> A displaced person from Tamarasheni said she had no means to return to her village even if she wanted to, but in any event she had been told that all the houses in the village were destroyed, making return impossible.<sup>327</sup>

On the other hand, some villagers have been able to visit their former places of residence. Several residents of Kurta told the HRAM they had been able to return briefly to the village. One recounted how he had gone back with his cousin and a friend to try to rescue his elderly father, who had remained behind when others fled the village. When he reached the Russian checkpoint at Megvrekisi and explained his situation, one of the Russian officers provided him with a car and an armed escort to take him to Kurta.<sup>328</sup> Another villager from Kurta told how she heard that Russian soldiers sometimes helped people to get back to the village to look for missing persons. Her husband and two other villagers then went to look for a missing neighbour and the Russians did, indeed, also provide them with a car and escort. Her husband took cognac to give to the Russians, but they would not accept it.<sup>329</sup> Another villager from Kurta, an ethnic Ossetian woman, managed to return for one night even without help from the Russians; she left again because she heard shooting and became frightened.<sup>330</sup>

Displaced persons from two other villages also reported that they had returned briefly with the help of Russian soldiers. A villager from Kekhvi reported to the HRAM that she was able to visit her village escorted by Russian soldiers from a checkpoint, who drove her through the village in a military car. She saw that Kekhvi was a mass of burnt ruins. She said she would be glad to return to the village but would not go there unless there were international monitors deployed.<sup>331</sup> A villager from Nuli recounted that the Russians drove him briefly to his village, despite the objections of an Ossetian commander who told him “you might be killed.”<sup>332</sup> A villager from Ksuisi said that the few persons remaining in the village were still able to cross the administrative boundary to Mereti.<sup>333</sup>

Villagers from Akhalgori, in contrast, told the HRAM in separate interviews that they could enter their village without any problems and this was observed by the HRAM. One villager, an ethnic Ossetian, said she goes back once or twice a week and has even spent a night there.<sup>334</sup> Another villager from Akhalgori, however, said that she

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<sup>323</sup> HRAM individual interview 84.

<sup>324</sup> HRAM individual interview 115.

<sup>325</sup> HRAM individual interview 119.

<sup>326</sup> HRAM individual interview 112.

<sup>327</sup> HRAM individual interview 65.

<sup>328</sup> HRAM individual interview 98.

<sup>329</sup> HRAM individual interview 153.

<sup>330</sup> HRAM individual interview 95.

<sup>331</sup> HRAM individual interview 93.

<sup>332</sup> HRAM individual interview 106.

<sup>333</sup> HRAM individual interview 161.

<sup>334</sup> HRAM individual interview 120.

is afraid to go back.<sup>335</sup> A woman from Disevi said she had been back to her village twice.<sup>336</sup> A villager from Gorinta also said he had returned twice to the village but that only old people were staying there on a permanent basis. He said he would go home if the checkpoints were dismantled.<sup>337</sup>

The residents of Akhgori, however, face a particular problem. While travel across the administrative boundary has been easy up to mid-November for persons with proof of civil registration, the *de facto* authorities indicated to HRAM their plan to close the administrative border.<sup>338</sup> A *de facto* official said that people in the area should make a decision to stay in South Ossetia or to leave it. If the decision of the *de facto* authorities to close the administrative boundary is implemented, the socioeconomic situation of ethnic Georgians in the Akhgori district would deteriorate significantly. The population of the region has very strong links with Gori, where many people work and study. Ethnic Georgians fear that the decision to close the administrative boundary will isolate them from family and others. Some people may opt to leave the region in order to preserve their culture and identity, as well as their links with their relatives across the administrative boundary.

Since the new South Ossetian *de facto* administration has taken over in the Akhgori area, many people have left the region. More than 5,100 individuals had left Akhgori by the end of October.<sup>339</sup> As another indication, a teacher told the HRAM that there were just 40 students in her school this year, compared to 170 last year and there were only half as many teachers as previously.<sup>340</sup> The HRAM was told that some people are selling their homes and others are considering doing so; others have stated they return frequently to ascertain the situation prior to making a decision whether to sell their homes and move permanently to another region of Georgia. Georgians are leaving Akhgori because of the strong presence of Russian and Ossetian forces and believe that fighting may break out.

A particularly worrying aspect of the new restrictions on movement into South Ossetia is the restrictions on delivery of international humanitarian assistance, unless it comes via the Russian Federation. The *UN Guiding Principles on Internal Displacement* state clearly that “All authorities concerned shall grant and facilitate the free passage of humanitarian assistance” and that consent to such assistance “shall not be arbitrarily withheld.”<sup>341</sup> The 15 October order of the ICJ also requires the parties to refrain from placing any impediment to humanitarian assistance.<sup>342</sup>

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<sup>335</sup> HRAM individual interview 119.

<sup>336</sup> HRAM individual interview 62.

<sup>337</sup> HRAM individual interview 125.

<sup>338</sup> HRAM meeting with Head of the State Commission on Humanitarian Assistance, Kosta Georgievich Dzugaev.

<sup>339</sup> HRAM interview with international organization.

<sup>340</sup> HRAM individual interview 169.

<sup>341</sup> Guiding Principles on Internal Displacement, §25.

<sup>342</sup> ICJ Order of 15 October, *supra* note 6, §149.

### ***Right to education***

*International legal instruments including the ICESCR, the Convention on the Rights of the Child and the ECHR set out the right of everyone to an education.*<sup>343</sup>

The destruction of some school buildings and some other disruptions resulting from the conflict have had a negative effect on education in South Ossetia. For example, as noted above, the university in Tskhinvali was destroyed during the conflict. The HRAM saw a school in the village of Znauri that was damaged by large calibre weapons. The school in Prisi was burned during the fighting and children now must travel to Tskhinvali to attend classes.<sup>344</sup>

The conflict also disrupted the education of thousands of children who were displaced. Among the displaced persons from South Ossetia living in collective centres across the administrative boundary who were interviewed by the HRAM, those with school-age children said the children are currently going to school despite the disruptions caused to their lives by the August war. A displaced couple from Ksuisi, for example, said all four of their children are in school.<sup>345</sup> Some families, however, reported that they did not have the financial resources necessary to support their children's education. A family from Kekhvi reported that their three children had no warm clothes for school.<sup>346</sup> A woman from Charebi commented that her children are in school "but they have nothing, no exercise books, so I feel ashamed."<sup>347</sup>

### ***Economic, social and cultural rights***

*The parties to the conflict are bound by the provisions of the ICESCR, which recognizes the right of everyone to social security, the highest attainable standard of physical and mental health and to an adequate standard of living including adequate food, clothing and housing.*<sup>348</sup>

As in the other war-affected areas, many of the people most affected by the conflict in South Ossetia were not people of great means even before conflict. As described above, in the aftermath of the conflict many lost their homes, their possessions and their crops; as a result they are in financial and social distress and in need of substantial assistance. Some left their homes with only the clothes on their backs.<sup>349</sup> While the large majority of ethnic Ossetians who fled to North Ossetia during the conflict have now returned to their former places of residence, some found that their homes were destroyed or damaged. These families are currently facing very difficult conditions. A few are being housed in collective centres in Tskhinvali and elsewhere, while some are living in severely damaged houses. The situation is even worse for many ethnic Georgians who fled South Ossetia, some 20,000 of whom have not been

<sup>343</sup> ICESCR article 13, CRC article 28, ECHR article 2, Protocol 1.

<sup>344</sup> HRAM individual interview 154.

<sup>345</sup> HRAM individual interview 82.

<sup>346</sup> HRAM individual interview 90.

<sup>347</sup> HRAM individual interview 101.

<sup>348</sup> ICESCR articles 9, 11, 12.

<sup>349</sup> HRAM individual interview 70.

able to return.<sup>350</sup> Many of these people remain in collective centres rapidly established by the Government of Georgia to care for them.

Current conditions for many of the displaced persons who fled from South Ossetia and who are now housed in collective centres are not adequate. For example, some villagers from Ikoti housed at the collective centre at Okrokana kindergarten are living in extremely poor conditions with no electricity, no running water, no beds and broken windows.<sup>351</sup> They claimed also not to be receiving food or health care.<sup>352</sup> Displaced persons from Disevi complained at great length to the HRAM about conditions in their collective centre, saying the second-hand clothing and the food they received was not adapted to their needs,<sup>353</sup> there was no tea or sugar, the roof of the collective centre was damaged and there was no running water.<sup>354</sup> A displaced person from Kekhvi pointed out that there were still not enough beds in his collective centre and that the food consisted of just pasta and bread.<sup>355</sup> A displaced person from Kurta commented on the very poor conditions in another collective centre with no beds and limited food.<sup>356</sup> A displaced person from Tamarasheni was in yet another collective centre with no heating or running water.<sup>357</sup> A family from Vanati said very little assistance was available to them in their collective centre, although they did receive soap, blankets and two hot meals a day.<sup>358</sup> A couple from Beloti said they were not receiving health care or food.<sup>359</sup> The HRAM found, in particular, that conditions at the following collective centres were in need of immediate attention and improvement: the former milk factory in Gori, the camping site in Gori, the former police station in Gori, the Ateni boarding school, the kindergarten attached to the municipal building in Ksovrisi, the hospital in Mukhrani, the Sachkheri school, the Kintsvisi school and the Kekhijvari collective centres.

At other collective centres, displaced persons had no complaints to report to the HRAM. Conditions at Rustavi school, for example, were reported to be good, with adequate food, blankets, beds and gas cookers.<sup>360</sup> At another collective centre an international company was at work installing showers, an oil heater and hot water.<sup>361</sup> Other displaced persons reported that they were receiving assistance from NGOs or international organizations. A family from Eredvi, for example, reported that an international NGO had provided them with spaghetti, beans, sugar, and oil, in addition to special food for children under two years old.<sup>362</sup> Another reported receiving food aid from the United Nations, and other bilateral donors.<sup>363</sup> Other families also reported getting some assistance from NGOs.<sup>364</sup>

<sup>350</sup> United Nations, Georgia Crisis Flash Appeal, October 2008, pp. 4-5.

<sup>351</sup> HRAM individual interview 125.

<sup>352</sup> HRAM individual interview 125.

<sup>353</sup> HRAM individual interview 58

<sup>354</sup> HRAM individual interview 59.

<sup>355</sup> HRAM individual interview 92.

<sup>356</sup> HRAM individual interview 95.

<sup>357</sup> HRAM individual interview 59.

<sup>358</sup> HRAM individual interviews 66, 67

<sup>359</sup> HRAM individual interview 124.

<sup>360</sup> HRAM individual interview 113.

<sup>361</sup> HRAM individual interview 69.

<sup>362</sup> HRAM individual interview 81.

<sup>363</sup> HRAM individual interview 113.

<sup>364</sup> HRAM individual interview 120.

The HRAM found that the availability of medical care, including mental health and reproductive health care, was also a high priority for displaced persons. Some reported they were receiving adequate medical attention, while others said they were not. An elderly displaced couple in one collective centre said that a doctor visits them every other day, but complained that they usually have to pay for their own medicines.<sup>365</sup> Another displaced person also reported having been examined by a doctor and having been prescribed medicines, but added that she would have to pay for them herself and could not afford it.<sup>366</sup> An elderly displaced couple from Eredvi told the HRAM they needed to see a doctor but had no money to pay for a visit.<sup>367</sup> Yet another displaced person reported that there were no doctor visits at his collective centre but some medicines were handed out.<sup>368</sup> A displaced person from Ksuisi, on the other hand, reported easy availability of medical services, recounting that after arriving in Tbilisi he spent a week in the hospital, received medicines and was given a prescription to continue treatments at home.<sup>369</sup> Another displaced person reported being told that he could have a free medical examination if he needed one.<sup>370</sup> An international humanitarian organization assessed that the lack of financial means to purchase medicine was one of the two major issues of concern most consistently raised by displaced persons, the other being lack of employment opportunities.<sup>371</sup>

Most of the displaced persons interviewed by the HRAM either were in possession of their original personal identity cards or had been able to procure replacement documents. This is an important point since identity documents are often required to enable displaced persons to have access to social services. Most displaced persons who had lost their identity documents when they fled the conflict reported to the HRAM that they had no difficulty in getting them replaced.<sup>372</sup> A displaced woman from Disevi, however, said she could not get her identification documents replaced because she does not have enough money to go to Tbilisi to take care of it.<sup>373</sup> Another, an ethnic Ossetian, said she had been unable to get a Georgian identity document and believed she was being discriminated against because of her ethnicity.<sup>374</sup>

Although most displaced persons had their identity documents, some stated that they have not been officially registered as IDPs. This was confirmed, for example, in interviews with displaced persons from Kurta<sup>375</sup> and Disevi.<sup>376</sup> Humanitarian organizations confirmed that displaced persons from the August conflict were not being accorded official IDP status.<sup>377</sup> Not being officially registered as IDPs could

<sup>365</sup> HRAM individual interview 64.

<sup>366</sup> HRAM individual interview 85.

<sup>367</sup> HRAM individual interviews 72, 73.

<sup>368</sup> HRAM individual interview 64.

<sup>369</sup> HRAM individual interview 97.

<sup>370</sup> HRAM individual interview 86.

<sup>371</sup> HRAM meeting with international NGO.

<sup>372</sup> HRAM individual interviews 68, 92, 107, 109, 110.

<sup>373</sup> HRAM individual interview 58.

<sup>374</sup> HRAM individual interview 103.

<sup>375</sup> HRAM individual interview 95.

<sup>376</sup> HRAM individual interview 62.

<sup>377</sup> HRAM report from coordination meeting of humanitarian organizations operating in the Gori region.

deprive individuals of some of the benefits and protections of IDP status, for example, protection from eviction.

In contrast to identity documents, it is not clear that displaced persons will be able easily to replace property ownership documents that they left behind, which might be needed for compensation or to reclaim their property. A number of displaced persons told the HRAM that they no longer had their property documents.<sup>378</sup>

Some displaced persons complained that they were placed in collective centres away from other members of their families or residents of their home villages.<sup>379</sup>

Importantly, displaced persons who are pensioners reported to the HRAM that they are able to continue to collect their pensions despite their displacement.<sup>380</sup> The HRAM heard no complaints about pensions being held up.

One of the most difficult problems facing displaced persons is the continuing uncertainty over what the future will bring. Many displaced persons from South Ossetia said they had only rumours or hearsay information about Government plans for them. None of the displaced persons interviewed said that Government officials had consulted them on plans for the future. A displaced person from Eredvi told HRAM interviewers that he and his family had no information from the Government and that no Government officials had visited his collective centre to discuss the future.<sup>381</sup> A displaced person from Ksuisi concurred that there was no information about the future.<sup>382</sup> A villager from Kekhvi complained that the Government was circulating “propaganda” about caring for IDP needs but no Government officials had come to explain what the plans were.<sup>383</sup>

The Government of Georgia’s ambitious plan rapidly to construct housing for thousands of displaced persons from South Ossetia is well underway, with much construction already visible. The Deputy Minister for Refugees and Accommodation confirmed to the HRAM that the Government began constructing housing units for those who were not able to return, i.e. 22 000 persons. Each family would be allocated a furnished and fully equipped house and 600 to 700 square meters of land. The first 6000 houses were supposed to be constructed before the winter according to the Deputy Minister.<sup>384</sup> It remained unclear on which basis the houses would be allocated to the beneficiaries and if the latter would have legal security of tenure, protecting them against risks of forced eviction.

Many displaced persons reported to the HRAM that they have heard only television reports about the housing construction programme and still have no idea if or when they might be allocated a new house. A displaced person from Disevi told the HRAM that she only had heard a lot of rumours about new houses being built by the

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<sup>378</sup> HRAM individual interviews 69, 77, 113.

<sup>379</sup> E.g., HRAM individual interviews 78, 119, 86.

<sup>380</sup> HRAM individual interviews 79, 92, 93.

<sup>381</sup> HRAM individual interview 78.

<sup>382</sup> HRAM individual interview 85.

<sup>383</sup> HRAM individual interview 92.

<sup>384</sup> HRAM meeting with the Deputy Minister for Refugees and Accommodation, Beso Tserediani.



Government, not official information.<sup>385</sup> Another displaced person, from Kekhvi, commented “they bring food, bread and pasta but don’t tell us what will happen. We heard that there are cottages being built.”<sup>386</sup> Yet another elderly couple from Kekhvi said they had not been visited by any Government official and had only heard a lot of rumours about possible new houses being built by the Government.<sup>387</sup> Displaced persons from Disevi, Khetagurovo and elsewhere gave similar accounts of having heard of housing construction but not knowing when or if they would be among those allocated housing.<sup>388</sup> A man from Kurta said he had gone to the town hall asking about future accommodation and shelter, but had not received any answers.<sup>389</sup> On the other hand, the HRAM also spoke with displaced persons from Disevi,<sup>390</sup> Satskheneti<sup>391</sup> and Tamarasheni<sup>392</sup> who had heard from Government officials that they would be assigned one of the new houses when they were completed.

Another concern voiced by displaced persons was the question of how to deal with loans they had taken out before the war and before they lost all their possessions.<sup>393</sup> This concern touches on the longer term financial and social future of displaced persons. In the villages, displaced persons were able to support themselves with their crops, animals and other employment. Now, even if they are given new houses, many worry how they will survive over the longer term since they have lost not only their possessions, but their livelihoods.<sup>394</sup>

Many of the small number of people who remained in predominantly ethnic Georgian villages in South Ossetia during the conflict, or who have since returned, are facing extremely difficult conditions. In the largely destroyed village of Vanati, for example, a returnee whose house was burned told the HRAM she has received no assistance from the authorities but has been visited weekly by the ICRC.<sup>395</sup> In Satskheneti, another destroyed village, an old man who remained in the village said he would not survive the winter without help from the ICRC.<sup>396</sup> An old woman in the same village, an ethnic Ossetian who had been married to an ethnic Georgian, said she had received some food assistance from the *de facto* authorities but since her home and livestock had been looted, she does not have enough to eat or any way to heat her house.<sup>397</sup> In Ksuisi, a resident of the largely burned village told the HRAM that people are starving because their cattle was taken and their homes were burned; they do not know how they will survive the winter.<sup>398</sup> In lower Prisi, one villager said that she had received humanitarian aid in the form of roofing materials and food, but another said several *de facto* government officials had visited promising aid but none

<sup>385</sup> HRAM individual interview 64.

<sup>386</sup> HRAM individual interview 90.

<sup>387</sup> HRAM individual interview 64.

<sup>388</sup> HRAM individual interview 115.

<sup>389</sup> HRAM individual interview 98.

<sup>390</sup> HRAM individual interview 62.

<sup>391</sup> HRAM individual interview 102.

<sup>392</sup> HRAM individual interview 89.

<sup>393</sup> HRAM individual interview 85.

<sup>394</sup> This was an often-repeated concern, e.g., HRAM individual interviews 103, 58, 73.

<sup>395</sup> HRAM individual interview 157.

<sup>396</sup> HRAM individual interview 159.

<sup>397</sup> HRAM individual interview 158.

<sup>398</sup> HRAM individual interview 162.

had reached her.<sup>399</sup> The HRAM saw first hand that residents of Prisi, Vanati, Satskheneti and Ksuisi are facing a very difficult humanitarian situation.

In the Akhagori area, which was not directly affected by combat, the HRAM found that the villagers are having to deal with significant economic and social problems as a result of the conflict. Public workers and others in this area who were previously paid by the Georgian Government have received no pay since Russian and South Ossetian forces took control of the area in August.<sup>400</sup> During this period, prices in the shops have increased significantly. The Deputy Head of the Regional Administration told the HRAM that the population will rely heavily on the assistance of the ICRC to survive the winter.<sup>401</sup>

Many of the families in Tskhinvali whose homes were burned or damaged during the conflict remain in the damaged homes, where they are at risk from the unstable structures or the elements. The HRAM saw, for example, one family living in a burned structure where a plastic tarpaulin substituted for a wall. Some of those not living in their damaged homes are housed with friends or family or in seven collective centres. About 45 people who recently fled from Kakheti region are also accommodated in collective centres in Tskhinvali.<sup>402</sup> The HRAM visited one collective centre occupied by about 30 persons. Its residents had electricity and heaters in every room and said food was provided.<sup>403</sup>

Within South Ossetia, the reconstruction of damaged buildings was reportedly being handled by the Russian Federation's emergency relief agency EMERCOM,<sup>404</sup> although the HRAM did not see much ongoing reconstruction underway during its visit. According to the head of the *de facto* State Commission on Humanitarian Assistance, the *de facto* authorities have been able to cover food needs and most clothing requirements, but building materials now remain a priority for assistance.<sup>405</sup> He added that most aid is coming from the Russian Federation.

## **ABKHAZIA**

### **General situation**

The August conflict and its aftermath affected Abkhazia in ways very different from the "buffer zone" and South Ossetia. Most importantly, the HRAM noted that during its visits to the Kodori gorge and the southern Gali district there were no reports of

<sup>399</sup> HRAM individual interviews 155, 156.

<sup>400</sup> HRAM group interview 13.

<sup>401</sup> HRAM meeting with Deputy Head of the Regional Administration, Vladimir Gabarev.

<sup>402</sup> HRAM meeting with the *de facto* Deputy Minister for Special Affairs, Kazbek Karsanov.

<sup>403</sup> HRAM group interview 14.

<sup>404</sup> EMERCOM: Russian Federation Ministry for Civil Defence, Emergencies and Disaster Relief; UN Mission Report, Humanitarian Assessment Mission to South Ossetia, 16-20 September 2008. Available at

[www.parliament.ge/files/1185\\_20707\\_505519\\_SOssetia\\_Mission\\_Report\\_16-20\\_Sept\\_2008\\_Final\\_for\\_distr.pdf](http://www.parliament.ge/files/1185_20707_505519_SOssetia_Mission_Report_16-20_Sept_2008_Final_for_distr.pdf).

<sup>405</sup> HRAM meeting with Head of State Commission on Humanitarian Assistance, Kosta Georgievich Dzugaev.

deaths from bombing or other combat operations and that few injuries or destruction of houses were reported in either area that occurred during the conflict or its aftermath.<sup>406</sup> Nonetheless, the HRAM found a number of human rights and minority issues of concern as a result of the conflict in Abkhazia, as described below.

With regard to the Kodori area, there were a series of military air strikes on 9 August.<sup>407</sup> These attacks put civilians at risk, although the HRAM was told by some interviewees that the intended strikes were publicly announced on the previous day, affording the population the opportunity to seek safety. Others said there was no warning.<sup>408</sup> The air strikes were reportedly aimed at military targets. The very fact of the impending attacks, however, caused the large majority of the ethnic Georgian population to flee before Abkhaz ground forces moved into the area. Of an estimated 2,500 ethnic Georgians in the area, all but about 100 fled across the administrative boundary after the air strikes.<sup>409</sup> The displaced persons were transported by the UNHCR to collective centres in Kutaisi and Tbilisi, where most of them remain.

On about 10 August, the Russian Federation introduced large numbers of troops into the zone of conflict in the Gali region.<sup>410</sup> Initially, these forces were deployed on the Gali side of the administrative boundary but many were later moved to the Zugdidi side and adjacent areas.<sup>411</sup> There were no reported casualties or combat damage to civilian infrastructure reported to the HRAM as a result of these operations, nor was a significant displacement of population reported.

The conflict, however, appreciably exacerbated ethnic tensions in the region and led to new administrative restrictions and other measures with detrimental consequences for human and minority rights, as detailed and documented in the sections below. In particular, the HRAM found that the southern administrative boundary of the Gali district, which had been effectively open to most civilian traffic before the conflict, is now largely closed, resulting in severe economic and social distress for the population that previously could cross the boundary with little difficulty. Insecurity and lawlessness were reported to have increased. The *de facto* authorities in Abkhazia have proposed that residents of the area take Abkhaz citizenship, a process which may include renouncing Georgian citizenship; residents who choose not to do so may lose many of their current rights. The affected population includes an estimated 35,000-50,000 ethnic Georgians.

International humanitarian agencies, including the UNHCR and the ICRC, have access to the Kodori area and the southern Gali district.

According to the Representative for Human Rights Issues of the *de facto* President, the Abkhaz authorities are committed to implementing international standards related

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<sup>406</sup> See relevant sections below.

<sup>407</sup> Report of the United Nations Secretary-General on the Situation in Abkhazia, Georgia, 3 October 2008, S/2008/631, p. 2.

<sup>408</sup> HRAM group interviews 4, 8.

<sup>409</sup> See Freedom of movement, below.

<sup>410</sup> Report of the United Nations Secretary-General on the Situation in Abkhazia, Georgia, 3 October 2008, S/2008/631, p. 2.

<sup>411</sup> Ibid.

to the protection of human rights even though as a generally unrecognized entity they cannot sign international human rights treaties.<sup>412</sup>

## Specific human rights concerns

### *Right to life*

*The right to life is enshrined in many international human rights documents binding on the parties to the conflict, including the ICCPR and the ECHR,<sup>413</sup> and as such is incorporated also into OSCE commitments.<sup>414</sup> In a situation of armed conflict, the Geneva Conventions also apply to the parties.*

According to residents of the Kodori gorge area, air force planes began flying over villages in the gorge on 7 August; the appearance of the aircraft was enough to convince some villagers that they needed to leave for their own safety.<sup>415</sup> An international organization official told the HRAM that the *de facto* President announced on television and on radio on 10 August that there would be a military operation in the upper Kodori valley; the air strikes began very soon thereafter, aimed at two Georgian military targets.<sup>416</sup> Villagers from the valley, however, told the HRAM that there was no warning of the impending air strikes.<sup>417</sup> They said that suddenly planes appeared and bombs began to fall. Five or six planes, they said, were bombing the gorge so civilians began to flee for fear of their lives.<sup>418</sup>

A number of villagers reported that bombs fell on or near civilian houses endangering the lives of the population. A resident of Chkhalta, for example, reported seeing her neighbour's house bombed.<sup>419</sup> A villager from Ajara also reported that her village was bombed. She added that there were seven wounded – including one child and four women – not all from her village, who were treated at the hospital where she worked.<sup>420</sup> A man from the village of Gentsvishi said that a bomb dropped just 20 meters from his house but he was not aware of anyone injured in the bombing.<sup>421</sup> He stated that the Russian planes first bombed the edges of the villages and did not target the village itself until the population had had a chance to flee.

The HRAM received no reports of deaths from aerial bombardment in Abkhazia. According to international organizations, however, there were a few subsequent deaths resulting from the conflict. One individual who tried to travel to Kodori after hearing of the air strike was reportedly shot and killed by Abkhaz troops at the first

<sup>412</sup> HRAM meeting with Representative for Human Rights Issues of the *de facto* President, Georgiy Otyrba.

<sup>413</sup> ICCPR article 6, ECHR article 2.1.

<sup>414</sup> Helsinki document (1975) section 1.(a) Declaration on Principles Guiding Relations between participating States – Principle X.

<sup>415</sup> HRAM individual interviews 134, 141.

<sup>416</sup> HRAM meeting with international organization.

<sup>417</sup> Because of the geographic location of the Kodori gorge, part of its population may have been unable to receive Abkhaz TV and even radio which could explain contradictory statements about warnings transmitted by the media.

<sup>418</sup> HRAM group interview 4.

<sup>419</sup> HRAM individual interview 134.

<sup>420</sup> HRAM individual interview 141.

<sup>421</sup> HRAM individual interview 140.

checkpoint.<sup>422</sup> In addition, an Abkhaz car hit a mine on the Georgian side of the administrative boundary on 17 August, killing three of the occupants.<sup>423</sup> A Georgian police officer was killed on 30 August and another on 20 September, and an Abkhaz border guard was killed on 16 October. These incidents seemed to be aimed at people in uniform; there were no civilian deaths.<sup>424</sup> Another international organization reported that three civilians were injured during the air strikes, including two women.<sup>425</sup> A Minister of the Abkhaz Government-in-exile reported that there were five or six injuries as a result of the bombing, but no deaths.<sup>426</sup>

### ***Freedom from torture and ill-treatment***

*OSCE participating States have adopted numerous commitments prohibiting torture or ill-treatment.<sup>427</sup> In addition, the parties to the conflict have legal obligations to prevent torture and ill-treatment, including under provisions of the ICCPR,<sup>428</sup> the Convention against Torture, the ECHR<sup>429</sup> and other instruments.*

A hospital worker reported to the HRAM that she had treated a man who was allegedly beaten by Abkhaz militia after he stayed in the Kodori valley following the air strikes. The man had bruises on his face and his body. He was transported from Gali to Zugdidi to treat his injuries.<sup>430</sup>

### ***Arbitrary detention***

*OSCE commitments prohibit arbitrary arrest or detention,<sup>431</sup> as do the ICCPR<sup>432</sup>, the ECHR<sup>433</sup> and other instruments.*

The HRAM received no reports of arbitrary detention in Abkhazia.

### ***Policing and ensuring the safety of persons***

*OSCE participating States are committed to abide by the rule of law<sup>434</sup> and to take necessary measures to ensure that law enforcement personnel act in the public interest.<sup>435</sup> The ICCPR and the ECHR each stipulate that everyone has the right to security of the person.<sup>436</sup>*

<sup>422</sup> HRAM interview with international organization

<sup>423</sup> HRAM interview with international organization.

<sup>424</sup> Ibid.

<sup>425</sup> HRAM interview with international organization.

<sup>426</sup> HRAM meeting with Head of Department for Refugees of Abkhazia Government-in-exile, Tengiz Bendeliani.

<sup>427</sup> E.g., Charter for European Security (1990), §21.

<sup>428</sup> Article 7.

<sup>429</sup> Article 3.

<sup>430</sup> HRAM individual interview 145.

<sup>431</sup> Vienna document (1989), §23.

<sup>432</sup> Article 9.

<sup>433</sup> Article 5.

<sup>434</sup> E.g., Copenhagen document (1990), §2.

<sup>435</sup> Moscow document (1991), §21.1

<sup>436</sup> ICCPR article 9, ECHR article 5.

The HRAM received mixed reports about the security situation in Abkhazia in the wake of the conflict. Several villagers told the HRAM that they feel safe and do not feel threatened, for example, in the village of Ajara.<sup>437</sup> An international official who visited Kodori offered his view that the residents there did not appear to be frightened.<sup>438</sup> Another international official reported that there had been no complaints of misbehaviour by Abkhaz or Russian troops and that the latter, in particular, were very professional.<sup>439</sup>

On the other hand, some villagers reported that they were concerned, and even afraid, of the Russian troops. For example, two residents of Gali separately told the HRAM they are afraid of the Russians, even if they have not seen them do anything wrong.<sup>440</sup> The HRAM met with a number of villagers who were clearly scared and made nervous by the strong military presence.<sup>441</sup> An HRAM team witnessed a group of residents of the Kodori valley that was acting aggressively.<sup>442</sup> An official from an international organization confirmed that the population is uncomfortable with the heavier military presence since the conflict.<sup>443</sup> Confirming the increased military presence, an NGO representative commented that the Russians are building a huge military base near the village of Pechori and are constructing fortifications in many other areas.<sup>444</sup> A resident of Nabakevi commented that “during the hazelnut season, the crime rate goes up. There are organized bandits who scare and rob people; they fake executions to force people to give part or all of their harvest. Recently, a man was thrown from the second floor.”<sup>445</sup> The Chairman of the Human Rights Committee of the *de facto* Parliament agreed that the situation in Gali is tense, although he insisted that it is no worse than before the conflict.<sup>446</sup> According to the UNOMIG, some residents of the Gali area reported that they were afraid to harvest their crops, while others reported being afraid to travel to the Gali market to sell hazelnuts, because of criminal gangs.<sup>447</sup>

### ***Property rights and compensation***

*OSCE commitments guarantee everyone the right peacefully to enjoy his property and stipulate that no one may be deprived of his property except in the public interest and subject to the conditions provided for by law and consistent with international commitments and obligations.*<sup>448</sup> *The Fourth Geneva Convention prohibits pillage.*<sup>449</sup> *Protocol 1 of the ECHR stipulates that no person shall be deprived of his possessions*

<sup>437</sup> HRAM individual interview 132.

<sup>438</sup> HRAM interview with international organization.

<sup>439</sup> HRAM interview with international organization.

<sup>440</sup> HRAM group interview 5.

<sup>441</sup> HRAM group interview 5.

<sup>442</sup> Observed by HRAM.

<sup>443</sup> HRAM interview with international organization.

<sup>444</sup> HRAM interviews with NGOs and meeting with Deputy Head of the Administration in Gali on cultural issues, Justan Gergedava.

<sup>445</sup> HRAM individual interview 145.

<sup>446</sup> HRAM meeting with Head of the Human Rights Committee of the *de facto* Parliament of Abkhazia, Bata Kobakhia.

<sup>447</sup> Report of the UN Secretary-General on the Situation in Abkhazia, Georgia, 3 October 2008, S/2008/631, §32.

<sup>448</sup> Copenhagen document (1990), §9.6.

<sup>449</sup> Fourth Geneva Convention (1949), article 33.

*except in the public interest and through a process of law.*<sup>450</sup> Many human rights treaties include provisions giving victims of human rights violations the right to a remedy, including, for example, ECHR Article 13 and CERD Article 6. The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law set out in more detail the rights of victims to restitution, compensation and rehabilitation.<sup>451</sup>

A number of residents of the Kodori gorge lost homes and property as a result of the conflict. A villager from Chkhalta told the HRAM that his house and some of his neighbours' houses were damaged in the bombing.<sup>452</sup> A woman from Sakheni reported that her house was damaged by bombs,<sup>453</sup> as did a man from Gentsvishi.<sup>454</sup> Another man's house was damaged when a bomb dropped in his yard, 20 meters from his house.<sup>455</sup> In Ajara a woman reported that four or five houses were destroyed by bombs.<sup>456</sup>

The HRAM also received some reports of looting in the Kodori gorge. One villager reported that his house survived without damage, but when he returned he found that his television, radio and curtains had been stolen.<sup>457</sup> A woman from Ptishi said that she returned to find her house looted, as did several of her neighbours.<sup>458</sup> The houses were not burned, however. Even the UNOMIG base in Ajara was emptied of all movable assets and was occupied by Abkhaz personnel.<sup>459</sup>

As a result of the conflict, many villagers also lost cattle, which for many is essential for their livelihood. A woman from Ptishi recounted that some cattle were killed by bombs.<sup>460</sup> A man from Gentsvishi said that he had not been able to locate his cattle since his return.<sup>461</sup> An international humanitarian organization also confirmed that villagers' cattle had disappeared.<sup>462</sup>

An NGO in Gali reported to the HRAM that there were claims that the Russians were building fortifications on private property without offering compensation.<sup>463</sup> The HRAM saw soldiers uprooting trees and digging trenches on the grounds adjacent to the dispensary/kindergarten building in Nabakevi.

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<sup>450</sup> ECHR Protocol 1, article 1.

<sup>451</sup> United Nations General Assembly Resolution 60/147.

<sup>452</sup> HRAM individual interview 134.

<sup>453</sup> HRAM individual interview 178.

<sup>454</sup> HRAM individual interview 138.

<sup>455</sup> HRAM individual interview 140.

<sup>456</sup> HRAM individual interview 141.

<sup>457</sup> HRAM individual interview 132.

<sup>458</sup> HRAM individual interview 134.

<sup>459</sup> Report of the UN Secretary-General on the Situation in Abkhazia, Georgia, 3 October 2008, S/2008/631, §47.

<sup>460</sup> HRAM individual interview 142.

<sup>461</sup> HRAM individual interview 138.

<sup>462</sup> HRAM interview with international organization.

<sup>463</sup> HRAM interviews with NGOs and meeting with Deputy Head of Administration in Gali on cultural issues, Justan Gergedava.

### ***Freedom of movement, including right to return***

*OSCE participating States are committed to removing all legal and other restrictions with respect to travel within their territories and with respect to residence for those entitled to permanent residence within their territories.<sup>464</sup> They are further committed to facilitate the voluntary return in safety and dignity, of internally displaced persons, in accordance with international standards, recognizing also that the reintegration of people to their places of origin must be pursued without discrimination.<sup>465</sup> The OSCE has recognized the UN Guiding Principles on Internal Displacement as the relevant framework.<sup>466</sup> The cease-fire agreement entered into by the Governments of Georgia and the Russian Federation on 12 August requires the parties to the conflict to permit free access to humanitarian assistance and to all the return of refugees.<sup>467</sup>*

The August conflict and its aftermath negatively affected freedom of movement and residence in a number of ways with respect to Abkhazia. In the Kodori gorge, most of the residents felt that they had to flee their homes for their own safety after the bombing began in early August.<sup>468</sup> Many of those who fled still do not believe that security conditions in the Kodori gorge permit their safe return.<sup>469</sup> A displaced person from Ptishi, for example, told the HRAM that she is not willing to return to Kodori unless the Russians withdraw.<sup>470</sup> Some residents are convinced that Russian troops are blocking access to the gorge and preventing returns.<sup>471</sup> Others are unwilling to return because they believe their possessions have been looted.<sup>472</sup> One displaced person commented to the HRAM that it will soon be unrealistic to try to return because the winter snows will make the gorge inaccessible.<sup>473</sup>

In practice, however, a number of persons who fled from the Kodori gorge in August have been able to return without difficulty. For example, the HRAM interviewed villagers from Kvabchara, Chkhalta, Gentsvishi and Ajara who were able to return with no difficulty and had no problems crossing the administrative boundary.<sup>474</sup> Several of those who have returned were concerned that they have not been able to keep in regular contact with their families because the local telephone network had been down for many weeks.<sup>475</sup>

According to information received by the HRAM, there were about 2,500 ethnic Georgians in the Kodori gorge prior to the August conflict.<sup>476</sup> Of these, only between

<sup>464</sup> Moscow document (1991), §33.

<sup>465</sup> Lisbon document (1996), §10.

<sup>466</sup> Maastricht Ministerial Council decision 4/03, §13.

<sup>467</sup> Point 3. Available at

[www.elysee.fr/documents/index.php?lang=fr&mode=view&cat\\_id=8&press\\_id=1738](http://www.elysee.fr/documents/index.php?lang=fr&mode=view&cat_id=8&press_id=1738).

<sup>468</sup> See “Right to life”, above.

<sup>469</sup> See “Policing and ensuring the safety of persons”, above.

<sup>470</sup> HRAM individual interview 142.

<sup>471</sup> HRAM group interview 9.

<sup>472</sup> HRAM meeting with Head of the Department for Refugees, Abkhaz Government-in-exile, Tengiz Bendeliani.

<sup>473</sup> HRAM individual interview 140.

<sup>474</sup> HRAM group interviews 132, 133, 135, 136, 137, 138.

<sup>475</sup> HRAM individual interview 132.

<sup>476</sup> HRAM meeting with Head of the Department for Refugees, Abkhaz Government-in-exile, Tengiz Bendeliani.



100 and 150 are reported to have returned.<sup>477</sup> Most of the returnees are reported to be single men, although the HRAM also spoke with a few families who have returned.<sup>478</sup> Very few young people have returned.<sup>479</sup>

The HRAM was told by the Chairman of the Human Rights Committee of the *de facto* Parliament that the *de facto* President of Abkhazia made an appeal on television and radio for the civilian population to return;<sup>480</sup> this is an important and positive development. The *de facto* Minister of Foreign Affairs told the HRAM that there are no obstacles to return and that his Government is prepared to support returnees and to provide them with what they need to live. He added, however, that returnees must understand that they will be returning to the “State of Abkhazia,” where they will have the right to become full citizens.<sup>481</sup> That so few displaced persons have returned to the Kodori valley is strong evidence that the *de facto* authorities have not yet done enough to meet their obligations to encourage and enable displaced persons to return voluntarily to their homes in dignity and security.

The situation of freedom of movement in the Gali region is also problematic. Since there were no combat operations in Gali during the conflict, the population was not directly affected by the fighting and there was no general exodus of the population or destruction of property. Nonetheless, by various estimates, there are between 35,000 and 50,000 ethnic Georgians living in the Gali district of Abkhazia who were reliant in many ways on freedom of movement across the administrative boundary.<sup>482</sup> By most accounts, until the summer of 2008, this population was able to move more or less freely across the porous administrative boundary to interact with relatives and do business in Zugdidi and other Georgian cities. They could go to markets, attend school, or to seek medical treatment; some people even lived on one side of the administrative boundary and crossed to tend fields or orchards on the other side.<sup>483</sup> There was one official crossing point, the Inguri bridge, however, in practice it was possible to cross the border in many other locations by offering a small consideration to the border guards.<sup>484</sup> The administrative boundary was closed in July 2008, following an incident in which a high-ranking Abkhaz security officer was killed, but controls remained loose and many people still managed to cross without great difficulty.<sup>485</sup>

In early October, however, the border regime was strengthened by the Russian and *de facto* authorities and it became almost impossible to cross the administrative boundary.<sup>486</sup> The administrative boundary is now guarded by Russian troops who strictly enforce the closure.<sup>487</sup> Only a few people with special passes, for instance

<sup>477</sup> HRAM individual interview 147; HRAM interview with NGO.

<sup>478</sup> HRAM interview with international organization.

<sup>479</sup> HRAM individual interview 139.

<sup>480</sup> HRAM meeting with Head of the Human Rights Committee of the *de facto* Parliament of Abkhazia, Bata Kobakhia.

<sup>481</sup> HRAM meeting with *de facto* Minister of Foreign Affairs, Sergej Shamba.

<sup>482</sup> HRAM meetings with international organizations.

<sup>483</sup> HRAM interview with international organization; HRAM interview with NGO.

<sup>484</sup> HRAM interview with international organization.

<sup>485</sup> Ibid.

<sup>486</sup> HRAM interview with international organization.

<sup>487</sup> HRAM interviews with NGOs and meeting with Deputy Head of the Administration in Gali on cultural issues, Justan Gergedava.

those who work at the Inguri hydroelectric station, are allowed to cross the boundary.<sup>488</sup> The *de facto* authorities are building a physical barrier along the administrative boundary that will further impede freedom of movement.<sup>489</sup> The *de facto* Minister of Foreign Affairs, however, told the HRAM that his government is planning to establish some official crossing points to allow movement.<sup>490</sup>

In the interim, the closure of the administrative boundary has severely restricted freedom of movement for residents of the Gali district and is causing serious social dislocations. Families with members on each side of the administrative boundary, for example, can no longer visit each other.<sup>491</sup> Health workers are also blocked from passage and residents of Gali can no longer visit medical facilities in Zugdidi.<sup>492</sup> A health worker in Gali recounted how a man had died after he was refused permission to cross the administrative boundary to seek medical care in Zugdidi.<sup>493</sup> Another health worker, however, told the HRAM that she had been able to transport serious cases across the administrative boundary.<sup>494</sup>

Among international humanitarian organizations, UNHCR has been able to cross the administrative boundary, but several other organizations have not.<sup>495</sup>

### ***Right to education***

*International legal instruments including the ICESCR, the Convention on the Rights of the Child and the ECHR set out the right of everyone to an education.<sup>496</sup> OSCE commitments further stipulate that persons belonging to national minorities have the right to establish their own educational institutions.<sup>497</sup>*

According to the *de facto* Minister of Education, there are now 21 schools in the Gali region, with a total of 3,026 students in attendance. The official language of instruction is Russian, although in practice Georgian is also taught in some schools; 11 schools in lower Gali teach their courses in Georgian, while ten schools in upper Gali teach exclusively in Russian. The Russian language schools do give courses of Abkhaz and Georgian languages. The *de facto* Minister told the HRAM that there is no plan to change the curriculum for schools in upper Gali but in lower Gali there is a plan to require children to study history and geography in Abkhaz. She mentioned that it is difficult to recruit teachers of Abkhaz to work in Gali. In Kodori, she said, there are not enough children for a school this year.<sup>498</sup>

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<sup>488</sup> Ibid.

<sup>489</sup> HRAM observed Russian armed forces personnel digging trenches as part of building border facilities.

<sup>490</sup> HRAM meeting with *de facto* Minister of Foreign Affairs, Sergej Shamba.

<sup>491</sup> HRAM individual interview 179; HRAM group interview 5.

<sup>492</sup> HRAM individual interview 180.

<sup>493</sup> HRAM individual interview 143.

<sup>494</sup> HRAM individual interview 145.

<sup>495</sup> HRAM interview with international NGOs.

<sup>496</sup> ICESCR article 13, CRC article 28, ECHR article 2, Protocol 1.

<sup>497</sup> Copenhagen document (1990), §32 and Vienna document (1989), §19.

<sup>498</sup> HRAM meeting with *de facto* Minister of Education, Indira Vadaniya.

In Nabakevi, the school used to be attended by children from the village of Kurcha, on the other side of the administrative boundary but under the new border regime, these children can no longer attend the school.<sup>499</sup>

The issue of language in schools has become an issue of growing concern for the ethnic Georgian population of the Gali region. Hours of instruction in Russian have been increased, while the hours of instruction in Georgian have been reduced.<sup>500</sup> A local human rights NGO also confirmed that the hours of instruction in Georgian are being decreased in the schools, adding that some families are leaving Gali in order to ensure a Georgian-language education for their children.<sup>501</sup> The same NGO reported that rumours are circulating that classes in Georgian will not be financed by the state and will become optional for students. HRAM was told that after the August conflict, many parents took their children to study in Georgia.<sup>502</sup> The Head of the Department for Refugees of the Abkhaz Government-in-exile asserted to the HRAM that most people with school age children have left Gali because of the difficulty of getting an education in Georgian;<sup>503</sup> other information collected by the HRAM did not bear out this assertion, although it appears that some families have left for this reason.<sup>504</sup> For example, it was reported to HRAM that in one school in lower Gali, there are just 117 pupils in attendance this year, down from 157 pupils last year.<sup>505</sup>

Another apparently serious impediment to the right to education caused by the new border regime is that Georgian teachers in Gali were receiving their salaries from the Government of Georgia; with the closure of the crossing points, these teachers can no longer receive their pay.<sup>506</sup> They expect to be paid by the *de facto* authorities beginning in 2009, however, they may not be eligible for pay unless they take out Abkhaz citizenship. Yet another obstacle is that the *de facto* authorities reportedly have no resources to print books needed for the required curriculum for pupils and teachers in the Gali district.<sup>507</sup> One interlocutor expressed concern at the rise of inter-ethnic tensions among children at schools since the August conflict, recounting that her child had been threatened with a beating by children from other schools if he spoke Georgian.<sup>508</sup>

A representative of the Armenian community in Gagra, in contrast, expressed satisfaction that there are 32 Armenian schools in Abkhazia and there are no problems with the right to use the Armenian language. The history of Armenia is included in the curriculum. The University of Abkhazia has a department devoted to training teachers for Armenian schools. The representative expressed gratitude to the authorities for still financing schools which are increasingly depopulated.<sup>509</sup>

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<sup>499</sup> HRAM individual interview 151.

<sup>500</sup> HRAM individual interview 144.

<sup>501</sup> HRAM interview with NGOs and meeting with Deputy Head of the Administration in Gali on cultural issues, Justan Gergedava.

<sup>502</sup> HRAM individual interview 151.

<sup>503</sup> HRAM meeting with Head of Department for Refugees of the Abkhaz Government-in-exile, Tengiz Bendeliani.

<sup>504</sup> HRAM individual interview 151.

<sup>505</sup> Ibid.

<sup>506</sup> HRAM interview with international organization.

<sup>507</sup> HRAM interview with NGO.

<sup>508</sup> HRAM individual interview 145.

<sup>509</sup> HRAM individual interview 146.

### *Economic, social and cultural rights*

*The parties to the conflict are bound by the provisions of the ICESCR, which recognizes the right of everyone to social security, the highest attainable standard of physical and mental health and to an adequate standard of living including adequate food, clothing and housing.*<sup>510</sup>

One of the consequences of the conflict was to threaten the economic and social rights of some of the people of Abkhazia. Economic conditions for those who have returned to the Kodori gorge remain precarious. A returnee in Kvabchara, for example, told the HRAM that because he left during the conflict, he could not harvest his fields and therefore he now has no food.<sup>511</sup> A resident of Ajara commented that he has potatoes, meat and cheese, but he had to sell his cattle.<sup>512</sup> A local official said he was told that there will be a special help programme from the *de facto* President to get people through the winter, but he does not know what it will entail.<sup>513</sup> An international humanitarian agency concurred that the main problem facing returnees in the Kodori valley is basic humanitarian needs. The agency confirmed that villagers could not harvest their crops and that some of their cattle disappeared.<sup>514</sup> Since there are no shops, villagers who stayed or returned depend on food assistance from the international agencies. The hospital in Ajara has enough supplies for the small population that remains. There are no resident doctors at the hospital, but it is served by two doctors who travel back and forth from Sukhumi.<sup>515</sup>

In the Gali district, economic and social rights have been hard hit by the closure of the administrative boundary. A local human rights group explained to the HRAM that the boundary closure will affect the population negatively in many ways: the economy will suffer since most people used to sell their goods on the Zugdidi side of the administrative boundary; family relations will suffer since many families have members on both sides of the administrative boundary; and health care will suffer since many residents of Gali used to go to Zugdidi for medical treatment available there.<sup>516</sup> These points were confirmed in multiple interviews with the HRAM. An international relief agency, for example, commented that residents of Gali who depended on selling their tangerine and hazelnut harvest in Zugdidi in the past will now have to sell it for much less in Abkhazia. At the same time, the agency continued, the cost of basic necessities will rise for residents of Gali since most goods are cheaper in Zugdidi.<sup>517</sup> A doctor in Gali confirmed that supplies were short at the hospital in Gali and its capacities are very limited; as a result of the administrative boundary closing the population will now be deprived of the much better and more comprehensive care available in Zugdidi.<sup>518</sup> A mother complained to the HRAM that

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<sup>510</sup> ICESCR articles 9, 11, 12.

<sup>511</sup> HRAM individual interview 132.

<sup>512</sup> HRAM individual interview 135.

<sup>513</sup> HRAM individual interview 139.

<sup>514</sup> HRAM interview with international organization.

<sup>515</sup> HRAM interview with international organization.

<sup>516</sup> HRAM interview with NGOs and meeting with Deputy Head of the Administration in Gali on cultural issues, Justan Gergedava.

<sup>517</sup> HRAM meeting with international NGOs.

<sup>518</sup> HRAM individual interview 180.

she was no longer able to travel and see her children in Zugdidi, or even to send them food.<sup>519</sup>

Another NGO reported that 90 per cent of the population of Abkhazia can be considered economically vulnerable,<sup>520</sup> while still another said that there is no expectation of a healthy economy in the near future.<sup>521</sup> Elderly Abkhaz with Russian passports are now reportedly eligible to receive a pension of 1,600 rubles, compared with that of 100 rubles offered by the Abkhaz government.<sup>522</sup>

Many displaced persons from Abkhazia living in collective centres are also in economic distress. The HRAM visited displaced persons from Kodori living in the collective centre established in Tbilisi's former Academy of Arts, Kipshidze #34, where there were no mattresses, no pillows, no hot water and very few blankets. Displaced persons at the centre reported that the authorities bring them only bread for food, plus baby food for the infants.<sup>523</sup> The state of the building is very poor. Displaced persons from Ptishi in another collective centre have no running water, no showers and only one toilet in a three-floor building.<sup>524</sup> The authorities have, however, provided them with basic food and non-food items including clothing. Conditions in the collective centre are extremely crowded; one woman told the HRAM that she shares a room with six other people, including three small children.<sup>525</sup> Another collective centre for former residents of Ajara has electricity and food, but no running water.<sup>526</sup> The Head of the Department for Refugees of the Abkhaz Government-in-exile told the HRAM that his department is supplying 400 mattresses, pillows and blankets to displaced persons at collective centres and plans to distribute 1,500 more, plus clothing. The Department also distributes a food package to displaced persons every other day.<sup>527</sup>

Displaced persons from Abkhazia, like their counterparts from South Ossetia, told the HRAM that they have not been consulted on their future and they have very little information on what awaits them. A displaced person from Chkhalta, for example, said she was not aware of what might happen to her.<sup>528</sup> A displaced person from Ajara said she was certain that she would remain in her collective centre through the winter, but no additional information had been provided by the authorities.<sup>529</sup> Others have heard that the Government will build cottages somewhere for them but they have no details and have not been asked their preferences.<sup>530</sup>

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<sup>519</sup> HRAM individual interview 145.

<sup>520</sup> HRAM interview with NGO.

<sup>521</sup> HRAM interview with NGO.

<sup>522</sup> HRAM interview with NGO.

<sup>523</sup> HRAM group interview 6.

<sup>524</sup> HRAM individual interview 142.

<sup>525</sup> HRAM individual interview 142.

<sup>526</sup> HRAM individual interview 141.

<sup>527</sup> HRAM meeting with Head of the Department for Refugees of the Abkhaz Government-in-exile, Tengiz Bendeliani.

<sup>528</sup> HRAM individual interview 134.

<sup>529</sup> HRAM individual interview 141.

<sup>530</sup> HRAM group interview 6.

## Citizenship

OSCE commitments state that no one should be deprived of his or her nationality arbitrarily.<sup>531</sup> The right to nationality is also protected by the CERD.<sup>532</sup> In addition, OSCE participating States have agreed that all persons belonging to a national minority are guaranteed all their human rights and freedoms, without discrimination, and that no disadvantage may arise for a person belonging to a national minority on account of the exercise or non-exercise of any such right.<sup>533</sup> The ICCPR also guarantees persons belonging to minorities to enjoy their own and to use their own language.<sup>534</sup> The Framework Convention on National Minorities provides further protections binding on the parties to the conflict.

In the Gali district, ethnic Georgians are becoming increasingly concerned not only about their security, but also about their future prospects for preserving their identity, language and culture, as well as maintaining links with Tbilisi.<sup>535</sup> In this regard, the question of passports and citizenship is one of the current issues most troubling to them. Presently, virtually every resident of Gali has a Georgian passport.<sup>536</sup> Since 2006, the *de facto* Government of Abkhazia has issued its own passports but, according to reports to the HRAM, it was difficult for ethnic Georgians from Gali to obtain an Abkhaz passport even if they wanted one.<sup>537</sup> Most ethnic Georgians opted instead for a residence permit, sometimes referred to as a “form nine.”<sup>538</sup>

There are now growing pressures on residents of the Gali district to obtain Abkhaz passports, which may be significant enough to constitute coercion.<sup>539</sup> An NGO told the HRAM that conditions are being created that will make it impossible for many of the residents of Gali to live normally without an Abkhaz passport.<sup>540</sup> For example, according to two separate interlocutors, beginning next year an Abkhaz passport will be required for all employees of the local administration, including doctors and teachers; a passport will also be needed to transact business or for other legal activities.<sup>541</sup> Another NGO told the HRAM that it feared that without Abkhaz passports, ethnic Georgians will not be able to send their children to school, effect a contract, or even draw up a will.<sup>542</sup> A doctor in Gali said she did not want to apply for an Abkhaz passport, but “we have to apply.”<sup>543</sup> Many members of the population already feel they will have no choice but to obtain Abkhaz citizenship or to leave

<sup>531</sup> Charter for European Security (1990), §19.

<sup>532</sup> Article 5(a)(d)(iii).

<sup>533</sup> Copenhagen document (1990), §§30, 32.

<sup>534</sup> ICCPR article 27.

<sup>535</sup> HRAM meetings with NGOs.

<sup>536</sup> HRAM meeting with *de facto* Minister of Foreign Affairs, Sergej Shamba; and HRAM meeting with Head of the Human Rights Committee of the *de facto* Parliament of Abkhazia, Bata Kobakhia.

<sup>537</sup> HRAM interview with NGO.

<sup>538</sup> HRAM interview with NGO; and HRAM interview with international organization.

<sup>539</sup> HRAM meetings with NGOs and international organizations.

<sup>540</sup> HRAM interview with NGOs and meeting with Deputy Head of the Administration in Gali on cultural issues, Justan Gergedava.

<sup>541</sup> HRAM individual interview 180; HRAM interview with NGOs and meeting with Deputy Head of the Administration in Gali on cultural issues, Justan Gergedava.

<sup>542</sup> HRAM interview with NGO.

<sup>543</sup> HRAM group interview 7.

Gali.<sup>544</sup> A representative of the Abkhaz Government-in-exile asserted that unidentified persons are visiting the houses of ethnic Georgians in Gali and telling them to get citizenship or they will have to pack their belongings and leave Abkhazia for good.<sup>545</sup>

The anxieties faced by ethnic Georgians in Gali on the passport and citizenship issue are compounded by a lack of information. So far, there has been no detailed, official information released by the authorities about their plans, although some information has appeared in newspapers.<sup>546</sup> The rumours have sparked widespread fear among the population that they will lose their rights if they do not take Abkhaz citizenship.<sup>547</sup> Information obtained by the HRAM from senior officials of the *de facto* government was not reassuring. The *de facto* Minister of Foreign affairs told the HRAM that the government has no intention of forcing the residents of Gali to abandon their Georgian citizenship or to acquire Abkhaz citizenship.<sup>548</sup> The Chairman of the Human Rights Committee of the *de facto* Parliament, however, said that residents of Gali should make a decision. Those who do not want Abkhaz citizenship should be given a residence permit valid for seven to nine years. Once that period elapsed, he said, they should be required to make a final decision whether to apply for citizenship or not.<sup>549</sup>

Ethnic Georgians are reluctant to obtain Abkhaz citizenship for a number of reasons. Among the main reasons cited by the HRAM's interlocutors is that they would be required to give up their Georgian citizenship in order to obtain Abkhaz citizenship.<sup>550</sup> Reportedly, the application form for an Abkhaz passport includes a statement that "I voluntarily renounce my Georgian citizenship."<sup>551</sup> In addition, according to an international agency, Gali Georgians who wish to obtain Abkhaz citizenship may be required to produce a document from the Georgian Government certifying that they are no longer citizens of Georgia.<sup>552</sup> Abkhaz law permits dual citizenship with Russia, but not with Georgia,<sup>553</sup> a provision that many consider discriminatory. According to officials of the *de facto* government, there is an agreement with Russia that ethnic Georgians who choose to become Abkhaz citizens will also be provided with Russian citizenship.<sup>554</sup>

The consequences for Gali residents of giving up their Georgian citizenship could be severe. Those who do so may no longer be eligible to receive their pensions or other

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<sup>544</sup> HRAM interview with NGOs and meeting with Deputy Head of the Administration in Gali on cultural issues, Justan Gergedava.

<sup>545</sup> HRAM meeting with Head of the Department for Refugees, Abkhaz Government-in-exile, Tengiz Bendeliani.

<sup>546</sup> HRAM interview with NGO.

<sup>547</sup> HRAM interview with NGOs and meeting with Deputy Head of the Administration in Gali on cultural issues, Justan Gergedava.

<sup>548</sup> HRAM meeting with *de facto* Minister of Foreign Affairs, Sergej Shamba.

<sup>549</sup> HRAM meeting with Head of the Human Rights Committee of the *de facto* Parliament of Abkhazia, Bata Kobakhia.

<sup>550</sup> HRAM interview with NGO.

<sup>551</sup> HRAM interview with international organization.

<sup>552</sup> HRAM interview with international organization.

<sup>553</sup> HRAM meeting with Head of the Human Rights Committee of the *de facto* Parliament of Abkhazia, Bata Kobakhia.

<sup>554</sup> HRAM meeting with *de facto* Minister of Foreign Affairs, Sergej Shamba.

payments from the Georgian Government.<sup>555</sup> Others fear that renouncing Georgian citizenship will impede their ability to visit relatives or to obtain higher education at Georgian language universities.<sup>556</sup> In addition, some ethnic Georgians in Gali are reluctant to obtain Abkhaz citizenship for fear of being considered traitors to Georgia.<sup>557</sup> For these reasons, many ethnic Georgian residents of Gali are adopting a “wait and see” approach, determined not to apply for Abkhaz citizenship until it becomes absolutely necessary.<sup>558</sup> According to various reports, therefore, less than 100 ethnic Georgians have applied for Abkhaz citizenship so far.<sup>559</sup>

An international humanitarian agency expressed deep concern to the HRAM that if conditions are created under which the residents of Gali cannot make a living because of their legal status and if they are not granted freedom of movement, this combination of circumstances could create a humanitarian disaster.<sup>560</sup>

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<sup>555</sup> HRAM interview with international NGOs.

<sup>556</sup> HRAM individual interview 180; HRAM interview with NGOs and meeting with Deputy Head of Administration in Gali on cultural issues, Justan Gergedava.

<sup>557</sup> HRAM interview with NGO.

<sup>558</sup> HRAM individual interview 180; HRAM interview with NGOs and meeting with Deputy Head of Administration in Gali on cultural issues, Justan Gergedava.

<sup>559</sup> HRAM interview with international organizations.

<sup>560</sup> HRAM interview with international organization.



## 8. FINDINGS AND RECOMMENDATIONS

### *SUMMARY OF KEY FINDINGS*

As set out in the assessment above, it was clear from the information gathered by the HRAM that there remain a number of serious human and minority rights concerns in all of the war-affected areas as a result of the recent conflict.

#### **Displaced persons**

The most urgent human rights concern is the grave situation facing tens of thousands of persons displaced by the conflict who have not yet been able to return to their homes. Most of those still displaced are unable to return to their former places of residence because their homes have been destroyed. It is clear that the *de facto* authorities in South Ossetia and Abkhazia, including Russian military authorities, have not taken steps to facilitate and ensure that these persons can return voluntarily to their former places of residence in safety and dignity. On the contrary, their actions impede the return of displaced persons, in contravention of OSCE commitments<sup>561</sup> and other international obligations,<sup>562</sup> including the recent order of the International Court of Justice.<sup>563</sup>

Despite efforts under difficult circumstances by the Government of Georgia and international humanitarian organizations to cope with the needs of tens of thousands of displaced persons, the conditions facing many displaced persons still residing in collective centres are very difficult. With winter fast approaching, their living conditions could deteriorate further. Since these displaced persons are being prevented from returning to their former places of residence, they may become dependent on long-term assistance. The Government has not yet been able to ensure that displaced persons can fully enjoy their right to an adequate standard of living, including adequate food, clothing and housing, in line with international obligations.<sup>564</sup> Moreover, the Government has yet to provide information to many displaced persons on its plans for their future and has not consulted them on planning and management of their return or resettlement and reintegration, in accordance with international standards.<sup>565</sup> It is troubling that many displaced persons from the “buffer zone” consider that they were induced by the Government to return to their homes when they might not have chosen to do so voluntarily; their conclusion is shared by a number of international humanitarian organizations.

Within South Ossetia, despite assistance provided by the *de facto* authorities and international humanitarian agencies, many persons displaced or otherwise affected by the conflict continue to live in difficult conditions. In particular, a number of persons currently living in heavily damaged or destroyed villages are facing extremely difficult circumstances and are reliant on international aid to survive.

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<sup>561</sup> E.g., Lisbon document (1996), §10.

<sup>562</sup> E.g., ICCPR article 12.

<sup>563</sup> ICJ Order of 15 October 2008, *supra* note 6, especially §149.

<sup>564</sup> ICESCR article 11.

<sup>565</sup> UN Guiding Principles on Internal Displacement, § 28.

Persons displaced by the conflict have not been officially registered as IDPs by either the Government of Georgia or the *de facto* authorities in South Ossetia, thus denying them some of the protections and benefits enjoyed by persons displaced in earlier conflicts.

### **Freedom of movement**

In addition to impeding the return of displaced persons to their former places of residence, the *de facto* authorities in South Ossetia, including Russian military authorities, have placed undue restrictions on movement across the administrative boundaries, in contravention of OSCE commitments<sup>566</sup> and other international obligations.<sup>567</sup> Even if the administrative boundaries were universally recognised international borders, the CoE *Framework Convention for the Protection of National Minorities* specifically requires parties “not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.”<sup>568</sup> This policy is having a profound and negative effect on segments of the population, dividing families and creating severe economic and social dislocation.

It is also a deep concern that contrary to OSCE commitments<sup>569</sup> and other international obligations,<sup>570</sup> the *de facto* authorities in South Ossetia, including Russian military authorities, are impeding international humanitarian organizations from crossing the administrative boundaries. For example, since early October, the ICRC, which is the only international humanitarian organization with a permanent presence in South Ossetia, has not been permitted to move international staff from the Russian Federation to South Ossetia, unless they are nationals of the Commonwealth of Independent States, which is having an increasingly negative impact on the effort to respond to the growing needs of people affected by the conflict in that district.<sup>571</sup>

The restrictions on movements across the administrative boundaries are also impeding the work of international organizations, including the OSCE and the European Union Monitoring Mission. The refusal to allow the HRAM to cross the administrative boundary into South Ossetia is just one example of this problem.

### **Minority communities**

The *de facto* authorities in Abkhazia are exacerbating conditions for the minority community of ethnic Georgians, leaving them in a growing state of uneasiness and uncertainty in regard to their future. In addition to the steeply increased hardships they face from the closure of the administrative boundary, many members of the minority community now believe they are under pressure to renounce their Georgian

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<sup>566</sup> E.g., Lisbon document (1996), §10.

<sup>567</sup> E.g., ICCPR article 12.

<sup>568</sup> Framework Convention for the Protection of National Minorities, article 17.1.

<sup>569</sup> E.g., Helsinki document (1992), §51.

<sup>570</sup> E.g., the ICJ Order of 15 October 2008, *supra* note 6, especially §149.

<sup>571</sup> “Georgia/Russian Federation: a difficult winter ahead”, ICRC Operational Update, 6 November 2008.

citizenship, failing which they will either face increasing restrictions on their rights or be forced to leave Abkhazia. These policies are contrary to OSCE commitments<sup>572</sup> and other international obligations.<sup>573</sup> The worsening circumstances for the minority community of ethnic Georgians in Abkhazia are particularly troubling in light of the assessment by an international humanitarian agency that if the residents of Gali cannot make a living because of their legal status and if they are not granted freedom of movement, this combination of conditions could create a humanitarian disaster.<sup>574</sup>

The population living in the villages close to Tskhinvali that were predominantly inhabited by ethnic Georgians encountered by the HRAM consisted primarily of small numbers of elderly people who did not leave during the conflict and small numbers of returnees to villages that were destroyed or heavily damaged during the conflict. These individuals are in general living in extremely precarious economic situations, often without sufficient food or shelter; some have not received any assistance from the *de facto* authorities. Their conditions appear likely to worsen with the onset of winter, in some instances putting their lives at risk. In the Akhlagori area, which recently came under the control of the South Ossetian *de facto* authorities, the security situation has deteriorated since the end of the conflict, as have economic and social conditions. Ethnic Georgians continue to leave the area. The impending closure of the administrative boundary will cause further hardships for the population of the area. As noted above, the closure of the administrative border would be an impediment to freedom of movement contrary to the parties' international commitments.<sup>575</sup>

The HRAM met very few ethnic Ossetians living outside of South Ossetia. Of those, only one or two complained of instances of discrimination, for example with regard to obtaining identity documents. A few ethnic Ossetians have returned to South Ossetia from elsewhere in Georgia for various personal reasons, including young men avoiding conscription into the Georgian army.

### **Property and compensation**

Many persons lost their homes during the conflict, in some instances, apparently, as the result of indiscriminate bombing and shelling of populated areas or targeting of civilian facilities. The parties to the conflict were obligated to protect civilians and civilian property under the Additional Protocol to the Geneva Conventions.<sup>576</sup> In addition, a large number of people lost their homes, their possessions and their livelihoods during the conflict and in its immediate aftermath as a result of deliberate acts of destruction or pillage, which are prohibited by the Fourth Geneva Convention.<sup>577</sup> Many of these persons are now displaced and appear to have little immediate prospect of regaining what they lost; they are likely to face increasingly difficult personal circumstances.

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<sup>572</sup> E.g., Helsinki document (1992), §26.

<sup>573</sup> E.g., CoE Framework Convention for the Protection of National Minorities, articles 4,5, and 17.

<sup>574</sup> HRAM interview with international organization.

<sup>575</sup> E.g., Framework Convention for the Protection of National Minorities, article 17.1.

<sup>576</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, articles 51 and 52.

<sup>577</sup> Fourth Geneva Convention (1949), article 33.

The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law<sup>578</sup> stipulate that victims of gross violations of international human rights law should be provided with full and effective reparation, which includes restitution, compensation and rehabilitation, irrespective of who may ultimately bear responsibility for the violation. Restitution should, whenever possible, restore the victim to the original situation before the violations; compensation should be provided for any economically assessable damage including material damages and loss of earnings; rehabilitation should include medical and psychological care.<sup>579</sup>

### **Other human rights violations and accountability**

As documented in this report, the conflict and its aftermath saw numerous and widespread violations of human rights, including, *inter alia*, credible allegations of violations in regard to the right to life, freedom from torture and ill-treatment, arbitrary detention, property rights, freedom of movement, right to education and economic, social and cultural rights, all in contravention of numerous OSCE commitments and other international obligations.

The HRAM was not informed of any current efforts by the Government of Georgia to hold its own citizens or officials to account for human rights violations that occurred during the conflict. A Georgian Government prosecutor, for example, reported to the HRAM that not a single conflict-related case has been sent to a Gori-based court, as perpetrators could not be identified.<sup>580</sup> The *de facto* authorities of South Ossetia told the HRAM that 86 people were detained in the district for looting, many of whom are still awaiting trial, but purported that it is difficult to prosecute them since the victims cannot be identified.<sup>581</sup> The HRAM was subsequently provided with copies of 38 decisions of the Tskhinvali regional court concerning cases of looting, in which 46 persons received administrative penalties or fines for misdemeanours (petty theft); the amount of the fines were not included in the documents provided. None of the perpetrators was convicted of a criminal offence.

The parties to the conflict have turned to international courts in their efforts to seek accountability, which at best will be a lengthy and difficult process. The ICJ has already issued a provisional ruling following an application by Georgia in connection with allegations of violations of provisions of the CERD by the Russian Federation.<sup>582</sup> The Government of Georgia has also filed an interstate application against the Russian Federation at the European Court of Human Rights.<sup>583</sup> The Prosecutor of the International Criminal Court is collecting information about violations of international criminal law that may have taken place during the conflict.<sup>584</sup>

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<sup>578</sup> United Nations General Assembly resolution 60/147.

<sup>579</sup> Ibid, articles 18-21.

<sup>580</sup> HRAM meeting with Regional Prosecutor, Davit Sakvarelidze.

<sup>581</sup> HRAM meeting with *de facto* Deputy Minister of Special Affairs, Kazbek Karsanov.

<sup>582</sup> “Case concerning Application of the International Convention on the Elimination of all Forms of Racial Discrimination” (Georgia v. Russian Federation), 15 October 2008.

<sup>583</sup> Press release by the Registrar, European Court of Human Rights, 10 October 2008.

<sup>584</sup> HRAM meeting with Head of the International Relations Division, Georgian Ministry of Justice, Levan Meskhoradze.

Individuals are also applying to the European Court of Human Rights in regard to alleged human rights violations. As of 9 October 2008, the European Court had received some 2,729 applications from South Ossetians.<sup>585</sup> The Georgian Ministry of Justice is working with NGOs to collect evidence for additional cases to be presented to the Court.<sup>586</sup> A number of national NGOs in Georgia have initiated legal support projects to assist individuals in applying to the Court.

Cases before international courts take a certain amount of time to be decided. With the current backlog of cases at the European Court of Human Rights,<sup>587</sup> it will be difficult for the Court to deal with such cases speedily. As the Court itself notes with reference to a number of cases which it has received in relation to the conflict, “[t]his very significant number of individual applications has increased the already considerable workload of the European Court of Human Rights”.<sup>588</sup> Nonetheless, international jurisprudence is important for displaced persons and their claims.

### **Freedom of expression and information**

The HRAM was not in a position to gather detailed information on freedom of expression and information. However, there is reason to be concerned that broadcasting by parties to the conflict may have reinforced negative stereotypes and exacerbated inter-ethnic tensions. The freedom of journalists to move across the administrative boundaries has also been severely circumscribed, contrary to the parties’ OSCE commitments.<sup>589</sup>

### **Right to education**

As set out in the human rights assessment above, the conflict has had negative effects on the right to education. Displaced children have had their schooling disrupted and the many who have not been able to return to their original places of residence will continue to face disruptions. Some schools were destroyed, damaged or looted during the conflict, primarily in Georgian villages in South Ossetia and in the “buffer zone”. In Abkhazia, the issue of Georgian language in schools has become a matter of growing concern for the ethnic Georgian population of the Gali region. The closure of the administrative boundary is also having negative ramifications for many students from Gali who were attending schools across the boundary.

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<sup>585</sup> Press release by the Registrar, European Court of Human Rights, 10 October 2008.

<sup>586</sup> HRAM interview with NGO.

<sup>587</sup> For an overview of the development of the Court’s case-load, see the Court’s most recent Annual Reports, available at [www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Reports/Annual+Reports/](http://www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Reports/Annual+Reports/)

<sup>588</sup> Press release by the Registrar, European Court of Human Rights, 10 October 2008.

<sup>589</sup> E.g., Vienna document (1989), §40.

## **RECOMMENDATIONS**

### **RECOMMENDATIONS FOR ALL PARTIES TO THE CONFLICT**

#### ***Justice, accountability and compensation***

1. Implement and abide by the provisional measures ordered by the International Court of Justice in the “Case Concerning application of the International Convention on the Elimination of all Forms of Racial Discrimination”.<sup>590</sup>
2. Co-operate fully with the European Court of Human Rights, the ICJ and the International Criminal Court to assist them in establishing facts and deliver their decisions on admissibility and merits of pending cases. All parties should accept and execute decisions of these courts.
3. Respect all provisions of international humanitarian law and make use of existing procedures for the protection of combatants and the civilian population.
4. All persons who claim to have been victims of a human rights or humanitarian law violation should be afforded equal and effective access to justice.
5. Undertake a thorough and genuine investigation of allegations of, and prosecute, human rights violations and other unlawful acts during the conflict by persons under their jurisdiction or control. Any individuals believed to have been involved in human rights violations or other serious crimes should be held to account and prosecuted in accordance with law. The parties should co-operate in exchanging information and evidence for such prosecutions. In addition to holding individuals accountable, there should be full public disclosure of facts surrounding human rights violations during the conflict.
6. Bearing in mind the obligation to provide remedies for human rights violations contained in the ECHR and other international human rights conventions, and following the United Nations *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, the parties should “establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.”<sup>591</sup> Reparations should include the restitution of victims to their situation before the violation, compensation for economic damages suffered, and rehabilitation including medical and psychological care. Any compensation programme should take gender considerations into account to ensure that women heads of households and other female victims have equal access to restitution, compensation and rehabilitation.

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<sup>590</sup> See *supra* note 6.

<sup>591</sup> United Nations General Assembly resolution 60/147 (2005), *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, §16.

### ***Human rights***

7. Respect fully, within their respective jurisdictions, all OSCE human rights commitments and other international human rights obligations. Special attention should be devoted to ensuring that conditions are created for members of minority communities to enjoy all their human rights and freedoms.
8. Establish mechanisms to monitor the human rights of displaced persons, returnees and other war-affected individuals, in order to ensure they enjoy the full protection of their rights and freedoms and to provide a simple and rapid process to remedy any grievances. Such mechanisms might be most effective if they include an active role for civil society.
9. Urgently remove undue restrictions with respect to the free movement of persons, goods and information across the administrative boundaries, in accordance with OSCE commitments and other international obligations on freedom of movement including the provisional measures indicated by the ICJ on 15 October 2008.
10. Ensure freedom of expression and information, both to the media and to all persons under their jurisdiction. In line with OSCE commitments and other obligations, the parties should take measures to ensure people are aware of their rights. Media should not foment hatred or ethnic tension.
11. Despite the destruction and damage to some schools during the conflict, ensure that all children in or from the war-affected areas can enjoy their right to education, including education in minority languages. UXO need to be removed as a matter of urgency from school compounds and surrounding areas.
12. Support and co-operate with national and international NGOs and other national civil society groups to protect and promote human rights.
13. Adopt a rights-based approach to post-conflict rehabilitation and reconstruction, ensuring that human and minority rights, non-discrimination and gender equality serve as a cornerstone for their programmes. Special attention should be devoted to vulnerable groups, including children, pregnant and lactating women, the elderly and families of mixed ethnicity. All actors should consider “the special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction.”<sup>592</sup>
14. No-one affected by the conflict should be arbitrarily deprived of their citizenship.

### ***Humanitarian issues***

15. Ensure, on an urgent basis, that the basic human needs of persons affected by the conflict are met, including food, clothing and shelter.
16. Recognizing that unexploded ordnance remains a significant danger to the civilian population and to the return of displaced persons, the parties should co-operate in

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<sup>592</sup> United Nations Security Council resolution 1325, §8(a).

demining operations, particularly by providing information on the location of mines and other unexploded ordnance, in accordance with their obligations under the 1980 *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects* and its protocol on mines. The authorities in all war-affected areas should make civic education on mines and unexploded ordnance a priority.

17. Put in place facilities and programmes to deal with the medical, psychological and psychosocial effects of the conflict on the civilian population, including training medical staff to better identify and care for victims of post-traumatic stress, as well as sexual or gender-based violence.
18. Register and grant official status to persons displaced by the August conflict, to ensure they enjoy the same protections and benefits as other IDPs.
19. Post-conflict reconstruction planning should ensure the participation of persons directly affected by the conflict, as well as civil society actors.

#### ***Confidence building, reconciliation and peace***

20. Urgently pursue efforts toward a peaceful, political solution to the conflict taking into account fundamental OSCE principles. Any solution should guarantee that all persons will be able fully to enjoy all of their human rights and fundamental freedoms and that the rights and interests of minority communities will be fully respected.
21. Consider confidence building measures to promote constructive good will between the sides, respect for each other's concerns, and reconciliation.
22. Officials in charge of security and all members of the police and security services should work in close co-operation with the civilian population to enhance confidence and personal security.
23. In accordance with United Nations Security Council resolution 1325 on women, peace and security, parties to the conflict should ensure increased representation of women at all decision-making levels in mechanisms for the prevention, management, and resolution of conflict and should adopt a gender perspective when negotiating and implementing a peace agreement.<sup>593</sup>
24. Encourage and facilitate continued contacts, dialogue and co-operation among human rights NGOs across the region.

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<sup>593</sup> United Nations Security Council resolution 1325, §1 and 8.



## **ADDITIONAL RECOMMENDATIONS FOR THE GOVERNMENT OF THE RUSSIAN FEDERATION AND THE *DE FACTO* AUTHORITIES IN SOUTH OSSETIA AND ABKHAZIA**

### ***Freedom of movement, access and return***

25. Ensure that persons displaced by the conflict can return to their former places of residence in safety and dignity, in accordance with OSCE commitments and other international obligations. The responsible authorities should make sure to address their needs and compensate them for any lost/damaged property and livelihoods.
26. Allow access to South Ossetia and Abkhazia across the administrative boundaries for: a) international humanitarian organizations, in accordance with OSCE commitments and other international obligations; b) officials of international organizations, including in particular the OSCE, the United Nations and its specialized agencies and the European Union Monitoring Mission; and c) journalists and civil society organizations.
27. Ensure that the property of persons displaced by the conflict is protected and, in particular, that looting is ended immediately.

### ***Minority communities***

28. The *de facto* authorities, even if they have not been generally recognized by the international community, as well as the Government of the Russian Federation, have an obligation to protect and implement the human and minority rights of all persons under their jurisdiction.<sup>594</sup> Special care should be given to ensure that returnees from the conflict and members of minority communities who did not flee the conflict have their human rights and freedoms fully protected.
29. Take urgent steps to promote reconciliation and to rebuild trust with minority communities. The HCNM would be prepared to offer his expertise to this end.
30. Take no steps that might exacerbate conditions for the minority communities in the Gali district or the Kodori gorge. In particular, there should be no measures enacted that would place minority communities under direct or indirect pressure to renounce their Georgian citizenship, as such policies would be contrary to OSCE commitments<sup>595</sup> and other international obligations.<sup>596</sup> Citizenship laws should not be discriminatory.
31. Ensure that all children from minority communities may study in their mother tongue.

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<sup>594</sup> Universal Declaration of Human Rights, preamble.

<sup>595</sup> E.g., Helsinki document (1992), §26.

<sup>596</sup> E.g., CoE Framework Convention for the Protection of National Minorities, articles 4, 5, and 17.

**ADDITIONAL RECOMMENDATIONS FOR THE GOVERNMENT OF GEORGIA*****Displaced persons***

32. Take urgent steps to improve conditions for displaced persons still living in collective centres and ensure that all have adequate shelter, food, sanitation facilities, medicine and medical care, including mental health care, as well as other necessities such as beds, clothing and heating.
33. Ensure that conditions exist for all displaced persons to enjoy all their human rights without discrimination, on the same basis as all other residents of Georgia.
34. In accordance with OSCE commitments and other international obligations, ensure that displaced persons are not forced, pressured or induced to return to their former places of residence except on a fully voluntary basis, and that those who return can do so in safety and dignity.
35. Register persons displaced by the August conflict as displaced persons in order to ensure that they enjoy all the rights and protections enjoyed by other IDPs under national law. Continue efforts to ensure that everyone who was displaced by the conflict can obtain identity documents quickly and easily. Further attention should be given to ensure that lost property ownership documents are also replaced.
36. Recognizing that the effects of the conflict will impact on many displaced persons over the longer term, the Government of Georgia should give greater attention to long-term needs of displaced persons, including employment and debt relief. The Ministry of Refugees and Accommodation should be reinforced in order to be able to cope with the influx of displaced persons resulting from the August conflict.
37. Give further attention to the needs of especially vulnerable displaced persons, including women, children and the elderly, and develop additional programmes to serve the particular needs of these groups, including programmes on gender-based violence and psychological assistance programmes to support those who suffered trauma during or after the conflict.
38. Establish clear and transparent guidelines for the distribution, occupancy and security of tenure of the large number of new houses being constructed for displaced persons.
39. Develop an effective communication strategy as well as mechanisms for adequate consultation to ensure that displaced persons and persons living in or from the war-affected areas have access to information about situations and conditions impacting their lives, including the prospects of return or resettlement, as well as available services and compensation.
40. Displaced persons and others affected by the conflict should be given access to free or affordable legal services.

### *Legal reforms*

41. Adopt a law on national minorities as an additional way to make clear its seriousness about promoting an inclusive and non-discriminatory policy towards persons belonging to minorities and minority communities. A new law could be formulated in part by consolidating Georgia's existing legislation on national minorities into a comprehensive law that provides detailed rules on the protection of minorities in accordance with the requirements of article 38 of the Georgian constitution, and taking into account its obligations under the *Framework Convention for the Protection of National Minorities*.
42. Demonstrate its open attitude to supervisory mechanisms on minorities by declaring that it will make public the opinion to be adopted by the Advisory Committee of the Framework Convention on National Minorities, which has initiated its examination of Georgia's report under the convention, submitted on 16 July 2007.
43. Consider modifications to regulations prohibiting the importation of plastic explosives, to the extent that these are needed by organizations involved in clearing mines and unexploded ordnance.

## **RECOMMENDATIONS FOR THE OSCE AND OTHER INTERNATIONAL ORGANIZATIONS**

### *Justice and accountability*

44. The OSCE should support relevant governments to ensure accountability for violations of international human rights law and international humanitarian law and provide technical assistance to this effect.

### *Human rights*

45. The OSCE, in collaboration with other international organizations, where appropriate, should use all the tools and resources at its disposal to monitor, promote and protect the human rights of persons in the war-affected areas, as well as other vulnerable groups, and to encourage the parties to the conflict to do likewise. International organizations should continue to assess the compliance, by the parties, of their international obligations and OSCE commitments in the area of human rights.
46. The OSCE should give particular attention to the need to implement the right to freedom of movement and the right of displaced persons to return to their places of residence voluntarily and in safety and dignity.
47. OSCE Institutions and the OSCE Mission to Georgia should assist in improving the human rights and minorities situation in the war-affected areas in accordance with their respective mandates, including through programmes to support human rights defenders, strengthen legal protections and the administration of justice, provide legal aid to individuals, provide training to law enforcement structures,

enhance the rights of minority communities and promote public awareness of human rights issues.

48. The OSCE should support and co-operate with national and international NGOs and other national civil society groups to protect and promote human rights.

#### ***Humanitarian issues***

49. International humanitarian organizations should continue, and to the extent possible increase, their commendable efforts to assist in meeting the needs of displaced persons and others affected by the conflict, recognizing also that long-term assistance will be required for some displaced persons.
50. International organizations should continue to support efforts to remove landmines and other unexploded ordnance.
51. International organizations should stand ready to assist with the issue of compensation, drawing on the benefit of previous experience, for example, the OSCE's experience with the Compensation Commission in Bosnia and Herzegovina.

#### ***Confidence building, reconciliation and peace***

52. The OSCE and other international organizations should continue to support negotiations and other efforts toward a peaceful, political solution to the conflict. Any solution should guarantee that all persons, women, men and children, will be able fully to enjoy all of their human rights and fundamental freedoms and that the rights and interests of minority communities will be fully respected.
53. The OSCE should assist the parties to the conflict to develop and implement confidence building measures to promote constructive good will between the sides, respect for each other's concerns, and reconciliation.
54. The OSCE should pursue efforts to promote reconciliation and respect for human rights, including minority rights, between the parties.

## ANNEX I Letter from the OSCE Chairman-in-Office



MINISTRY FOR FOREIGN AFFAIRS OF  
FINLAND

HEL7067-90

Helsinki, 17 September 2008

Ambassador Janez Lenarčič  
Director  
ODIHR  
Aleje Ujazdowskie 19  
00-557 Warsaw  
Poland

Dear Ambassador Lenarčič,

I met with Mr Carl Bildt, the Minister for Foreign Affairs of Sweden and Chairman of the Committee of Ministers of the Council of Europe together with high-level officials of the OSCE and the Council of Europe secretariats on Monday 15 September 2008. The human rights situation after the current crisis in Georgia was discussed. We agreed that both the OSCE and the Council of Europe should focus on efforts to improve the human rights situation in the war-affected areas.

We see an important role for the Council of Europe Human Rights Commissioner, the OSCE Office for Democratic Institutions and Human Rights and the OSCE High Commissioner on National Minorities in this work. Several positive steps have already been taken, including the important statement on the protection of national minorities under international law by the High Commissioner on National Minorities and his visit to the region, as well as the six principles for ensuring human rights and providing humanitarian protection and assistance in the war-affected areas put forth by Human Rights Commissioner Thomas Hammarberg. ODIHR of course has over the years engaged in valuable work in Georgia in the context of its human rights, democracy and rule of law programmes.

Therefore, I am requesting you to assess the human rights and minorities situation in the war-affected areas in Georgia within your mandate. Close cooperation with the High Commissioner on National Minorities and the Council of Europe Human Rights Commissioner would of course be beneficial.

It would be useful, if a first assessment and recommendations would be available at the Helsinki Ministerial Council. I will also make a similar request to the High Commissioner on National Minorities, Knut Vollebaek.

Yours sincerely,

Alexander Stubb  
Chairman-in-Office of the OSCE  
Minister for Foreign Affairs of Finland

CC: Mr Carl Bildt, Minister for Foreign Affairs of Sweden, Chairman of the  
Committee of Ministers of the Council of Europe  
Mr Marc Perrin de Brichambaut, Secretary General of the OSCE  
Mr Knut Vollebaek, OSCE High Commissioner on National Minorities  
Ms Terhi Hakala, Head of Mission, OSCE Mission to Georgia

OSCE/ODIHR

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2008-09-18

## **ANNEX II Relevant OSCE commitments on human and minority rights, CoE obligations and UN standards**

### **Relevant OSCE Commitments**

#### **1. INTERNATIONAL HUMANITARIAN LAW**

##### **Helsinki 1992**

The participating States

(47) Recall that international humanitarian law is based upon the inherent dignity of the human person;

(48) Will in all circumstances respect and ensure respect for international humanitarian law including the protection of the civilian population;

(49) Recall that those who violate international humanitarian law are held personally accountable;

(50) Acknowledge the essential role of the International Committee of the Red Cross in promoting the implementation and development of international humanitarian law, including the Geneva Conventions and their relevant Protocols;

(51) Reaffirm their commitment to extend full support to the International Committee of the Red Cross, as well as to the Red Cross and Red Crescent Societies, and to the United Nations organizations, particularly in times of armed conflict, respect their protective emblems, prevent the misuse of these emblems and, as appropriate, exert all efforts to ensure access to the areas concerned;

(52) Commit themselves to fulfilling their obligation to teach and disseminate information about their obligations under international humanitarian law.

#### **2. FREEDOM FROM TORTURE/ ILL-TREATMENT**

##### **1989 Vienna Concluding Document**

(23) [The participating States will]

(...)

(23.2) - ensure that all individuals in detention or incarceration will be treated with humanity and with respect for the inherent dignity of the human person;

(23.3) - observe the United Nations Standard Minimum Rules for the Treatment of Prisoners as well as the United Nations Code of Conduct for Law Enforcement Officials;

(23.4) - prohibit torture and other cruel, inhuman or degrading treatment or punishment and take effective legislative, administrative, judicial and other measures to prevent and punish such practices;

(23.5) - consider acceding to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, if they have not yet done so;

(23.6) - protect individuals from any psychiatric or other medical practices that violate human rights and fundamental freedoms and take effective measures to prevent and punish such practices.

### **1990 Copenhagen Document**

(16) [The participating States]

(...)

(16.2) - intend, as a matter of urgency, to consider acceding to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, if they have not yet done so, and recognizing the competences of the Committee against Torture under articles 21 and 22 of the Convention and withdrawing reservations regarding the competence of the Committee under article 20;

(16.3) - stress that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture;

(16.4) - will ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment;

(16.5) - will keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under their jurisdiction, with a view to preventing any cases of torture;

(16.6) - will take up with priority for consideration and for appropriate action, in accordance with the agreed measures and procedures for the effective implementation of the commitments relating to the human dimension of the CSCE, any cases of torture and other inhuman or degrading treatment or punishment made known to them through official channels or coming from any other reliable source of information;

(16.7) - will act upon the understanding that preserving and guaranteeing the life and security of any individual subjected to any form of torture and other inhuman or degrading treatment or punishment will be the sole criterion in determining the urgency and priorities to be accorded in taking appropriate remedial action; and, therefore, the consideration of any cases of torture and other inhuman or degrading treatment or punishment within the framework of any other international body or mechanism may not be invoked as a reason for refraining from consideration and appropriate action in accordance with the agreed measures and procedures for the effective implementation of the commitments relating to the human dimension of the CSCE

### **1990 Paris Charter**

We affirm that, without discrimination (...) no one will be:

(...)

subject to torture or other cruel, inhuman or degrading treatment or punishment;

(...)

### **1991 Moscow Document**

(23.1) [The participating States] will ensure that

(...)

(vii) effective measures will be adopted, if this has not already been done, to provide that law enforcement bodies do not take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, or otherwise to incriminate himself, or to force him to testify against any other person;

(viii) the duration of any interrogation and the intervals between them will be recorded and certified, consistent with domestic law;

(...)

(ix) a detained person or his counsel will have the right to make a request or complaint regarding his treatment, in particular when torture or other cruel, inhuman or degrading treatment has been applied, to the authorities responsible for the administration of the place of detention and to higher authorities, and when necessary, to appropriate authorities vested with reviewing or remedial power;

(...)

(x) such request or complaint will be promptly dealt with and replied to without undue delay; if the request or complaint is rejected or in case of inordinate delay, the complainant will be entitled to bring it before a judicial or other authority; neither the detained or imprisoned person nor any complainant will suffer prejudice for making a request or complaint;

### **1994 Budapest Document**

20. [The participating States] strongly condemn all forms of torture as one of the most flagrant violations of human rights and human dignity. They commit themselves to strive for its elimination.

They recognize the importance in this respect of international norms as laid down in international treaties on human rights, in particular the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. They also recognize the importance of national legislation aimed at eradicating torture. They commit themselves to inquire into all alleged cases of torture and to prosecute offenders. They also commit themselves to include in their educational and training programmes for law enforcement and police forces specific provisions with a view to eradicating torture. They consider that an exchange of information on this problem is an essential prerequisite. The participating States should have the possibility to obtain such information. The CSCE should in this context also draw on the experience of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment established by the Commission on Human Rights of the United Nations and make use of information provided by NGOs.

### **1999 Istanbul Charter for European Security**

21. We are committed to eradicating torture and cruel, inhumane or degrading treatment or punishment throughout the OSCE area. To this end, we will promote legislation to provide procedural and substantive safeguards and remedies to combat these practices. We will assist victims and co-operate with relevant international organizations and non-governmental organizations, as appropriate.

## **3. ARBITRARY DETENTION/ FORCED DISAPPEARANCES**

### **1989 Vienna Concluding Document**

(13) (...) [the participating States] will



(...)

(13.4) - effectively ensure the right of the individual to know and act upon his rights and duties in this field, and to that end publish and make accessible all laws, regulations and procedures relating to human rights and fundamental freedoms

(...)

(13.9) - ensure that effective remedies as well as full information about them are available to those who claim that their human rights and fundamental freedoms have been violated; they will, *inter alia*, effectively apply the following remedies:

- the right of the individual to appeal to executive, legislative, judicial or administrative organs;
- the right to a fair and public hearing within a reasonable time before an independent and impartial tribunal, including the right to present legal arguments and to be represented by legal counsel of one's choice;
- the right to be promptly and officially informed of the decision taken on any appeal, including the legal grounds on which this decision was based. This information will be provided as a rule in writing and, in any event, in a way that will enable the individual to make effective use of further available remedies

(...)

(23.1) - ensure that no one will be subjected to arbitrary arrest, detention or exile;

(...)

### **1990 Copenhagen Document**

(5) [The participating States] solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:

(5.10) - everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity;

(5.11) - administrative decisions against a person must be fully justifiable and must as a rule indicate the usual remedies available;

(...)

(5.15) - any person arrested or detained on a criminal charge will have the right, so that the lawfulness of his arrest or detention can be decided, to be brought promptly before a judge or other officer authorized by law to exercise this function;

### **1990 Paris Charter**

We will ensure that everyone will enjoy recourse to effective remedies, national or international, against any violation of his rights.

### **1991 Moscow Document**

(23.1) [The participating States] will ensure that

(i) no one will be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law;

(ii) anyone who is arrested will be informed promptly in a language which he understands of the reason for his arrest, and will be informed of any charges against him;

(iii) any person who has been deprived of his liberty will be promptly informed about his rights according to domestic law;

(iv) any person arrested or detained will have the right to be brought promptly before a judge or other officer authorized by law to determine the lawfulness of his arrest or detention, and will be released without delay if it is unlawful;

(...)

(vi) any person arrested or detained will have the right, without undue delay, to notify or to require the competent authority to notify appropriate persons of his choice of his arrest, detention, imprisonment and whereabouts; any restriction in the exercise of this right will be prescribed by law and in accordance with international standards;

(vii) effective measures will be adopted, if this has not already been done, to provide that law enforcement bodies do not take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, or otherwise to incriminate himself, or to force him to testify against any other person;

(viii) the duration of any interrogation and the intervals between them will be recorded and certified, consistent with domestic law;

(ix) a detained person or his counsel will have the right to make a request or complaint regarding his treatment, in particular when torture or other cruel, inhuman or degrading treatment has been applied, to the authorities responsible for the administration of the place of detention and to higher authorities, and when necessary, to appropriate authorities vested with reviewing or remedial power;

(x) such request or complaint will be promptly dealt with and replied to without undue delay; if the request or complaint is rejected or in case of inordinate delay, the complainant will be entitled to bring it before a judicial or other authority; neither the detained or imprisoned person nor any complainant will suffer prejudice for making a request or complaint;

(xi) anyone who has been the victim of an unlawful arrest or detention will have a legally enforceable right to seek compensation.

#### **4. FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION**

##### **1975 Helsinki Final Act**

The participating States,

Conscious of the need for an ever wider knowledge and understanding of the various aspects of life in other participating States,

Acknowledging the contribution of this process to the growth of confidence between peoples,

Desiring, with the development of mutual understanding between the participating States and with the further improvement of their relations, to continue further efforts towards progress in this field,

(...)

Recognizing the importance of the dissemination of information from the other participating States and of a better acquaintance with such information,

Emphasizing therefore the essential and influential role of the press, radio, television, cinema and news agencies and of the journalists working in these fields,

Make it their aim to facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information and the exchange of information with other countries, and, to improve the conditions under which journalists from one participating State exercise their profession in another participating State, and Express their intention in particular:

### **1989 Vienna Concluding Document**

(34) (...) in accordance with the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights and their relevant international commitments concerning seeking, receiving and imparting information of all kinds, [the participating States] will ensure that individuals can freely choose their sources of information. In this context they will

(...)

- allow individuals, institutions and organizations, while respecting intellectual property rights, including copyright, to obtain, possess, reproduce and distribute information material of all kinds.

To these ends they will remove any restrictions inconsistent with the abovementioned obligations and commitments.

(35) They will take every opportunity offered by modern means of communication, including cable and satellites, to increase the freer and wider dissemination of information of all kinds. They will also encourage co-operation and exchanges between their relevant institutions, organizations and technical experts, and work towards the harmonization of technical standards and norms.

(36) They will ensure in practice that official information bulletins can be freely distributed on their territory by the diplomatic and other official missions and consular posts of the other participating States.

(...)

(45) They will ensure in practice that persons belonging to national minorities or regional cultures on their territories can disseminate, have access to, and exchange information in their mother tongue.

### **1989 Sofia Document**

The participating States reaffirm their respect for the right of individuals, groups and organizations concerned with environmental issues to express freely their views, to associate with others, to peacefully assemble, as well as to obtain, publish and distribute information on these issues, without legal and administrative impediments inconsistent with the CSCE provisions. These individuals, groups and organizations have the right to participate in public debates on environmental issues, as well as to establish and maintain direct and independent contacts at national and international level.

### **1990 Copenhagen Document**

(7) (...) [the participating States will]

(...)

(7.7) - ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them.

(...)

(9) The participating States reaffirm that

(9.1) - everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright;

(...)

(10) (...) the participating States express their commitment to

(10.1) - respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information;

(10.2) - respect the rights of everyone, individually or in association with others, to study and discuss the observance of human rights and fundamental freedoms and to develop and discuss ideas for improved protection of human rights and better means for ensuring compliance with international human rights standards;

(...)

(32) (...) Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will.

### **1991 Geneva Document**

The participating States, concerned by the proliferation of acts of racial, ethnic and religious hatred, anti-semitism, xenophobia and discrimination, stress their determination to condemn, on a continuing basis, such acts against anyone. In this context, they reaffirm their recognition of the particular problems of Roma (gypsies) (...)

Further, the participating States will take effective measures, including the adoption, in conformity with their constitutional law and their international obligations, if they have not already done so, of laws that would prohibit acts that constitute incitement to violence based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-semitism, and policies to enforce such laws.

Moreover, in order to heighten public awareness of prejudice and hatred, to improve enforcement of laws against hate-related crime and otherwise to further efforts to address hatred and prejudice in society, they will make efforts to collect, publish on a regular basis, and make available to the public, data about crimes on their respective territories that are based on prejudice as to race, ethnic identity or religion, including the guidelines used for the collection of such data. These data should not contain any personal information.

They will consult and exchange views and information at the international level, including at future meetings of the CSCE, on crimes that manifest evidence of prejudice and hate.

### **1991 Moscow Document**

(26) The participating States reaffirm the right to freedom of expression, including (...) the right of the media to collect, report and disseminate information, news and opinions. Any restriction in the exercise of this right will be prescribed by law and in accordance with international standards. They further recognize that independent media are essential to a free

and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental freedoms.

### **1994 Budapest Document**

36. [The participating States] reaffirm that freedom of expression is a fundamental human right and a basic component of a democratic society. In this respect, independent and pluralistic media are essential to a free and open society and accountable systems of government. They take as their guiding principle that they will safeguard this right.

37. They condemn all attacks on and harassment of journalists and will endeavour to hold those directly responsible for such attacks and harassment accountable.

38. They further note that fomenting hatred and ethnic tension through the media, especially by governments, can serve as an early warning of conflict.

### **1999 Istanbul Charter for European Security**

26. We reaffirm the importance of (...) the free flow of information as well as the public's access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for (...) unimpeded transborder and intra-State flow of information (...)

### **1999 Istanbul Document**

27. (...) We are deeply concerned about the exploitation of media in areas of conflict to foment hatred and ethnic tension and the use of legal restrictions and harassment to deprive citizens of free media. We underline the need to secure freedom of expression, which is an essential element of political discourse in any democracy. We support the Office of the Representative on Freedom of the Media in its efforts to promote free and independent media.

### **2002 Porto OSCE Charter on Preventing and Combating Terrorism**

[The participating States]

22. Commit themselves to combat hate speech and to take the necessary measures to prevent the abuse of the media and information technology for terrorist purposes, ensuring that such measures are consistent with domestic and international law and OSCE commitments;

(...)

## **5. FREEDOM OF MOVEMENT**

### **1975 Helsinki Final Act**

[The participating States],

Considering the development of contacts to be an important element in the strengthening of friendly relations and trust among peoples

(...)

Make it their aim to facilitate freer movement and contacts, individually and collectively, whether privately or officially, among persons, institutions and organizations of the participating States, and to contribute to the solution of the humanitarian problems that arise in that connexion,

Declare their readiness to these ends to take measures which they consider appropriate and to conclude agreements or arrangements among themselves, as may be needed, and

Express their intention now to proceed to the implementation of the following:

(a) Contacts and Regular Meetings on the Basis of Family Ties

In order to promote further development of contacts on the basis of family ties the participating States will favourably consider applications for travel with the purpose of allowing persons to enter or leave their territory temporarily, and on a regular basis if desired, in order to visit members of their families.

Applications for temporary visits to meet members of their families will be dealt with without distinction as to the country of origin or destination: existing requirements for travel documents and visas will be applied in this spirit. The preparation and issue of such documents and visas will be effected within reasonable time limits, cases of urgent necessity — such as serious illness or death — will be given priority treatment. They will take such steps as may be necessary to ensure that the fees for official travel documents and visas are acceptable.

They confirm that the presentation of an application concerning contacts on the basis of family ties will not modify the rights and obligations of the applicant or of members of his family.

(b) Reunification of Families

The participating States will deal in a positive and humanitarian spirit with the applications of persons who wish to be reunited with members of their family, with special attention being given to requests of an urgent character - such as requests submitted by persons who are ill or old.

They will deal with applications in this field as expeditiously as possible. They will lower where necessary the fees charged in connexion with these applications to ensure that they are at a moderate level.

Applications for the purpose of family reunification which are not granted may be renewed at the appropriate level and will be reconsidered at reasonably short intervals by the authorities of the country of residence or destination, whichever is concerned, under such circumstances fees will be charged only when applications are granted. Persons whose applications for family reunification are granted may bring with them or ship their household and personal effects; to this end the participating States will use all possibilities provided by existing regulations.

Until members of the same family are reunited meetings and contacts between them may take place in accordance with the modalities for contacts on the basis of family ties.

The participating States will support the efforts of Red Cross and Red Crescent Societies concerned with the problems of family reunification.

They confirm that the presentation of an application concerning family reunification will not modify the rights and obligations of the applicant or of members of his family.

The receiving participating State will take appropriate care with regard to employment for persons from other participating States who take up permanent residence in that State in connexion with family reunification with its citizens and see that they are afforded opportunities equal to those enjoyed by its own citizens for education, medical assistance and social security.

(...)

(d) Travel for Personal or Professional Reasons

The participating States intend to facilitate wider travel by their citizens for personal or professional reasons and to this end they intend in particular:

- gradually to simplify and to administer flexibly the procedures for exit and entry;
- to ease regulations concerning movement of citizens from the other participating States in their territory, with due regard to security requirements.

They will endeavour gradually to lower, where necessary, the fees for visas and official travel documents.

They intend to consider, as necessary, means — including, in so far as appropriate, the conclusion of multilateral or bilateral consular conventions or other relevant agreements or understandings — for the improvement of arrangements to provide consular services, including legal and consular assistance.

### **1989 Vienna Concluding Document**

(20) The participating States will respect fully the right of everyone

- to freedom of movement and residence within the borders of each State, and
- to leave any country, including his own, and to return to his country.

(22) [The participating States] (...) will allow all refugees who so desire to return in safety to their homes.

### **1990 Copenhagen Document**

(9) The participating States reaffirm that

(...)

(9.5) - they will respect the right of everyone to leave any country, including his own, and to return to his country, consistent with a State's international obligations and CSCE commitments. Restrictions on this right will have the character of very rare exceptions, will be considered necessary only if they respond to a specific public need, pursue a legitimate aim and are proportionate to that aim, and will not be abused or applied in an arbitrary manner.

(...)

(19) The participating States affirm that freer movement and contacts among their citizens are important in the context of the protection and promotion of human rights and fundamental freedoms. They will ensure that their policies concerning entry into their territories are fully consistent with the aims set out in the relevant provisions of the Final Act, the Madrid Concluding Document and the Vienna Concluding Document. While reaffirming their determination not to recede from the commitments contained in CSCE documents, they undertake to implement fully and improve present commitments in the field of human contacts, including on a bilateral and multilateral basis. (...)

### **1990 Paris Charter**

In accordance with our CSCE commitments, we stress that free movement and contacts among our citizens as well as the free flow of information and ideas are crucial for the maintenance and development of free societies and flourishing cultures (...)

### **1991 Moscow Document**

(33) The participating States will remove all legal and other restrictions with respect to travel within their territories for their own nationals and foreigners, and with respect to residence for those entitled to permanent residence, except those restrictions which may be necessary and officially declared for military, safety, ecological or other legitimate government interests, in accordance with their national laws, consistent with CSCE commitments and international human rights obligations. The participating States undertake to keep such restrictions to a minimum.

### **1992 Helsinki Document**

The participating States

(39) Express their concern over the problem of refugees and displaced persons; (40) Emphasize the importance of preventing situations that may result in mass flows of refugees and displaced persons and stress the need to identify and address the root causes of displacement and involuntary migration;

(41) Recognize the need for international co-operation in dealing with mass flows of refugees and displaced persons;

(42) Recognize that displacement is often a result of violations of CSCE commitments, including those relating to the Human Dimension;

(43) Reaffirm the importance of existing international standards and instruments related to the protection of and assistance to refugees and will consider acceding to the Convention relating to the Status of Refugees and the Protocol, if they have not already done so;

(44) Recognize the importance of the United Nations High Commissioner for Refugees and the International Committee of the Red Cross, as well as of non-governmental organizations involved in relief work, for the protection of and assistance to refugees and displaced persons;

(45) Welcome and support unilateral, bilateral and multilateral efforts to ensure protection of and assistance to refugees and displaced persons with the aim of finding durable solutions;

### **1994 Budapest Document**

32. The participating States express their concern at mass migratory movements in the CSCE region, including millions of refugees and displaced persons, due mainly to war, armed conflict, civil strife and grave human rights violations (...) they decide to expand their co-operation with appropriate international bodies in this respect (...).

### **1996 Lisbon Document**

9. (...) Among the acute problems within the human dimension, the continuing violations of human rights, such as involuntary migration (...) continue to endanger stability in the OSCE region. We are committed to continuing to address these problems.

10. Against the background of recent refugee tragedies in the OSCE region and taking into account the issue of forced migration, we again condemn and pledge to refrain from any policy of 'ethnic cleansing' or mass expulsion. Our States will facilitate the return, in safety and in dignity, of refugees and internally displaced persons, according to international standards. Their reintegration into their places of origin must be pursued without discrimination (...).



## 6. RIGHT TO NATIONALITY

### 1992 Helsinki Document

[The participating States]

(55) Recognize that everyone has the right to a nationality and that no one should be deprived of his/her nationality arbitrarily;

(56) Underline that all aspects of nationality will be governed by the process of law. They will, as appropriate, take measures, consistent with their constitutional framework not to increase statelessness.

### 1999 Istanbul Charter for European Security

19. (...) We reaffirm our recognition that everyone has the right to a nationality and that no one should be deprived of his or her nationality arbitrarily. We commit ourselves to continue our efforts to ensure that everyone can exercise this right. We also commit ourselves to further the international protection of stateless persons.

## 7. PROPERTY RIGHTS AND COMPENSATION

### 1990 Bonn Document

[The participating States]

(w)ill endeavour to achieve or maintain the following:

(...)

- Full recognition and protection of all types of property including private property, and the right of citizens to own and use them, as well as intellectual property rights;

- The right to prompt, just and effective compensation in the event private property is taken for public use;

(...)

### 1990 Copenhagen Document

(9) The participating States reaffirm that

(...)

(9.6) - everyone has the right peacefully to enjoy his property either on his own or in common with others. No one may be deprived of his property except in the public interest and subject to the conditions provided for by law and consistent with international commitments and obligations.

### 1990 Paris Charter

We affirm that, without discrimination (...) everyone (...) has the right:

(...)

to own property alone or in association and to exercise individual enterprise (...).

### 1991 Moscow Document

(24) The participating States reconfirm the right to the protection of private and family life, domicile, correspondence and electronic communications. In order to avoid any improper or arbitrary intrusion by the State in the realm of the individual, which would be harmful to any

democratic society, the exercise of this right will be subject only to such restrictions as are prescribed by law and are consistent with internationally recognized human rights standards. In particular, the participating States will ensure that searches and seizures of persons and private premises and property will take place only in accordance with standards that are judicially enforceable.

## **8. ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

### **1975 Helsinki Final Act**

[The participating States] will promote and encourage the effective exercise of ...economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.

(...)

They will endeavour, in developing their co-operation, to improve the well-being of peoples and contribute to the fulfilment of their aspirations through, inter alia, the benefits resulting from increased mutual knowledge and from progress and achievement in the economic, scientific, technological, social, cultural and humanitarian fields. They will take steps to promote conditions favourable to making these benefits available to all; they will take into account the interest of all in the narrowing of differences in the levels of economic development, and in particular the interest of developing countries throughout the world.

### **Madrid Concluding Document 1983**

[The participating States] similarly stress their determination to develop their laws and regulations in the field of (...) economic, social, cultural and other human rights and fundamental freedoms; they also emphasize their determination to ensure the effective exercise of these rights and freedoms.

### **1989 Vienna Concluding Document**

(12) (...) They recognize that (...) economic, social, cultural and other rights and freedoms are all of paramount importance and must be fully realized by all appropriate means.

### **1990 Paris Charter**

We affirm that, without discrimination (...) everyone (...) has the right:

(...)

to enjoy his economic, social and cultural rights.

### **1990 Bonn Document**

[The participating States] will endeavour to achieve or maintain the following:

(...)

- Policies that promote social justice and improve living and working conditions;

(...)

## **9. RIGHT TO EDUCATION**

### **1989 Vienna Document**

(19) [The participating States] will protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of national minorities on their territory.

(...)

(63) [They] will ensure access by all to the various types and levels of education without discrimination as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

### **1990 Copenhagen Document**

(32) (...) Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will. In particular, they have the right

(32.1) - to use freely their mother tongue in private as well as in public;

(32.2) - to establish and maintain their own educational, cultural and religious institutions, organizations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation

(34) The participating States will endeavour to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue (...)

In the context of the teaching of history and culture in educational establishments, they will also take account of the history and culture of national minorities

### **1991 Geneva Document**

[The participating States]

Aware of the diversity and varying constitutional systems among them, which make no single approach necessarily generally applicable, the participating States note with interest that positive results have been obtained by some of them in an appropriate democratic manner by, inter alia:

- advisory and decision-making bodies in which minorities are represented, in particular with regard to education, culture and religion;

(...)

- self-administration by a national minority of aspects concerning its identity in situations where autonomy on a territorial basis does not apply;

(...)

- for persons belonging to national minorities, provision of adequate types and levels of education in their mother tongue with due regard to the number, geographic settlement patterns and cultural traditions of national minorities;

- funding the teaching of minority languages to the general public, as well as the inclusion of minority languages in teacher-training institutions, in particular in regions inhabited by persons belonging to national minorities;

- in cases where instruction in a particular subject is not provided in their territory in the minority language at all levels, taking the necessary measures to find means of recognizing diplomas issued abroad for a course of study completed in that language;

(...)

## 10. POLICING AND ENSURING THE SAFETY OF PERSONS

### 1990 Copenhagen Document

(5) [The participating States] solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:

(...)

(5.6) - military forces and the police will be under the control of, and accountable to, the civil authorities

(...)

### 1991 Moscow Document

(25) The participating States will

(25.1) - ensure that their military and paramilitary forces, internal security and intelligence services, and the police are subject to the effective direction and control of the appropriate civil authorities;

(25.2) - maintain and, where necessary, strengthen executive control over the use of military and paramilitary forces as well as the activities of the internal security and intelligence services and the police;

(25.3) - take appropriate steps to create, wherever they do not already exist, and maintain effective arrangements for legislative supervision of all such forces, services and activities.

### 1994 Budapest Document

20. The participating States consider the democratic political control of military, paramilitary and internal security forces as well as of intelligence services and the police to be an indispensable element of stability and security. They will further the integration of their armed forces with civil society as an important expression of democracy

21. Each participating State will at all times provide for and maintain effective guidance to and control of its military, paramilitary and security forces by constitutionally established authorities vested with democratic legitimacy. Each participating State will provide controls to ensure that such authorities fulfil their constitutional and legal responsibilities.

They will clearly define the roles and missions of such forces and their obligation to act solely within the constitutional framework.

22. Each participating State will provide for its legislative approval of defence expenditures. Each participating State will, with due regard to national security requirements, exercise restraint in its military expenditures and provide for transparency and public access to information related to the armed forces.

23. Each participating State, while providing for the individual service member's exercise of his or her civil rights, will ensure that its armed forces as such are politically neutral.

24. Each participating State will provide and maintain measures to guard against accidental or unauthorized use of military means.

25. The participating States will not tolerate or support forces that are not accountable to or controlled by their constitutionally established authorities. If a participating State is unable to exercise its authority over such forces, it may seek consultations within the CSCE to consider steps to be taken.

(...)

36. Each participating State will ensure that any decision to assign its armed forces to internal security missions is arrived at in conformity with constitutional procedures. Such decisions will prescribe the armed forces' missions, ensuring that they will be performed under the effective control of constitutionally established authorities and subject to the rule of law.

## 11. WOMEN'S HUMAN RIGHTS AND SECURITY

### 2004 Sofia Document

Recalling UNSCR 1325 which calls for full and equal participation of women in decision making with regard to conflict prevention as well as in post-conflict reconstruction, and stressing the importance of their full and equal participation and involvement in all efforts for the maintenance and promotion of peace and security (preamble).

(...)

### 2005 Ljubljana Document

Ministerial Council Decision 14/05 on Women in Conflict Prevention, Crisis Management and Post-Conflict Rehabilitation

(...)

The Ministerial Council:

(...)

- Recognizing that the knowledge, skills and experience of both women and men are essential to peace, sustainable democracy, economic development and therefore to security and stability in the OSCE region (preamble);
- Further recognizing that UNSCR 1325 links gender equality and security, focusing on the role of women in matters of peace and security at all levels (preamble);

(...)

Acknowledging the need for concrete action by the OSCE to integrate women into conflict prevention, crisis management and post-conflict rehabilitation through its activities,

*inter alia*, by:

(...)

- Integrating into the activities of the OSCE, as appropriate, the relevant parts of UNSCR 1325 on the role of women in all levels of conflict prevention, crisis management and resolution, and post-conflict rehabilitation (art. 2);

(...)

- Decides to task the Secretary General in his annual progress report on the implementation of Permanent Council Decision No. 638 on the 2004 OSCE Action Plan for the Promotion of Gender Equality with making specific references to the implementation in the Organization of the parts of UNSCR 1325 that are relevant to the OSCE (recommendation).

### **Council of Europe Obligations**

European Convention for the Protection of Human Rights and Fundamental Freedoms:

<http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>

Case-law under the ECHR, as well as press releases by the registrar (including on interim measures), can be retrieved at

<http://www.echr.coe.int/echr/index.htm>

Council of Europe Framework Convention on National Minorities:

<http://conventions.coe.int/Treaty/EN/Treaties/Html/157.htm>

### **UN Standards**

Convention on the Rights of the Child:

<http://www2.ohchr.org/english/law/crc.htm>

Geneva Conventions:

<http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/genevaconventions>

International Covenant on Civil and Political Rights:

<http://www2.ohchr.org/english/law/ccpr.htm>

Case-law of the UN Human Rights Committee can be retrieved at

<http://www2.ohchr.org/english/bodies/hrc/index.htm>

International Covenant on Economic, Social and Cultural Rights:

<http://www2.ohchr.org/english/law/cescr.htm>

International Convention against Torture and other Cruel, Inhuman or Degrading Treatment:

<http://www2.ohchr.org/english/law/cat.htm>

International Convention on the Elimination of All Forms of Racial Discrimination (CERD):

<http://www2.ohchr.org/english/law/cerd.htm>

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):

<http://www2.ohchr.org/english/law/cedaw.htm>

UN Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2 dated 11/02/1998):

<http://www.unhcr.ch/html/menu2/7/b/principles.htm>

United Nations Security Council Resolution 1325 on Women, Peace and Security

S/RES/1325 passed 31 October 2000

[http://www.un.org/events/res\\_1325e.pdf](http://www.un.org/events/res_1325e.pdf)

UN General Assembly resolution 60/147 of 16 December 2005, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, retrievable at:

[www.un.org/ga](http://www.un.org/ga)

Case-law of the International Court of Justice can be retrieved at:

<http://www.icj-cij.org/homepage/index.php?lang=en>

### ANNEX III List of meetings held and interlocutors met during the human rights assessment (including the high-level visit)

#### I. Authorities:

1. President of Georgia, H.E. Mikheil Saakashvili
2. Minister of Foreign Affairs, Eka Tqeshelashvili
3. Speaker of Parliament, David Bakradze
4. State Minister for Reintegration, Temur Yakobashvili
5. Deputy State Minister for Reintegration, Elene Tevdoradze
6. Deputy Minister for Refugees and Accommodation, Beso Tserediani
7. Public Defender, Sozar Subari
8. Office of the Prosecutor General, Archil Giorgadze, Head of the Human Rights Protection Unit
9. Ministry of Justice, Levan Meskhoradze, Head of the International Relations Division
10. Regional Prosecutor for Shida Kartli and Mtskheta-Mtianeti regions, Davit Sakvarelidze
11. Regional Deputy Chief of Police in Gori, Shalva Tramakidze
12. Deputy Director of the Military Hospital in Gori, Tornike Arsenashvili
13. Chief Doctor of Gori City Hospital, Paata Khavabadze
14. Mayor of Sachkhere Municipality, Zurab Tsevtsuadze, First Deputy Mayor Malkhaz Labadze
15. Ministry for Refugees and Accommodation for Imereti, Guria, Racha-Lechkumi, Kvemo-Svaneti in Kutaisi, David Abtseuri
16. Deputy Governor in Gori, Kaspi, Kareli and Khashuri Municipalities, Zurab Chinchilakashvili
17. Representative of the Ministry of Foreign Affairs in Vladikavkaz, Tamerlan Zaseev
18. “Commandant of Tskhinvali”, Colonel Anatoly Tarasov, Russian Federation Armed Forces
19. *de facto* Minister of Foreign Affairs of South Ossetia, Murat Kuzmich Jioev
20. *de facto* Deputy Minister for Special Affairs, in charge of refugees and IDPs issues, Kazbek Karsanov
21. *de facto* Minister of Interior, Mikhail Majramovich Mindzaev
22. *de facto* Deputy Head of the Cabinet of Ministers, Elenora Bedoeva
23. *de facto* Prosecutor General, Tejmuraz Khugaev
24. Head of the Tskhinvali Prison, Valentin Gogozov
25. *de facto* Head of State Commission on Humanitarian Assistance, Kosta Georgievich Dzugaev
26. *de facto* Ombudsman, David Sanakoev
27. Head of the Regional Administration of the Znaur Region, Slava Bistsoev
28. Deputy Head of the *de facto* Regional Administration in Akhalgori, Vladimir Gabaraev
29. Head of the Department for Refugees, Abkhaz Government-in-exile, Tengiz Bendeliani
30. Minister of Education and Culture, Abkhaz Government-in-exile, Aleksandr Aplakov
31. *de facto* Minister of Foreign Affairs of Abkhazia, Sergej Shamba
32. *de facto* Minister of Education, Indira Vardania
33. Representative for Human Rights of the *de facto* President of Abkhazia, Georgiy Otyrba
34. Chairman of the Human Rights Committee, *de facto* Parliament, Batal Kobakhia
35. Representative of the *de facto* President of Abkhazia in Gali, Ruslan Kishmaria,

36. Deputy Head of Administration in Gali on Cultural Issues, Justan Gergedava

## **II. NGOs/INGOs**

1. Rehabilitation Centre for Victims of Torture “Empathy”, Mariam Jishkariani, Director and George Berulava, Deputy Director
2. Public Movement Multinational Georgia, Agit Mirzoev, Executive Director and Arnold Stepanian, Chairman
3. Demos, Centre for Information and Research on Public Interest Issues, Varvara Pakhomenko
4. Georgian Young Lawyers Association, Besarion Bokhashvili, Executive Director
5. Human Rights Centre, Ucha Nanuashvili, Executive Director and Nino Gvedashvili
6. Article 42 of the Constitution, Manana Kobakhidze, Chair
7. Union ‘Century 21’, Paata Gachechiladze, Chairman
8. Justice and Liberty, Irakli Sesiashvili, Chairman and Babutsa Pataraiia, Lawyer
9. NGO Caucasus Women’s Centre, Nina Tsikhistavi
10. Norwegian Refugee Council in Tbilisi and Kutaisi, Margaret Vikki, Head of Mission
11. Danish Refugee Council, Jelena Krivcevi, Head of Office in Gori
12. Memorial/Human Rights Center, Oleg Orlov and Tatiana Kasatkina
13. Save the Children in Gori, Ekin Ogutogullari
14. International Refugee Council in Gori, Eric James
15. Women of South Ossetia for Democracy and Human Rights, Lira Tskhovrebova
16. Agency for Socio-Economic and Cultural Development, Dina Alborova
17. “The Ossetian People Against Genocide”, Zhanna Zaseeva
18. Representative of the Armenian Communities in Gagra, Hachik Minasian
19. Association of Women of Abkhazia, Natella Akaba, Chair of the Board and Marieta Topchan, Project Manager
20. World without Violence, Dalila Pilia
21. Civic Initiative and Man of the Future Foundation, Tamaz Ketsba, Head of the NGO Human Rights Centre in Gali, Guram Shonia
22. Women's Association in Gali, Tina Ketsbaia
23. Institute of Democracy in Gali, Paata Ablotia
24. Center for Humanitarian Programmes, Liana Kvarchelia

## **III. International Organizations**

1. UN Office for the Coordination of Humanitarian Affairs, David Carden, Team Leader and Kirstie Farmer, Humanitarian Affairs Officer
2. UN Office of the High Commissioner for Human Rights South Caucasus, Vladlen Stefanov, Senior Human Rights Advisor
3. UNICEF, Kendra Gregson, Head of Child Protection
4. UNHCR, Christoph Bierwirth, Senior Protection Officer and Edina Slipicevic Dziho, Associate Protection Officer, Stefano Berti, Head of Gori Office, Mohammed Aziz, Associate Protection Officer, Srecko Neuman, Head of UNHCR Field Office in Gali/Zugdidi
5. UNOMIG, Ivo Petrov, Deputy Special Representative of the Secretary-General, Ryszard Komenda, Head of Human Rights Office in Abkhazia
6. Council of Europe, Igor Gaon, Special Representative
7. Delegation of the European Commission to Georgia, Maria Van Ruiten, Project Manager on Post Conflict Rehabilitation; Zane Bandere, Project Manager
8. European Union Monitoring Mission (EUMM), Ambassador Hansjorg Haber, Head of Mission
9. International Organization for Migration, Mary Sheehan, Chief of Mission and Nugzar Kokhraidze, Field Officer based in Kutaisi



10. International Committee of the Red Cross, Jan Roemer, Protection Coordinator; Head of ICRC Office in Gori, Florence Gillette, Head of ICRC Office in Tskhinvali, Rene Boeckli, Head of Mission in Abkhazia, Alexandra Manescu.

## ANNEX IV List of non-OSCE sources cited

*UN Training Manual on Human Rights Monitoring*

<http://www1.umn.edu/humanrts/monitoring/index.html>.

*UN Mission Report, Humanitarian Assessment Mission to South Ossetia, 16-20 September 2008*

[http://www.parliament.ge/files/1185\\_20707\\_505519\\_SOssetia\\_Mission\\_Report\\_16-20\\_Sept\\_2008\\_Final\\_for\\_distr.pdf](http://www.parliament.ge/files/1185_20707_505519_SOssetia_Mission_Report_16-20_Sept_2008_Final_for_distr.pdf)

*United Nations Crisis Flash Appeal for Georgia October 2008*

<http://ochaonline.un.org/cap2005/webpage.asp?Page=1701>

*Report of the United Nations Secretary-General on the Situation in Abkhazia, Georgia, S/2008/480, 23 July 2008*

<http://www.un.org/Docs/sc/sgrep08.htm>

*Report of the United Nations Secretary-General on the Situation in Abkhazia, Georgia, S/2008/631, 3 October 2008*

<http://www.un.org/Docs/sc/sgrep08.htm>

*Human Rights in Areas Affected by the South Ossetia Conflict. Special Mission to Georgia and Russian Federation, Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, 8 September 2008, CommDH(2008)22*

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*Special Follow Up Mission to the Areas Affected by the South Ossetia Conflict, Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, 21 October 2008, CommDH(2008)30*

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*Russia vs Georgia: the fallout, Europe Report N°195 – 22 August 2008, International Crisis Group*

<http://www.crisisgroup.org/home/index.cfm?id=5636>

*Georgia/Russian Federation: a difficult winter ahead, ICRC Operational Update 6 November 2008*

<http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/georgia-update-061108>

**Resolution 1633 (2008)<sup>1</sup>****The consequences of the war between Georgia and Russia**

1. The Parliamentary Assembly is firmly committed to the pursuit of peace and the principles embodied in the Statute of the Council of Europe (ETS No. 1): democracy, human rights and the rule of law, as well as to principles of state sovereignty, the right to territorial integrity and the inviolability of state frontiers. Respect for these principles is an obligation incumbent upon all member states of the Council of Europe.
2. When joining the Council of Europe, both Georgia and Russia committed themselves to settle conflicts by peaceful means and in accordance with the principles of international law.
3. The Assembly condemns the outbreak of war between two member states of the Organisation and deplores the human suffering it has caused.
4. The Assembly is conscious that, although the outbreak of the war on 7 August 2008 may have come unexpectedly to most of its members, it was the result of a serious escalation of tension, with provocations and ensuing deterioration of the security situation, which had started much earlier. Steps to reduce tension were not taken and the possibility of military intervention became an option for both sides in the conflict. This is unacceptable for the Assembly. It is of the view that in the end the peacekeeping format proved that it could not fulfil its intended function and that the peacekeepers did not succeed in their mission to protect the lives and property of the people in the conflict area. It therefore regrets that earlier calls to discuss a change in the format of the peacekeeping and conflict resolution process were rejected by South Ossetia and Russia.
5. However, the initiation of shelling of Tskhinvali without warning by the Georgian military, on 7 August 2008, marked a new level of escalation, namely that of open and fully fledged warfare. The use of heavy weapons and cluster munitions, creating grave risks for civilians, constituted a disproportionate use of armed force by Georgia, albeit within its own territory, and as such a violation of international humanitarian law and Georgia's commitment to resolve the conflict peacefully.
6. At the same time, the Russian counter-attack, including large-scale military actions in central and western Georgia and in Abkhazia, equally failed to respect the principle of proportionality and international humanitarian law, and constituted a violation of Council of Europe principles, as well as of the statutory obligations and specific accession commitments of Russia as a member state. It led to the occupation of a significant part of the territory of Georgia, as well as to attacks on the economic and strategic infrastructure of the country, which can be deemed to be either a direct attack on the sovereignty of Georgia and thus a violation of the Statute of the Council of Europe, or an attempt by Russia to extend its influence over a "near abroad" state in violation of its accession commitment to denounce such a concept.
7. In this respect, the Assembly considers that, from the point of view of international law, the notion of "protecting citizens abroad" is not acceptable and is concerned by the political implications of such a policy by the Russian authorities for other member states where a substantial number of Russian citizens reside.
8. The Assembly believes that truth is a precondition for reconciliation. Since the facts surrounding the outbreak of the war are disputed by both Georgia and Russia, they should be established, in an objective manner, by an independent international investigation. The Georgian authorities have indicated that they would welcome such an international inquiry and the Russian members of parliament have also indicated that they would not object to this proposal. This investigation should not be limited to the outbreak of the war, but should also focus on the years leading up to the conflict.
9. The Assembly condemns the recognition by Russia of the independence of South Ossetia and Abkhazia as a violation of international law and Council of Europe statutory principles. The Assembly reaffirms its attachment to the territorial integrity and sovereignty of Georgia and calls on Russia to withdraw its recognition of the independence of South Ossetia and Abkhazia and respect fully the sovereignty and territorial integrity of Georgia, as well as the inviolability of its frontiers.
10. The Assembly particularly deplores the fact that the recognition of independence was prompted by the unanimous demand of both houses of the Parliament of Russia, the State Duma and the Council of the Federation. It is seriously concerned that the act of recognition, followed by the recent signing by Russia of friendship and co-operation treaties with the de facto authorities in Tskhinvali and Sukhumi, hinders the implementation of the European Union-brokered ceasefire agreement, as well as the provision of humanitarian aid and monitoring of the implementation of the ceasefire agreement by independent observers.
11. The Assembly is concerned about the human rights and humanitarian law violations committed by both sides in the context of the war, such as the intentional or avoidable killing or wounding of civilians, as well as destruction of property. In particular, the use of indiscriminate force and weapons by both Georgian and Russian troops in civilian areas can be considered as war crimes that need to be fully investigated.

12. Russia appears not to have succeeded in its duty, under the 1907 Hague Convention (IV) on the Laws and Customs of War on Land, to prevent looting, maintain law and order and protect property in the areas under the de facto control of its forces. In this respect, the Assembly notes that Russia bears full responsibility for violations of human rights and humanitarian law in the areas under its de facto control. In the light of the case law of the European Court of Human Rights, this also concerns acts committed at the behest of the de facto authorities in Tshkinvali.

13. The Assembly is especially concerned about credible reports of acts of ethnic cleansing committed in ethnic Georgian villages in South Ossetia and the "buffer zone" by irregular militia and gangs which the Russian troops failed to stop. It stresses in this respect that such acts were mostly committed after the signing of the ceasefire agreement on 12 August 2008, and continue today.

14. The total number of deaths and persons wounded has been the subject of controversy. The most recent independent estimates indicate that 300 persons were killed and approximately 500 were wounded on the South Ossetian and Russian sides, and that 364 persons were killed and 2 234 were wounded on the Georgian side. These figures are far lower than those initially advanced in particular by Russia. Some 54 persons remain missing from the conflict on the Georgian side and 6 persons are missing on the South Ossetian side. The International Committee of the Red Cross (ICRC), however, continues to receive tracing requests from families of the missing.

15. Some 192 000 persons were displaced as a consequence of the war. The Assembly is concerned that a total of 31 000 displaced persons (25 000 from South Ossetia and 6 000 from Abkhazia) are considered to be "permanently" unable to return to their original places of residence. These numbers should be seen in the context of the approximately 222 000 persons who remain displaced from the previous conflict in the early 1990s.

16. The Assembly welcomes the role played by the Council of Europe Commissioner for Human Rights who travelled to the region in August and September 2008, organised the exchange of prisoners and spelled out six principles for urgent protection of human rights and humanitarian security. The Assembly fully supports these principles.

17. The Assembly welcomes the initiative of the Swedish Chairmanship of the Council of Europe Committee of Ministers which, *inter alia*, convened an informal extraordinary meeting of the ministers for foreign affairs of member states of the Council of Europe on 24 September 2008 in order to prepare the response of the intergovernmental sector of the Organisation to the crisis.

18. The Assembly further welcomes the fact that the European Union, under the French Presidency, has been actively involved since the outbreak of the conflict and recalls its earlier appeals to this effect in its Resolution 1603 on the honouring of commitments and obligations by Georgia, adopted in January 2008. The Assembly further invites the European Union to strengthen its own monitoring mission on the ground and give it a mandate and resources not only to monitor, but also to protect persons and property, pending the restoration of public security by the Georgian police.

19. The Assembly also welcomes the proposal of the Turkish Government concerning a "Caucasus stability and co-operation platform" as a complementary and constructive initiative.

20. The Assembly calls on the Russian authorities to allow observers from both the European Union and the Organization for Security and Co-operation in Europe (OSCE) to have access to South Ossetia and Abkhazia, which are under the de facto control of Russia. In addition, differences about the role of European Union observers in the so-called "buffer zone" may lead to an even further deterioration of the security situation in this area, impeding the return of displaced persons after Russian troops have withdrawn from it.

21. The Assembly welcomes the quick reaction of the international community in providing assistance to the region. It welcomes the fact that the Russian authorities have provided generous support to refugees from South Ossetia and that the Georgian authorities similarly have mobilised considerable resources to meet the immediate needs of those persons displaced within Georgian territory under their effective control. However, the Assembly is concerned that the recognition by Russia of the independence of South Ossetia and Abkhazia is hindering the effective deployment of humanitarian aid in these areas.

22. In view of the above-mentioned considerations and taking into account in particular the findings of the ad hoc committee of its Bureau, which visited Georgia and Russia in the context of the war from 21 to 26 September 2008, the Assembly urges Georgia and Russia to:

22.1. implement unconditionally all points of the European Union-brokered ceasefire agreement. This implies, in particular, the obligation for Russia to withdraw its troops to positions *ex ante* the conflict and refrain from any act of provocation to justify maintaining the presence of Russian troops in the so-called "buffer zone";

22.2. enable OSCE and European Union observers to be deployed into South Ossetia and Abkhazia; Russia should also withdraw its recognition of independence of South Ossetia and Abkhazia;

22.3. co-operate fully in the establishment of an independent international investigation to look into the precise circumstances surrounding the outbreak of the war; this initiative should be without prejudice to the work of inquiry committees set up or to be set up within their own parliaments, which the Assembly fully supports;

22.4. work towards the creation of a new peacekeeping format and to internationalise the peacekeeping force, with the active participation of Council of Europe and European Union member states, in order to establish genuine conditions for the start of a peace process;

22.5. participate unconditionally in the Geneva talks scheduled for 15 October regarding the modalities of stability and security in South Ossetia and Abkhazia. In this respect the Assembly regrets that these talks will now only take place at expert level;

22.6. refrain from inflammatory discourse and take steps to maintain good neighbourly relations;

22.7. ensure effective respect for all human rights under the European Convention on Human Rights (ETS No. 5) and humanitarian

norms under the 1949 Geneva Conventions and their additional protocols on the territories under their de facto control;

22.8. investigate all allegations of human rights violations committed during the war and in its aftermath, and hold the perpetrators to account before the domestic courts;

22.9. allow safe and unhindered access by the media to the conflict zone, in accordance with Assembly Resolution 1438 (2005) on freedom of the press and the working conditions of journalists in conflict zones;

22.10. make full use of available means of peaceful conflict resolution, including, as appropriate, the European Court of Human Rights, the International Court of Justice and the International Criminal Court, in order to resolve the underlying conflict situation; in this context, implement the interim measures ordered by the European Court of Human Rights on 12 August 2008, upon the request of the Georgian Government, as well as any forthcoming judgments of the Court concerning alleged violations of human rights relating to the conflict;

22.11. join the United Nations Convention on Cluster Munitions.

23. The Assembly calls on all parties to the conflict, namely Georgia, Russia and the de facto authorities in South Ossetia to:

23.1. take urgent measures to guarantee the security of all persons within the region of South Ossetia, and those in the so-called "buffer zone". The de facto authorities in South Ossetia and the Russian forces have, in particular, the obligation to:

23.1.1. stamp out lawlessness (including physical assault, robbery, kidnapping, harassment, looting and torching of property), in accordance with Article 43 of the Hague Convention (IV) of 1907 and the Fourth Geneva Convention of 1949;

23.1.2. provide, without delay, the Office of the United Nations High Commissioner for Refugees (UNHCR) and all humanitarian organisations with unhindered access to the areas affected by the conflict, in particular in the region of South Ossetia and the so-called "buffer zone". All organisations providing humanitarian assistance in these areas should be guaranteed safety.

23.2. remove all mines and unexploded ordnance. This implies all parties to the conflict exchanging information on the use and location of such materials, and also the involvement of experts on mine and ordnance location and removal. The people living in these areas, as well as other persons concerned, must be made aware of the dangers of mines and unexploded ordnance;

23.3. co-operate fully with all international monitoring missions, whether from the United Nations (UN), the OSCE, the European Union, the Council of Europe or any other international body and grant these organisations full access to the conflict regions;

23.4. ensure that all persons displaced by the conflict have the right to return on a fully voluntary basis and to refrain from using displaced persons as political pawns when tackling the issue of return. Furthermore, all internally displaced persons should have the right to return in safety and dignity, or to resettle voluntarily or integrate locally;

23.5. release and exchange immediately hostages, prisoners of war and other persons detained as a result of the conflict, without requiring reciprocity from any of the parties;

23.6. solve the issue of missing persons from the recent conflict and the earlier conflict, ensuring that the issue is treated as a humanitarian issue and not a political issue. Furthermore, establish a multilateral co-ordination mechanism with commissions in charge of searching for missing persons;

23.7. take concrete measures to fully and effectively implement the Council of Europe Commissioner for Human Rights' six principles for urgent protection of human rights and humanitarian security drawn up after his August 2008 visit to the region.

24. The Assembly calls on all member states and states with observer status with the Organisation to:

24.1. not recognise the independence of South Ossetia and Abkhazia;

24.2. intensify their efforts to provide humanitarian assistance to the victims of the conflict, including:

24.2.1. the pledging and delivery of aid and assistance for immediate urgent needs and those of a more long-term nature;

24.2.2. assistance covering basic needs, accommodation, health care, including care for trauma victims, support for the livelihood of victims, etc.;

24.2.3. particular support for vulnerable persons, including children, the aged and the sick and infirm;

24.3. maintain a focus on the needs of the 222 000 persons who remain displaced from the previous conflict over Abkhazia and South Ossetia, as well as those displaced from earlier conflicts in the North Caucasus;

24.4. formally condemn the ethnic cleansing taking place in the areas under the effective control of Russian forces and of the de facto authorities in South Ossetia;

24.5. ensure, to the extent that they are also members of the North Atlantic Treaty Organization (NATO), that the NATO assessment of the military build-up with respect to this war be made public;

- 24.6. make available to the independent international investigation into the circumstances surrounding the outbreak of the war all relevant satellite data they may have in their possession.
25. Because of the human rights violations and the humanitarian challenges resulting from the conflict between Russia and Georgia, the Assembly invites its Bureau to ensure that the Assembly remains seized of the matter through its competent committees and to step up its monitoring procedure with respect to both countries.
26. The Assembly resolves to convene an international conference to reflect on establishing and improving existing early warning systems to prevent the escalation of conflicts into fully fledged wars.
27. The Assembly invites the Secretary General of the Council of Europe to consider the establishment, possibly in consultation with the Commissioner for Human Rights, of a special human rights field mission of the Council of Europe with unhindered access to all areas affected by the war.
28. The Assembly also invites the Secretary General of the Council of Europe to consider availing himself of his powers under Article 52 of the European Convention on Human Rights in particular for the purpose of asking the Russian authorities to provide information on how the rights guaranteed by the Convention in zones under their de facto jurisdiction are effectively secured, and the Georgian authorities to provide explanations as to how it was deemed necessary to declare a state of war without it being necessary to make a derogation under Article 15 of the Convention.
29. The Assembly invites the Council of Europe Development Bank to consider action with a view to assisting refugees and displaced persons, as well as contributing to reconstruction in the areas affected, including South Ossetia and Abkhazia.
30. The Assembly is convinced that the establishment of dialogue is the best way forward for the solution of any conflict and for fostering stability in the long term. This holds true for this particular conflict. However, dialogue requires political will on both sides and must be backed up by concrete action. Therefore, some basic conditions for the dialogue have to be established and observed. Full implementation of the peace plan, including withdrawal of the Russian troops to positions *ex ante* the conflict is essential. In addition, full deployment of European Union and OSCE observers into South Ossetia and Abkhazia and withdrawal by Russia of the recognition of independence of South Ossetia and Abkhazia, would be minimum conditions for a meaningful dialogue.
31. In order to promote such dialogue, the Assembly will consider setting up under its aegis a special Parliamentary Assembly ad hoc committee, in which both Georgian and Russian parliamentarians will participate, to serve as a forum for discussing their differences and proposing ways to put an end to the current impasse and look towards the future.
32. With a view to minimising the risk of further outbreaks of violence involving its member states, the Assembly should play a role in the field of conflict prevention and resolution, as without peace there cannot be genuine respect for democracy, human rights and the rule of law. It decides, therefore, to ask its Bureau to study mechanisms by which it could conduct parliamentary diplomacy in the context of frozen conflicts in Europe and other situations liable to undermine peace and stability.

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1. *Assembly debate* on 30 September and 2 October 2008 (30th, 34th and 35th Sittings) (see [Doc. 11724](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Van den Brande and Mr Eörsi; [Doc. 11731](#), opinion of the Political Affairs Committee, rapporteur: Mr Lindblad; [Doc. 11732](#), opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pourgourides; and [Doc. 11730](#), opinion of the Committee on Migration, Refugees and Population, rapporteur: Mrs Jonker). *Text adopted by the Assembly* on 2 October 2008 (35th Sitting). See also [Recommendation 1846 \(2008\)](#).

## Resolution 1647 (2009)<sup>1</sup>

### Implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia

1. The Parliamentary Assembly fully reaffirms its [Resolution 1633 \(2008\)](#) on the consequences of the war between Georgia and Russia, adopted on 2 October 2008. In this resolution, the Assembly strongly condemned the outbreak of war between two of its member states and considered that, during the war and its immediate aftermath, both countries had violated human rights and principles of humanitarian law, as well as the Statute of the Council of Europe (ETS No. 1) and specific accession commitments made by the two countries. Therefore, the Assembly placed a series of concrete demands on both Georgia and Russia, as well as on the de facto authorities in South Ossetia and in Abkhazia, including the demand on Russia to withdraw its recognition of independence of these two break-away regions. In so doing, the Assembly provided a transparent, impartial and concrete roadmap to address the consequences of the war, not only for the parties concerned, but also for the Assembly itself.

2. The Assembly welcomes the establishment, by the European Union, on 2 December 2008, of an independent international fact-finding mission on the conflict in Georgia to investigate the origins and the course of the conflict, including with regard to international law, humanitarian law and human rights and the accusations made in that context. This is a crucial step towards establishing the truth and providing the basis for future reconciliation between Russia and Georgia. In this respect, the Assembly:

2.1. welcomes the support of both Russia and Georgia for the establishment of an independent international inquiry into the outbreak of the war and their declared willingness to fully co-operate with it;

2.2. calls upon Russia and Georgia now to co-operate effectively, fully and unconditionally with the European Union fact-finding mission;

2.3. calls upon all Council of Europe member states and states that have observer status with the Organisation to make available to the fact-finding mission any information, including satellite data, that may be of relevance to the investigation;

2.4. calls upon the member states of the Council of Europe which are also European Union members to ensure that the report of the European Union mission is also presented to the Council of Europe in order for its findings to be debated before the Assembly; the Council of Europe shall continue to fulfil its own responsibilities concerning this conflict between two of its member states;

2.5. resolves to return to the issue of the causes and precise circumstances surrounding the outbreak of the war once the report of the European Union mission has been presented.

3. The Assembly encourages all parties to pursue, in a constructive spirit, the Geneva talks on the modalities of security and stability in Abkhazia and South Ossetia with a view to introducing an incident prevention mechanism, as proposed by the co-chairing organisations (the United Nations, the Organisation for Security and co-operation in Europe (OSCE) and the European Union). The Assembly supports the principle that representatives of the inhabitants of South Ossetia and Abkhazia at the beginning of August 2008, both supporters of the de facto authorities and those that favour reintegration with Georgia, should participate in these talks. It also insists that their status in the talks should not violate Georgia's sovereignty and territorial integrity. The Assembly therefore calls upon all parties to agree on a formula ensuring their participation without prejudice to the status of the two break-away regions.

4. The Assembly condemns the recognition by Russia of the independence of South Ossetia and Abkhazia and considers it to be a violation of international law and of the Council of Europe's statutory principles. The Assembly reaffirms its attachment to the territorial integrity and sovereignty of Georgia and reiterates its call on Russia to withdraw its recognition of the independence of South Ossetia and Abkhazia and to fully respect the sovereignty and territorial integrity of Georgia, as well as the inviolability of its borders.

5. The Assembly is seriously concerned that the escalation of tensions and provocations along the administrative borders of the break-away regions of South Ossetia and Abkhazia are undermining the stability of the region and could lead to renewed clashes or an outbreak of hostilities. It deplores in particular the recent attacks on Georgian police officers in the areas close to the Abkhaz and South Ossetian administrative borders. It considers that the full access of international monitors to South Ossetia and Abkhazia, as well as the establishment of a new internationalised peacekeeping force in the region, are essential to guaranteeing stability and security and should not be made conditional on the status issue. The Assembly therefore:

5.1. deplores the continued refusal of Russia and the de facto authorities to allow access to OSCE monitors to South Ossetia and to European Union monitors to both South Ossetia and Abkhazia;

5.2. deeply regrets the closure of the OSCE mission in Georgia as a result of Russian objections over its exact mandate and calls upon all parties, and especially the Russian authorities, to accept a formula for the mandate of the OSCE mission, including its military monitoring operation, in Georgia, that would not prejudice the status of the two break-away regions;



5.3. welcomes the continued access of the United Nations Observer Mission in Georgia (UNOMIG) observers to Abkhazia and calls upon all parties not to take any actions that would endanger the renewal of the mandate of UNOMIG by the United Nations Security Council on 15 February 2009;

5.4. condemns the Russian non-mandated military presence and the building of new military bases within the separatist regions of South Ossetia and Abkhazia, as well as in Akhagori, Perevi and Upper Abkhazia and in villages controlled by the central government of Georgia before the breakout of the conflict.

6. The Assembly reaffirms its full support for the sovereignty and territorial integrity of Georgia, as well as the inviolability of its borders. In this respect, it regrets the unanimous ratification by both houses of the Russian Parliament of the "Friendship and Co-operation" treaties between Russia and the two break-away regions, in violation of these principles, as well as of the ceasefire agreement of 12 August 2008.

7. The Assembly condemns the ethnic cleansing and other human rights violations in South Ossetia, as well as the failure of Russia and the de facto authorities to bring these practices to a halt and their perpetrators to justice. The Assembly reiterates that, under international law, Russia bears responsibility for violations of human rights and humanitarian law in these areas which are under its de facto control.

8. With respect to Georgia, the Assembly:

8.1. welcomes the constructive approach and clear political will of the Georgian authorities to comply with the demands of the Assembly as expressed in [Resolution 1633](#) (2008) and considers that Georgia has complied with many, but not all, of its demands;

8.2. calls upon the Georgian authorities to ensure that all outstanding demands are promptly and fully complied with;

8.3. welcomes the establishment of an inquiry commission by the Georgian Parliament as evidence that it is willing to reflect on the actions and mistakes committed by the Georgian authorities in the outbreak and in the course of the war. The Assembly notes that this commission finalised its work and published its report in December 2008 and calls upon the parliament to review its conclusions in the light of the forthcoming report of the European Union fact-finding mission;

8.4. in the light of the overwhelming evidence to the effect that both Georgia and Russia violated human rights and humanitarian law in the course of the war, welcomes the investigation launched by the Georgian Prosecutor General's Office into alleged human rights and humanitarian law violations committed by both sides in the course of the war and its aftermath, and calls upon it to investigate, impartially, any alleged violations brought to its attention and ensure that the perpetrators are brought to justice;

8.5. is concerned that provisions in the Georgian law on the occupied territories may be at odds with principles of international human rights law, including the European Convention on Human Rights (ETS No. 5), and therefore calls upon Georgia to promptly implement any recommendations contained in the forthcoming opinion of the European Commission for Democracy through Law (Venice Commission) on this law, which was requested by the Monitoring Committee of the Assembly;

8.6. calls upon Georgia to refrain from any actions that could provoke or increase tensions along the administrative borders with South Ossetia and Abkhazia.

9. With respect to Russia, the Assembly:

9.1. takes note of the expressed intention of the Russian authorities to engage in a constructive and open dialogue with the Assembly in relation to the conflict;

9.2. welcomes the readiness expressed by the Russian parliamentarians to engage in dialogue with their Georgian counterparts under the aegis of the Assembly;

9.3. urges Russia to fully and unconditionally implement all requirements of [Resolution 1633](#) (2008) of the Parliamentary Assembly, including the withdrawal of the recognition of the two break-away regions of Georgia, the implementation of the European Union-brokered ceasefire agreement of 12 August 2008, allowing OSCE and European Union monitors into South Ossetia and Abkhazia, and to work towards the creation of a new peacekeeping format and an internationalised peacekeeping force, with the active participation of Council of Europe and European Union member states;

9.4. specifically requests Russia to withdraw from the Akhagori district, Upper Abkhazia, the Georgian enclave around Tskhinvali and Perevi village, and to reduce its military presence to pre-conflict levels;

9.5. calls upon Russia to implement fully and unconditionally all points of the ceasefire agreement of 12 August 2008;

9.6. calls upon Russia to agree to renew the mandate of the OSCE mission in Georgia, including its military monitoring operation;

9.7. calls upon Russia not to create any obstacles for the renewal of the UNOMIG mandate in Abkhazia;

9.8. calls upon Russia to allow, without further delay, the full access of all international monitors to South Ossetia and Abkhazia, and especially to allow OSCE monitors access to South Ossetia and European Union monitors access to South Ossetia and Abkhazia, without making it conditional on the question of status;

9.9. calls upon Russia and the de facto authorities of South Ossetia to ensure that there are no more acts of ethnic cleansing and other human rights violations, which continue to occur in South Ossetia, and bring the perpetrators promptly to justice;



9.10. calls upon Russia and the de facto authorities of both regions to bring to an immediate halt the provocations and attacks from the South Ossetian and Abkhaz sides of the administrative border and to refrain from any actions that could provoke or increase tensions along the administrative borders with South Ossetia and Abkhazia;

9.11. calls upon Russia and the de facto authorities to fully ensure the right of return of all internally displaced persons to the areas under their effective control;

9.12. in the light of the overwhelming evidence to the effect that both Georgia and Russia violated human rights and humanitarian law in the course of the war and in its aftermath, regrets that the Russian Prosecutor's Office has not yet started any investigation into alleged human rights and humanitarian law violations committed by Russian and allied South Ossetian forces. The Assembly calls upon Russia to initiate such an investigation without further delay and to ensure that the perpetrators are brought to justice.

10. With respect to the de facto authorities in South Ossetia, the Assembly notes that they have generally complied with the demand to exchange prisoners of war but regrets that they have failed to co-operate with international monitoring missions and are placing unreasonable restrictions on the access of humanitarian organisations to South Ossetia.

11. The Assembly calls upon both Russia and Georgia to:

11.1. allow unhindered and unconditional access of humanitarian organisations and humanitarian aid to the areas of South Ossetia and Abkhazia;

11.2. sign, without further delay, the United Nations Convention on Cluster Munitions;

11.3. implement the interim measures ordered by the European Court of Human Rights and the International Court of Justice, as well as any forthcoming judgments of these courts concerning alleged violations of human rights in the course of the conflict, and to co-operate fully and unconditionally with any possible investigation by the International Criminal Court;

11.4. work constructively towards the creation of a new peacekeeping format and internationalised peacekeeping force.

12. The Assembly welcomes the ongoing efforts by the Council of Europe Commissioner for Human Rights to protect human rights and humanitarian security in the region. It calls upon both Russia and Georgia to ensure that the six principles he formulated in this respect are fully and effectively implemented.

13. The Assembly is especially concerned about the human rights and humanitarian situation in Perevi, Upper Abkhazia, and in the Akhagori district, as well as about the status of the Akhagori district which, while technically a part of the former autonomous region (*oblast*) of South Ossetia, was never under the control of the de facto authorities and has always been mainly populated by ethnic Georgians. In this respect, it takes note that the Akhagori district was occupied by Russian forces on 15 August 2008, three days after the signing of the ceasefire agreement.

14. The Assembly considers it unacceptable that persons residing in Abkhazia and South Ossetia should not be effectively covered by the human rights protection mechanisms granted to them as citizens of a Council of Europe member state under the European Convention on Human Rights, as well as other relevant Council of Europe conventions, as a result of the consequences of the war between Russia and Georgia. Such a human rights protection black hole should not be allowed to exist within the Council of Europe area. The Assembly therefore invites the Secretary General of the Council of Europe to develop a comprehensive action plan to ensure that the rights guaranteed under the Convention are effectively secured for persons residing in South Ossetia and Abkhazia. This could include the establishment of a field presence in the two break-away regions, as demanded by the Assembly in [Resolution 1633 \(2008\)](#), including an ombudsperson who could examine individual applications in cases of human rights violations. In the absence of other credible investigations, this field presence should also investigate and document human rights violations committed during and in the aftermath of the war.

15. The Assembly reconfirms its conviction that the establishment of a genuine dialogue is the only way forward for the resolution of any conflict and to secure long-term stability in the region, provided the minimum conditions for meaningful dialogue as defined in [Resolution 1633 \(2008\)](#) are met. It therefore tasks its Bureau to set up in due course a special ad hoc committee, in which both Georgian and Russian parliamentarians will be invited to participate, to discuss their differences and develop concrete proposals to address the consequences of the war, in line with [Resolution 1633 \(2008\)](#). The Assembly would also welcome the possible participation of representatives of the Abkhaz and South Ossetian communities, from both the de facto authorities and those that favour integration with Georgia, in the work of the committee, subject to an agreement on the format of their participation.

16. The Assembly calls upon the European Union to continue to seek effective ways for the peaceful resolution of the Georgian-Russian conflict, including the strengthening and extension of the mandate of the European Union Monitoring Mission (EUMM) to cover protection and peacekeeping functions on both sides of the de facto borders of South Ossetia and Abkhazia and other parts of the former conflict zones that are presently occupied.

17. Having considered the consequences of the war between Georgia and Russia on other so-called "frozen conflicts" in Europe, the Assembly calls on Council of Europe member states to intensify their diplomatic efforts in order to find solutions which avoid violent confrontation. At the same time, the Assembly should intensify its activities on these matters, in particular as regards Nagorno-Karabakh and Transnistria.

18. The Assembly reiterates its commitment to play a role in the field of conflict prevention and, in this context, welcomes the establishment of an ad hoc sub-committee on early warning systems and conflict prevention in Europe within its Political Affairs Committee.

19. The Assembly invites its Monitoring Committee to monitor the follow-up given by Russia and Georgia to this resolution, as well as to

its [Resolution 1633](#) (2008), and to report back to the Assembly at the second part-session in April 2009. It also reiterates its request that the Monitoring Committee step up its monitoring procedure with respect to both Georgia and Russia.

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1. *Assembly debate* on 28 January 2009 (5th and 6th Sittings) (see [Doc. 11800](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Van den Brande and Mr Eörsi; [Doc. 11806](#), opinion of the Political Affairs Committee, rapporteur: Mr Gross; and [Doc. 11805](#), opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pourgourides). *Text adopted by the Assembly* on 28 January 2009 (6th Sitting).



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**Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)**

**The implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia**

**Preliminary draft explanatory memorandum<sup>1</sup>**

Co-rapporteurs: Mr Luc van den BRANDE, Belgium, Group of the European People's Party, and Mr Mátyás EÖRSI, Hungary, Alliance of Liberals and Democrats for Europe

***The full report, including the preliminary draft resolution, will be presented to the Committee after the visit of the Presidential Committee to Moscow, which is foreseen for 18 and 19 January 2009, for adoption by the Committee at the beginning of the January 2009 part-session of the Assembly, on Monday, 26 January 2009.***

<sup>1</sup> This preliminary draft explanatory memorandum was made public by decision of the Monitoring Committee dated 17 December 2008.

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## I. Introduction

1. On 2 October 2008, the Parliamentary Assembly adopted Resolution 1633 (2008) on the consequences of the war between Georgia and Russia. In this Resolution, the Assembly strongly condemned the outbreak of war between two of its member states and considered that, during the war and its immediate aftermath, both countries had violated human rights and international humanitarian law, as well as the Statute of the Council of Europe and specific accession commitments.

2. While recognising that the war did not start on 7 August 2008, the Assembly considered that the shelling of Tskhinvali, without warning, by Georgia marked a new level of escalation and constituted a disproportionate use of armed force, albeit within its own territory, which violated international humanitarian law and Georgia's commitment to resolve the conflict peacefully. At the same time, the Russian response, including large scale military operations in Georgia, outside its own territory and the original conflict zone, failed to respect the principle of proportionality and international humanitarian law, and constituted a violation of the principles of the Council of Europe, as well as statutory obligations and specific accession commitments of Russia as a member state of this Organisation. The Assembly was especially concerned about the failure of Russia to stop the looting, destruction of property and acts of ethnic cleansing, and to protect the ethnic Georgian civilian population, in the areas under its de facto control, despite its duties under the Hague Convention (IV) on the Laws and Customs of War on Land. The Assembly considered the occupation of a significant part of the territory of Georgia by Russia and the subsequent recognition of the independence of the break-away regions of South Ossetia and Abkhazia by Russia to be a direct violation of the sovereignty, territorial integrity of Georgia as well as the inviolability of its frontiers, which it strongly condemned.

3. The Assembly remained especially concerned about the immediate implications of the war, especially the human suffering it caused and the human rights abuses that were committed during and after the war, including the large scale wanton destruction of property and looting, as well as the credible reports that ethnic cleansing was taking place in the areas under effective control of Russia and the de facto South Ossetian authorities. In Resolution 1633 (2008), in order to address these concerns, the Assembly formulated a series of precise and concrete demands to Russia and Georgia. In addition to the full and unconditional implementation of the Ceasefire agreement of 12 August 2008, in particular the obligation for Russia to withdraw its troops to their positions ex ante the war, the Assembly called upon the Russian and Georgian authorities, inter alia, to:

- co-operate fully in the establishment of an independent international investigation into the precise circumstances surrounding the outbreak of the war;
- co-operate fully with all international monitoring missions - especially those from the Organisation for Security and Co-operation in Europe (OSCE) and European Union (EU) - and allow these monitors unrestricted access to South Ossetia and Abkhazia;
- bring an immediate halt to, and investigate all reports of, human rights abuses and acts of ethnic cleansing in the two break-away territories and the so-called "buffer zone";
- investigate any alleged violations of humanitarian law and the laws on the conduct of war that occurred during the war and bring the perpetrators to justice;
- ensure the right of return of all IDPs as a result of this conflict and implement the six principles outlined by the Human Rights Commissioner of the Council of Europe;
- work towards the creation of a new peacekeeping format and internationalise the peace keeping force.

From the de facto authorities in South Ossetia, the Assembly demanded to co-operate fully with any international monitoring missions, to stamp out lawlessness, as well as to protect the security of all persons in the areas under their control, and to ensure the effective implementation of the six principles outlined by the Human Rights Commissioner of the Council of Europe. Russia was called upon to withdraw its recognition of the independence of South Ossetia and Abkhazia and to respect fully the sovereignty and territorial integrity of Georgia and the inviolability of its frontiers.

4. At the same time, the Assembly considered that the establishment of a dialogue was the best way forward to overcome the consequences of the war and to ensure the long-term stability of the region. However, a meaningful dialogue should be backed up by political will and concrete action. The Assembly therefore considered compliance with its demands in Resolution 1633 (2008) to be minimum requirements for a meaningful dialogue.

5. Following the adoption of Assembly Resolution 1633 (2008), the Bureau of the Assembly, at its meeting on 3 October 2008, decided to place on the agenda of the Standing Committee meeting in Madrid, on 28 November 2008, an item on "the follow-up given to Resolution 1633 (2008)" and to include in the

preliminary draft agenda of the January 2009 part-session of the Assembly a report on the implementation of Resolution 1633 (2008). The Monitoring Committee was seized on this matter for report and the Political Affairs Committee and the Committee on Legal Affairs and Human Rights for opinion. The Bureau also asked the Committee on Migration, Refugees and Population to prepare a report on the "humanitarian consequences of the war between Georgia and Russia" which could also be debated during the January 2009 part-session. In addition, the Bureau decided to ask the Presidential Committee to visit Tbilisi and Moscow to discuss with the authorities, at the highest level, the implementation of Assembly Resolution 1633 (2008) and to report back to the Standing Committee on the follow-up given to this resolution.

6. The Presidential Committee visited Georgia on 30 and 31 October 2008. The findings by the Presidential Committee on this visit, in which both co-rapporteurs participated, are reflected in this report<sup>2</sup>. The visit of the Presidential Committee to Russia was foreseen to take place on 13 and 14 November 2008. However, these dates coincided with the EU-Russia Summit in Nice. Many of the high-level meetings requested could therefore not take place, resulting in a programme that would not meet the requirements set by the Bureau for this visit. It was therefore decided to postpone the visit to Moscow to a later date, on 18 and 19 January 2009. The findings of the visit of the Presidential Committee to Moscow, as well as any update on recent developments, will be reflected in the full report to be presented to the Monitoring Committee after the visit to Moscow.

## II. Implementation of the Ceasefire agreement

### *i. Withdrawal of troops*

7. The 12 August 2008 Ceasefire agreement contains 6 points:

- non-use of force;
- definitive cessation of hostilities;
- access for humanitarian aid;
- withdrawal of Georgian military forces to their usual bases;
- withdrawal of Russian military forces to the lines they held before the hostilities broke out. While waiting for an international body, the Russian peacekeeping forces will implement additional security measures;
- opening of international discussions on the modalities of security and stability in Abkhazia and South Ossetia.

8. Following a delay in the implementation of the Ceasefire agreement by Russia, Mr Nicolas Sarkozy, President of the French Republic, in his capacity of President of the European Council, joined by Mr José Manuel Barroso, President of the European Commission, Mr Javier Solana, High Representative for the Common Foreign and Security Policy, and Mr Bernard Kouchner, French Minister of Foreign and European Affairs, travelled to Moscow on 8 September 2008 to press the Russian authorities to unconditionally implement the Ceasefire agreement, as well as to discuss the initial phase of its implementation.

9. In the agreement reached at this meeting, the Russian authorities reaffirmed their commitment to fully implement the 6-point Ceasefire agreement and agreed that Russia:

- would withdraw its troops from the areas adjacent to Abkhazia and South-Ossetia within 10 days after the deployment of an EU monitoring mission on 1 October 2008;
- would allow UN observers to remain in Abkhazia and allow OSCE monitors access to all of their previous areas of deployment, including in South Ossetia;

It was also agreed to start the talks under point 6 of the Ceasefire agreement on 15 October 2008 in Geneva.

10. The exact status of the Sarkozy-Medvedev agreement of 8 September has led to some controversy. While the international community and the Georgian authorities insist that the 8 September agreement outlines the first phase of the implementation of the 12 August Ceasefire agreement and in no manner supersedes it, the Russian position seems to be that this agreement replaces certain aspects of the Ceasefire agreement most notably with regard to the withdrawal of Russian troops. This was also clear during the Assembly's debate on 2 October 2008 on the consequences of the war between Georgia and

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<sup>2</sup> See also the Memorandum prepared by Mr Lluís Maria de Puig, President of the Assembly, for the Bureau of the Assembly, Doc. AS/Bur (2008) 81 rev., which the Bureau declassified at its meeting in Madrid, on 27 November 2008.

Russia, when the Russian delegation sought to replace references to the Ceasefire agreement with references to the “Sarkozy-Medvedev” agreement of 8 September 2008.

11. Georgian troops have in general withdrawn to their usual bases, with the exception of those that used to be based in areas that are currently under the control of Russia.

12. On 9 October, Russia completed its withdrawal of troops from the zones adjacent to South Ossetia and Abkhazia, after the deployment of the EU observers in these areas on 1 October 2008. However, Russian forces maintain a checkpoint in Perevi near the administrative border with South Ossetia, but within the undisputed territory of Georgia. The maintenance of military troops in Perevi is clearly in violation of not only the 12 August Ceasefire agreement, but also of the Sarkozy-Medvedev agreement of 8 September 2008. In a Statement on 16 November 2008, the EU insisted that Perevi is well outside the administrative borders of the break-away region of South Ossetia and therefore should be vacated, without delay, by Russian troops and South Ossetian militia.

13. According to the 12 August Ceasefire agreement, Russia should withdraw its troops to the positions held before the start of the conflict. This implies that the presence of Russian troops in these two regions should be limited to the positions and strengths as defined in the 1992 Sochi agreement with respect to the conflict zone in South Ossetia and the 1994 CIS treaty with respect to Abkhazia; this would limit the number of Russian troops in South Ossetia to 500 and in Abkhazia to less than 3,000. However, the Russian authorities assert that, with the recognition of the independence of South Ossetia and Abkhazia by Russia, the presence of Russian troops in these two regions is now governed by bilateral agreements with the de facto authorities of these regions. On 17 September, Russia signed far-reaching “friendship and co-operation” treaties with South Ossetia and Abkhazia. These treaties foresee the establishment of military bases and the stationing of up to 3,800 Russian troops in each of these two regions. Therefore they maintain that, with the withdrawal from the zones adjacent to these regions, Russia has fulfilled its obligations under the Ceasefire agreement. On 20 October, President Medvedev transmitted both treaties to the State Duma for ratification. Both treaties were unanimously ratified by the State Duma on 29 October 2008 and by the Council of the Federation on 11 November 2008. Russia has currently stationed several thousands of troops in each of the break-away regions.

14. The deployment of Russian troops foreseen in these “friendship and co-operation” treaties, and indeed the continued presence of Russian troops over and above the strengths and positions as outlined in the 1992 and 1994 agreements, is in violation of the Ceasefire agreement of 12 August, as well as the demands made by the Assembly in Resolution 1633 (2008). On 1 September 2008, the European Council concluded that: *“The military forces which have not yet withdrawn to the lines held prior to the outbreak of hostilities must do so without delay”*. In the conclusions of its meeting on 15 and 16 October 2008, the European Council noted *“with satisfaction that Russian troops have withdrawn from the zones adjacent to South Ossetia and Abkhazia as an essential additional step in the implementation of the agreements of 12 August and 8 September”*. These two conclusions were reconfirmed during the meeting of the General Affairs and External Relations Council on 10 and 11 November 2008, which concluded that: *“All points regarding the withdrawal of Russian troops from Georgia and the implementation of the agreements of 12 August and 8 September, as set out in the European Council conclusions of 1 September and 15 and 16 October, remain valid and relevant, including those concerning access to certain areas”*. In an interview on 13 November, President Medvedev acknowledged that “no text, and that includes our agreement with President Sarkozy, governs our military contingent” in South Ossetia and Abkhazia, stressing that it was up to Russia itself to decide upon its military deployment in these two break-away regions.

15. This issue is of particular importance with respect to the Akhagori district of South Ossetia and the ethnic Georgian areas of Upper Abkhazia. While administratively part of the former Autonomous Oblast of South Ossetia, whose administrative borders are now recognised by Russia as the “state borders” of South Ossetia, the Akhagori district, which is mainly populated by ethnic Georgians, has always been under the control of the central authorities in Tbilisi and was not part of the conflict zone. Indeed, Russian troops only occupied this district on 15 August, 3 days after the signing of the Ceasefire agreement on 12 August. Similarly, the ethnic Georgian areas in upper Abkhazia had been under the control of the central authorities in Tbilisi until the Georgian troops were driven out by Abkhaz separatist forces, purportedly with the help of Russian troops, on 8 August 2008.

ii. *Security situation: non-use of force and cessation of hostilities*

16. Following the deployment of EU monitors and the withdrawal of Russian troops from the zones adjacent to the break-away regions of South-Ossetia and Abkhazia, Georgian police forces moved back into these zones to ensure security in those areas. With the return of the Georgian police, the security vacuum

that existed in these zones dissolved and IDPs returned in large numbers to these areas. The security situation in the areas is generally calm.

17. While initially limited to a few isolated incidents, the situation along the administrative borders of South Ossetia and Abkhazia has been escalating during the last months, with an increasing number of violent incidents and provocations being reported. OSCE and EU monitors regularly report cases where Georgian villages and Georgian police posts along the administrative border with South Ossetia have come under fire with small arms and grenade launchers from the Ossetian side. The OSCE and EU monitors have not been able to confirm allegations that Ossetian villages have come under fire from the Georgian side, due to the refusal by Russia and the de facto authorities in South Ossetia to allow access of EU and OSCE monitors to the region. In their meeting with the Presidential Committee in Georgia, the international monitors indicated that the number of reported incidents and provocations along the administrative border with South Ossetia had started to approach the levels seen in the months before the outbreak of the military hostilities in August, raising fears of possible new clashes in these volatile regions.

18. On 22 and 24 October, two Abkhaz officials from the de facto authorities were killed in the Gali region, while, on 24 October, a local Georgian governor was killed in Muzhava on the administrative border with Abkhazia. On 15 November, a Georgian policeman was killed near the administrative border with Abkhazia. EU monitors reportedly came under fire from the Abkhaz side when investigating this incident. On 10 November, a bomb explosion killed a police officer in Dvani, near the administrative border of South Ossetia, while another one was killed and three injured when a second bomb was detonated when they were investigating the scene of the first explosion. The EU Monitoring Mission called this attack an unacceptable breach of the Ceasefire agreement by its perpetrators.

19. In addition to the attacks, there are continuing reports of bands of South Ossetian marauders crossing the administrative border in order to loot and terrorise Georgian villages and villagers close to the administrative border. We regret that Russia, despite its overwhelming troop presence, has so far failed to stop these incursions into undisputed Georgian territory.

20. Regrettably, the Russian authorities and South Ossetian de facto authorities have increased their rhetoric against the international observer missions in what seems to be an attempt to cast doubt on their impartiality. On 20 October, the de facto authorities in Tskhinvali accused the EU monitors of being biased against South Ossetia and, on 23 October, the Russian Foreign Minister criticised the EU monitors of being biased and not doing enough to ensure the security in the zones adjacent to South Ossetia and Abkhazia. This was dismissed by the Head of the EU Monitoring Mission.

21. We are seriously concerned that this increase in tensions and provocations could undermine the overall security and stability in the region and could lead to renewed clashes or even military hostilities. This underlines the urgent need for access of international monitors to the two break-away regions and for the establishment of a new international peacekeeping force as demanded by the Assembly.

*iii. International discussions on the modalities of security and stability in Abkhazia and South Ossetia*

22. The opening of international discussions on the modalities of security and stability in Abkhazia and South Ossetia is the sixth point of the 12 August Ceasefire agreement. During the Sarkozy-Medvedev meeting on 8 September 2008, it was agreed to start the talks under this point on 15 October 2008, in Geneva.

23. The first round of talks in Geneva, under the co-sponsorship of the UN, EU and OSCE and with the participation of the United States, did not lead to any results and was suspended on the same day, after the Russian and Georgian delegations failed to meet face to face.

24. The main stumbling point during the 15 October talks was the participation of representatives from the South Ossetian and Abkhaz de facto authorities. The Russian authorities insisted that the Abkhaz and South Ossetian representatives should be given a status equal to that of Georgia and Russia. This was refused by Georgia and the international community, which considered that this would imply recognising the statehood of these two regions. As a result, Russia refused to participate in the plenary opening session of the talks. The Georgian side agreed that representatives of the de facto authorities could participate in the informal working groups, but insisted that representatives of the Abkhaz and South Ossetian communities that favour integration with Georgia should also participate in these working groups. This was refused by the de facto authorities. As a result, it was decided to postpone the talks to 19 November, so as to give the negotiators time to work on the "procedural difficulties".



25. The second round of talks, held on 19 November 2008 in Geneva, was considered constructive by all participants and hailed by its co-sponsors as an important step forwards. In order to avoid a new stalemate, the talks took place in informal working groups where all participants, including representatives of the de facto authorities, participated under a personal title. During the talks, it was agreed by all participants to suspend the discussions on the most polemical issues to a future round and to focus on the security situation, as well as on the return of IDPs and freedom of movement across the administrative borders. It was agreed that a new round of talks would take place on 17 and 18 December in Geneva, during which, inter alia, a broader discussion on peacekeeping missions would also be included in the agenda.

26. We welcome the constructive attitude displayed by all participants during the second round of talks, which could play a crucial role in increasing the stability in the regions. However, we note that the talks remain fragile and that, to date, no plenary sessions have taken place. We hope that the same constructive spirit as witnessed in Geneva on 19 November will also prevail in order to find a solution for the format of these plenary sessions. This would allow all the different representatives of the South Ossetian and Abkhaz people to participate, while respecting Georgia's legitimate concern that no equal status can be given to the representatives of the de facto authorities to that of Georgia and Russia, as this would amount to an implicit recognition of the two break-away regions in violation of Georgia's sovereignty and territorial integrity.

### **III. Access of international monitoring missions to the South Ossetian and Abkhazian regions**

27. In Resolution 1633 (2008), the Assembly demanded that Russia, Georgia and the de facto authorities in South Ossetia co-operate with all international monitoring missions, specifically those of the UN, OSCE and the EU, and explicitly insisted that those observer missions should be given full and unconditional access to the areas under the control of Russia and the de facto authorities. In addition, in the Medvedev-Sarkozy agreement of 8 September 2008, Russia agreed to allow UN observers to remain in Abkhazia and to allow OSCE monitors access to all of their previous areas of deployment, including in South Ossetia.

28. On 9 October, the UN Security Council adopted Resolution 1839 which extended the UNOMIG<sup>3</sup> mandate until 15 February 2009, allowing for the continued presence of UN monitors in Abkhazia until that date, in line with the Sarkozy-Medvedev agreement. However, beyond that date, the future of the UNOMIG presence is uncertain: Russia and the Abkhaz de facto authorities demand changes to its mandate and dropping the reference to Georgia from its name. This could put into question the continued presence of UN observers in that region after 15 February. However, some officials from the Abkhaz de facto authorities are reported to have privately informed western diplomats that they would prefer a continued UN presence, in some format or another.

29. Georgia has given its full co-operation to the international monitoring missions and has allowed these missions, as well as other international humanitarian bodies, full and unconditional access to the areas under its control.

30. To our great concern, and in violation of the Sarkozy-Medvedev agreement and Assembly demands, OSCE observers have not been granted access to South Ossetia by Russia and the South Ossetian de facto authorities. In addition, EU observers have not been granted access to South Ossetia and Abkhazia, as requested by the EU and the international community, including the Assembly in Resolution 1633 (2008). This has, inter alia, hindered the investigation of reports of violence along the administrative borders, the improvement of the security situation in zones along the administrative borders of these two regions, as well as the return of IDPs to South Ossetia and Abkhazia.

31. The refusal to give access to international monitors to South Ossetia, which negatively affects the security situation, endangers further the overall stability in these volatile regions, potentially leading to renewed confrontations. We find this unacceptable, especially taking into account the fact that the unconditional access of international monitors to the two break-away regions does not, as such, affect the question of their status.

### **IV. Independent international investigation into the precise circumstances surrounding the outbreak of the war, as well as investigations into alleged violations of human rights and international law in the course of the war and its aftermath**

32. An independent international investigation into the precise circumstances surrounding the outbreak of the war, as well as the exact sequence of events in August 2008, is one of the key demands of the Assembly expressed in Resolution 1633 (2008). Recent media reports, from different sides, giving support to the

<sup>3</sup> UNOMIG is an abbreviation for United Nations Observer Mission in Georgia.

claims made by the Russian or the Georgian authorities, only serve to show the extent of the controversy and the conflicting accounts regarding the circumstances surrounding the outbreak of the war. This underscores the need for an independent international investigation, as demanded by the Assembly.

33. We welcome the fact that, from the onset, the Georgian authorities publicly stated their full support for the establishment of such an independent international inquiry, as well as their readiness to give it their full co-operation. This support was reiterated to the Presidential Committee during its visit to Tbilisi on 30 and 31 October 2008. We also welcome the fact that, in a meeting with the Council of Foreign Relations in Washington, on 15 November, President Medvedev stated that Russia would equally welcome the establishment of such an independent international investigation, and that Russia was ready to co-operate fully with it.

34. The EU established, on 2 December 2008, an independent international fact-finding mission on the conflict in Georgia to investigate the origins and the course of the conflict, including with regard to international law<sup>4</sup>, humanitarian law and human rights, and the accusations made in that context<sup>5</sup>. Ms Heidi Tagliavini has been appointed head of the fact-finding mission for the period from 2 December 2008 to 31 July 2009. Ms Tagliavini was former deputy State Secretary of Switzerland and, from 2002 to 2006, the Head of UNOMIG in Georgia. The geographical scope and time span of the investigation will be sufficiently broad to determine all the possible causes of the conflict. The results of the investigation will be presented to the parties to the conflict, and to the EU Council, the OSCE and the United Nations (UN), in the form of a report. Taking into account the fact that both Georgia and Russia are members of the Council of Europe and the important human rights implications of the war between them, we consider it important that the report of the fact-finding mission would also be presented to the Council of Europe and its Assembly. We therefore call upon the member states of the Council of Europe which are also EU members to ensure that the report of the EU mission is also presented to the Council of Europe in order for its findings to be debated before the Assembly.

35. In order to ensure the independence of the investigations, Ms Tagliavini is fully independent to decide on the composition of the mission, as well as its procedures and working methods. The fact-finding mission shall comprise recognised experts, in particular lawyers, historians, military staff and human rights experts. The implementation of the EU Council's decision on the fact-finding mission shall be reviewed by the Council before 31 July 2009 and the work of the mission may be prolonged, if necessary.

36. We welcome the establishment of the independent international fact-finding mission and reiterate the demand of the Assembly that both Georgia and Russia fully and unconditionally co-operate with its investigations. In addition, we call upon all Council of Europe member states and states that have observer status with the Organisation, to make available to this fact-finding mission any information, including satellite data, that may be of relevance to the investigation. We equally welcome the support of Russia and Georgia for its establishment, and their declared willingness to co-operate with it. We would, however, like to stress that only their effective, full and unconditional co-operation with the investigation will mean that they have met the Assembly's demands in this respect. In the light of this important development, we will not touch further upon the possible causes of, and circumstances leading to, this war. We recommend that the Assembly comes back to this issue when the fact-finding mission has published its report and findings.

37. In parallel with the discussions on an international inquiry, the Parliament of Georgia has started its own inquiry into the circumstances of the war, the exact sequence of events in August and the decisions taken by the Georgian executive authorities. For this purpose, the Parliament established, on 7 October 2008, a special Ad Hoc Commission which is chaired by a member of the parliamentary opposition, Mr Paata Davitaia. The Inquiry Commission will report back to the Parliament, but has the power to refer issues to the General Prosecutor for investigation, if it finds that possible criminal actions may have taken place.

38. In order to ensure the fullest transparency of its work, the Commission meets in public, unless issues affecting national security are discussed, and its meetings are broadcast live on television. In addition, the full transcript of its proceedings is published, in both Georgian and English, on the website of the Georgian Parliament. Moreover, the public has been exhorted to provide information, as well as raise any questions they wish to see answered by the Commission.

39. The Commission started its work on 10 October and, to date, has heard testimonies from key decision-makers during the war, including from President Saakashvili, the Minister of Integration, the Minister of Foreign Affairs, the Secretary of the National Security Council, the Head of the Security Services, the

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<sup>4</sup> including the Helsinki Final Act

<sup>5</sup> including allegations of war crimes

Chief of Staff of the Georgian Armed Forces and the Speaker of the Parliament. The ruling party has publicly stated that any of its officials that fail to fully co-operate with the Inquiry Commission will face dire political consequences. Although the Commission does not have the constitutional power to summon the President to testify, President Saakashvili has stressed that "not a single official is immune" from being questioned by the Inquiry Commission and that he would be ready "to come and answer all questions" put to him by the Commission. He subsequently testified to the Commission on 28 November 2008.

40. From our meetings with the Chairman of the Commission, we are convinced of the clear political will of the Commission to fully investigate the circumstances of the war and to address the many questions that have been raised in its context. We believe that this is an example of how parliamentary democracies should function, by making the events that lead to the outbreak of the war, as well as its conduct and the different responsibilities in relation to it, subject to a wide public debate. However, in this context, we regret that the questioning of the former Ambassador of Georgia to Moscow, who has been publicly critical of the authorities' conduct of the crisis since his dismissal in June 2008 for unrelated reasons, resulted in a brawl between him and some members of the ruling party. We would call upon all members of the Commission to refrain from any actions and behaviour that may be seen as compromising its impartiality.

41. We are not aware of the establishment of any such similar commission, with a comparable mandate, composition and powers, by the Parliament of Russia. In his meeting with the Ad Hoc Committee of the Assembly to study the situation on the ground in Russia and Georgia, that visited Moscow from 21 to 23 September 2008, the Chairman of the Council of the Federation indicated that the Council was considering to set up an ad hoc committee to study the conduct and origins of the war as well as the actions of the Russian authorities in relation to this. We therefore would urge the Council of the Federation to establish an inquiry committee with the same scope and mandate as that established by the Georgian Parliament.

42. Since the adoption of Resolution 1633 (2008), a number of reports have been published, inter alia by such respected non-governmental organisations as Amnesty International and Human Rights Watch, that have documented evidence and witness testimonies that give credence to the claims that both Russia and Georgia have committed violations of human rights and international humanitarian law – possibly including war crimes - in the course and aftermath of the war, such as the indiscriminate and disproportionate use of armed force, the forceful displacement of civilians, looting, pillage, wanton seizure and destruction of property and acts of ethnic cleansing. We are seriously concerned about reports that the looting and pillaging, as well as harassment of civilians, hostage-taking and acts of ethnic cleansing, are still continuing in areas under Russian control. In addition, the UNOSAT satellite images reveal the massive damage of Georgian villages predominantly after cessation of hostilities.

43. In Resolution 1633 (2008), the Assembly demanded that Russia and Georgia "stamp out lawlessness", investigate all allegations of human rights violations committed during the war and its aftermath and hold the perpetrators to account before domestic courts.

44. The Inquiry Commission of the Georgian Parliament has the mandate to investigate allegations of violations of human rights and international humanitarian law committed by Georgia in the course of the war. As already mentioned, it has the power to refer to the General Prosecutor for investigation any allegations of criminal behaviour in this respect. The Commission has not yet finalised its investigations and we are not aware of any cases having been referred to the General Prosecutor's Office.

45. The General Prosecutor's Office of Georgia, for its part, launched, on 9 August 2008, an investigation into deliberate violations of international humanitarian law in the course of the war and its aftermath. The Prosecutor's Office has made clear that this investigation is aimed at all violations regardless of who has committed them on either side. The Georgian government has stated that it will fully co-operate with these investigations.

46. The Investigative Committee of the General Prosecutor's Office of Russia launched an investigation into genocide committed by Georgian troops against Russian citizens (ethnic Ossetians) in South Ossetia. In addition, it opened an investigation into crimes committed by Georgia against the Russian military. It would seem that there is no intention to investigate possible violations of human rights and humanitarian law committed by Russian forces and forces under the control of the de facto South Ossetian authorities. Indeed, the special Investigation Committee reportedly closed its investigations on the ground in South Ossetia in mid-September, at a time when credible reports indicated that looting, pillaging, as well as acts of ethnic cleansing were taking place on a daily basis in the areas under Russian control, including in the so-called "buffer zone".

47. To our knowledge, neither the investigation of the General Prosecutor's Office of Georgia, nor that of the General Prosecutor's Office of Russia, have to date resulted in any persons being charged.

48. Amnesty International has reported that the Public Chamber of Russia, a consultative body of NGOs, established, on 12 August 2008, a Public Commission on "War Crimes in South Ossetia and Civilian Victims Aid".

49. The Russian authorities have been actively encouraging and assisting ethnic Ossetians to file applications with the European Court of Human Rights against alleged human rights violations committed by Georgia in the course of the war. On 10 October 2008, the European Court of Human Rights announced that it had received over 2.700 individual applications from South Ossetians against Georgia. The unprecedented number of applications is having a considerable impact on the already heavy workload of the Court, especially in the absence of the reform of the Court foreseen in Protocol 14 to the European Convention on Human Rights.

50. Georgia has filed an inter-state application against Russia with the European Court of Human Rights and, on 12 August 2008, on a request of the Georgian authorities, the European Court of Human Rights indicated interim measures to Russia and Georgia under Rule 39 of the Court.

51. Georgia has also filed with the International Court of Justice (ICJ) in the Hague a request for the indication of provisional measures in order to preserve its rights under the International Convention on the Elimination of All Forms of Racial Discrimination "*to protect its citizens against violent discriminatory acts by Russian armed forces, acting in concert with separatist militia and foreign mercenaries*". On 15 October 2008, the ICJ held that the case fell under its jurisdiction and ordered provisional measures to be taken by both Georgia and Russia.

52. Under the Rome Statute, the International Criminal Court (ICC) has jurisdiction over possible war crimes and crimes against humanity. As Georgia has ratified the Rome Statute, the ICC has jurisdiction over such crimes committed on the territory of Georgia in the course of the conflict, irrespective of whether they were committed by Georgian or Russian citizens, notwithstanding the fact that Russia has not yet ratified the Statute. In addition, as Russia has signed the Rome Statute, according to the Vienna Convention on the Law of Treaties, it is bound to refrain from any action that would defeat its object and purpose. The Prosecutor of the ICC has reportedly started his preliminary analysis of information received. This is the first formal step in deciding whether to seek authorisation from the Pre-Trial Chamber to open a formal investigation.

## **V. Humanitarian consequences of the war**

53. The humanitarian consequences of the war between Georgia and Russia are the subject of a separate report by the Committee on Migration, Refugees and Population. We will therefore not deal extensively with these issues in the context of this report.

54. Following the re-establishment of a security environment in the zones adjacent to the break-away regions of Abkhazia and South Ossetia, many IDPs have returned to these areas. On 17 October 2008, UNHCR reported that, from the originally recorded 133,000 IDPs in Georgia, more than 100,000 had returned to their homes, among which 20,000 to the former "buffer zone". However, many homes in the areas adjacent to South Ossetia have been looted and destroyed by South Ossetian militias in the aftermath of the conflict. The UN estimates that around 11,500 IDPs cannot return to their original residences in the zones adjacent to South Ossetia. The Georgian Ombudsman estimates that, at present, a total of 23,000 IDPs cannot return to their pre-war place of residence. Moreover, occasional incursions by South Ossetian marauders make many IDPs fearful to return permanently to the areas close to the administrative border.

55. The return of IDPs to ethnic Georgian villages in South Ossetia and Abkhazia is considerably more difficult, if not outright impossible. Amidst continuing reports of acts of ethnic cleansing, most IDPs fear for their safety if they return, especially in the absence of independent international monitors from the EU and OSCE. In addition, most ethnic Georgian villages in South Ossetia have been looted and razed.

56. The return of ethnic Georgian IDPs to the break-away region of South Ossetia is further complicated by the insistence of the de facto authorities that IDPs returning to it accept the South Ossetian "nationality" and rescind the Georgian one. Ethnic Georgians in the Gali District of Abkhazia are reportedly also beginning to be put under pressure to accept Abkhazian passports. The Abkhaz de facto Foreign Minister, Mr Sergey Shamba, has informed OSCE/ODIHR officials that Georgian IDPs would be welcome to return to the Gali district and the upper Kodori Gorge. However, he said that the return of IDPs (including the IDPs from the 1994 conflict) to other areas of Abkhazia would be "impossible" under the current circumstances.

57. A further complication is the result of restrictions imposed on the freedom of movement for civilians. Civilian movement across the administrative border has until now been possible on a limited ad hoc basis. However, with the entry into force of the “friendship and co-operation” agreements between Russia and the break-away regions, which include an open border agreement between the parties, the administrative borders of these regions will be manned by Russian border guards, ending any possibilities for the free movement of civilians across the administrative borders. In this context, the de facto leadership in South Ossetia and Abkhazia have indicated that they plan to implement a visa regime for Georgians in the very near future.

58. The situation in the Akhagori district of South Ossetia, which is a predominantly ethnic Georgian area that was not directly affected by the war in August and which, prior to the war, was never under the control of the de facto authorities, is a matter of special concern. Indeed, Russian troops occupied this district on 15 August, some 3 days after the signing of the Ceasefire agreement on 12 August.

59. Recent reports by Human Rights Watch and the Russian human rights NGOs, Memorial and Demos Centre, have documented extensive evidence that systematic looting, pillaging, hostage taking and attacks on ethnic Georgians by South Ossetian militias continue to take place in the Akhagori district of South Ossetia, and that the Russian forces have done nothing to stop them. We strongly condemn the ethnic cleansing in the Akhagori district by South Ossetian militia, as well as Russia’s unwillingness to stop this from happening or to bring its perpetrators to justice. We would like to reiterate that, under international law, Russia bears full responsibility for violations of human rights and humanitarian law committed in the areas under its de facto control, including those committed at the behest of the de facto authorities in Tshkinvali.

60. As a result of the continuing attacks on ethnic Georgians, many of them have fled the Akhagori district out of safety concerns. In addition, many more have left due to fears that the administrative border with Georgia will be closed or because they are obliged to accept the South Ossetian nationality. According to UNHCR, Georgia registered more than 1,700 IDPs from the Akhagori area in October alone.

61. Humanitarian aid has been reaching the two break-away regions, mainly via Russia. However, significant obstacles remain for the access of humanitarian organisations and aid as a result of the insistence, on the one hand, of Georgia that access to the two break-away regions takes place via Georgia, and, on the other hand, of Russia and the de facto authorities that access takes place via Russia.

62. The UN and other international (humanitarian) organisations have been given unrestricted access by the Georgian authorities to the zones adjacent to South Ossetia and Abkhazia. Regrettably, the de facto authorities have only allowed limited access for these organisations, with the exception of the International Committee of the Red Cross (ICRC), to the territories under their control.

63. In his report to the Committee of Ministers of the Council of Europe, the Commissioner for Human Rights expressed his concern about the possible negative impact of the law on the occupied territories that was adopted by the Georgian Parliament on 28 October 2008. According to this law, access for foreigners and stateless persons to the occupied territories is subject to authorisation by the Georgian authorities, while entry into these areas without such an authorisation would be a criminal offence under Georgian law. Moreover, this law restricts economic activity with the two regions and declares null and void any certificate issued by the de facto authorities, including civil certificates and property deeds. In his report, the Commissioner expressed concern that certain provisions in the law on the occupied territories may be at variance with principles of international human rights law, including the European Convention on Human Rights. We would therefore join the President of the Assembly in his call to the Georgian authorities to submit this law to the European Commission for Democracy through Law (Venice Commission) for opinion and to fully implement its recommendations.

## **VI. Recognition of independence of the break-away regions of Abkhazia and South Ossetia by Russia**

64. In Resolution 1633 (2008), the Assembly condemned the recognition of the break-away regions of Abkhazia and South Ossetia by Russia as a violation of Georgia’s sovereignty, territorial integrity and the inviolability of its recognised international borders. The Assembly therefore called upon Russia to withdraw its recognition and urged all member states, as well as states holding observer status with the Organisation, not to recognise the independence of these two regions. The Assembly regretted that the recognition by Russia was prompted by a unanimous demand of both houses of the Parliament of Russia.

65. The Russian authorities, as well as the Federal Parliament, have publicly stated that they do not intend to withdraw their recognition of the independence of South Ossetia and Abkhazia. The “friendship and co-operation” treaties signed by Russia with South Ossetia and Abkhazia on 17 September 2008, which were unanimously ratified by the State Duma and Council of the Federation on 29 October and 11 November 2008 respectively, further confirmed this position. Under the treaties, Russia has pledged to help the two break-away regions to protect their borders and will be responsible for the control of them, and their signatories have granted each other the right to set up military bases on their respective territories. The treaties also formalised economic co-operation between Russia and the two break-away regions, and allowed dual citizenship for Russian, Abkhaz and South Ossetian residents.

66. The recognition of the independence of Abkhazia and South Ossetia and the subsequent signing and ratification of the “friendship and co-operation” treaties not only violate the Ceasefire agreement, international law, the Statute and principles of the Council of Europe and Russia’s accession commitments, but also impede the normalisation of the current situation and further affect the stability in the region. In this context, we also regret that Russia seems to be making the implicit recognition of the independence of the two break-away regions by the international community, including by our Assembly, a point in its co-operation with international organisations, as borne out by its insistence that the representatives of the de facto authorities of the two break-away regions should be given state status in the Geneva talks.

## **VII. Creation of a new peacekeeping format and internationalisation of the peacekeeping force**

67. In Resolution 1633 (2008), the Assembly called upon Russia and Georgia to work towards the creation of a new peacekeeping format and to internationalise the peacekeeping force.

68. Georgia formally withdrew from the 1992 Sochi and 1994 Moscow agreements that established the pre-war peacekeeping formats on 27 August 2008, and has indicated that it would welcome a peacekeeping force that would include European peacekeepers. The Georgian authorities have not ruled out their acceptance of a possible Russian participation in such a peacekeeping force. The Russian authorities have announced that the former peace agreements are now replaced by the bi-lateral friendship and co-operation treaties between Russia and the break-away regions and have stated that they see no role for any “additional” international peacekeeping format.

69. We would like to stress that Russia, as a party to the conflict, cannot be the sole provider of peace keeping troops and the sole guarantor of peace and security in the two break-away regions. As we have mentioned before, the absence of an international peacekeeping force, especially in combination with the presence of a large number of Russian troops, undermines the stability in the region, as well as the possibilities for the normalisation of the situation resulting from the war. In that respect, we welcome the fact that the issue of peacekeeping is on the agenda for the next round of talks in Geneva and call upon a constructive approach by all participants in these talks.

## **VIII. Overview of implementation of the demands of the Assembly as expressed in Resolution 1633 (2008)**

### *i. Georgia*

70. On the basis of the recent developments described in this report, we consider that Georgia has implemented the following demands of the Assembly outlined in Resolution 1633 (2008). It has notably:

- implemented fully and unconditionally the Ceasefire agreement of 12 August 2008 (§ 22.1 of the Resolution);
- allowed full access of, and given its fullest co-operation to, international monitors to the territories under its control (§ 22.2 and 23.3);
- taken measures to ensure the safety – including from mines and unexploded ordnances - of citizens in, and allowed for the voluntary return of IDPs to, the territories under its control (§ 23.1, 23.2 and 23.4);
- worked towards a new peacekeeping format and worked to internationalise the peacekeeping force (§ 22.4);
- made use of available means of peaceful conflict resolution (§ 22.10);

- participated unconditionally in the Geneva negotiations foreseen in point 6 of the Ceasefire agreement (§ 22.5). We consider that the condition from the Georgian authorities that the participation of the de facto authorities of the two break-away regions should not be taken to signify any implicit recognition of them is justified and does not contradict the Assembly's corresponding demand.

71. The Georgian authorities have stressed that they would welcome the establishment of, and would co-operate unconditionally with, an independent international inquiry into the war and its circumstances (§ 22.3). They can therefore be said to have taken all the necessary steps to comply with this demand of the Assembly, even though a final judgement can only be made when the inquiry has been completed and Georgia's co-operation in it has been fully assessed.

72. The Georgian authorities have taken concrete measures to effectively implement the six principles formulated by the Council of Europe Commissioner for Human Rights, in compliance with § 23.7 of Resolution 1633 (2008). We note that the implementation of several of these principles, including the exchange of prisoners of war, the unconditional return of IDPs and the provision of adequate accommodation to them, are still ongoing. We therefore urge the Georgian authorities to continue to implement the Commissioner's six principles as well as the related demands made in sub-paragraphs § 23.4 and 23.5 of Resolution 1633 (2009).

73. Overall, Georgia seeks to ensure effective respect for all human rights under the ECHR and humanitarian norms under the 1949 Geneva conventions and their additional protocols, in the territories under its control, in compliance with § 22.7 of the resolution. However, we share the concerns expressed by the Commissioner for Human Rights that certain provisions in the new law on the occupied territories may be at variance with principles of international human rights law, including the European Convention on Human Rights. We therefore call upon the Georgian authorities to submit this law to the Venice Commission for opinion and implement its recommendations. This would also ensure full compliance with § 22.7 of Resolution 1633 (2008).

74. The Georgian authorities have been allowing unhindered access by the press to the part of the conflict zone under its control, in line with § 22.9. However, we are concerned that the provisions in the law on the occupied territories that make it obligatory for foreign nationals to obtain prior authorisation from the Georgian authorities to visit the Georgian territories under Russian control could hinder the free access of the press to those parts of the conflict zone, in contradiction with § 22.9.

75. The Georgian Prosecutor General's Office has opened an investigation into violations of humanitarian and human rights law in the course of the war and its immediate aftermath. This investigation explicitly also includes possible violations committed by Georgia. In addition, the parliamentary Inquiry Commission has the mandate to investigate the war and look into possible human rights and humanitarian law violations committed by all sides in the course of the war. It has the right to refer cases to the General Prosecutor for investigation. We therefore welcome the efforts of the Georgian authorities to comply with § 22.8. These investigations are still ongoing and we are not aware that they have as yet resulted in any persons being charged. In the light of the overwhelming and credible evidence mentioned in this report that human rights and humanitarian law were violated by both sides during the war, including by Georgia, full compliance with this demand of the Assembly can only be assessed on the basis of the outcome of these investigations and the manner, including impartiality, in which the allegations of violations are addressed. We therefore call upon the Georgian authorities to inform the Monitoring Committee of the Assembly, on a regular basis, about the progress of the investigations conducted by both the parliamentary Inquiry Commission and the Prosecutor General's Office. We consider that compliance with this Assembly demand is still pending.

76. Regrettably, Georgia has not yet signed the UN Convention on Cluster weapons. In addition, the relations and rhetoric between Russia and Georgia are still tense and influenced by the war. We cannot therefore consider that Georgia has complied with § 22.6 and 22.11 of Resolution 1633 (2008).

#### *ii De facto authorities in South Ossetia*

77. On the basis of the recent developments described in this report, we consider that, with regard to the demands addressed to the de facto authorities in South Ossetia, the latter have generally complied with the demand to exchange prisoners of war (§ 23.5), although we are concerned about reports that hostage takings still occur, in contravention of § 23.5.

78. Regrettably, the South Ossetian de facto authorities have failed to co-operate with international monitoring missions, as demanded in § 23.3, and are placing unreasonable restrictions on the access of humanitarian organisations to South Ossetia in contravention of the demand of the Assembly in § 23.1.2. In

addition, the South Ossetian de facto authorities have failed to stamp out lawlessness and to guarantee the security in the areas under their de facto control, as demanded in § 23.1. and § 23.1.1. They have also failed to guarantee the right of return of all IDPs from the areas under their control. We therefore consider that they have not complied with the demands formulated in §23.3, § 23.4 and § 23.7 of Resolution 1633 (2008).

*iii. Russia*

79. On the basis of the recent developments described in this report, we consider that Russia has implemented the following demands of the Assembly outlined in Resolution 1633 (2008):

- removal of mines and unexploded ordnances and raising awareness among the affected population about the danger posed by such devises. We understand that this difficult task is ongoing (§ 23.2 of the Resolution);
- release and exchange of prisoners of war (§ 23.5), on the understanding that this is also an ongoing process;
- on the basis of the constructive proceedings during the latest round of the Geneva talks, we would consider that Russia has complied with § 22.5 of Resolution 1633 (2008) regarding participation in the Geneva talks. While we support the principle that different representatives of the Abkhaz and South Ossetian people, both those of the de facto authorities and those favouring integration with Georgia, should participate in these talks, we consider that Russia’s insistence that representatives of the de facto authorities should be given state status equal to that of Georgia and Russia in these talks, infringes on Georgia’s sovereignty and territorial integrity and could raise questions regarding Russia’s continued compliance with this point.

80. The Russian authorities have indicated that they would welcome the establishment of, and would co-operate unconditionally with, an independent international inquiry into the war and its circumstances (§ 22.3). They can therefore be said to have taken all the necessary steps to comply with this demand of the Assembly, even though a final judgement can only be made when the inquiry has been completed and Russia’s co-operation in it has been fully assessed.

81. The Russian Prosecutor General has initiated investigations against human rights and humanitarian law violations committed by Georgian troops during the course of the war against Russian citizens and against Russian servicemen. However, despite several credible reports that provide evidence that human rights and humanitarian law were also violated by Russia and the South Ossetian forces allied to it in the course of the war and its aftermath, no investigation has been started by the Russian Prosecutor General into such alleged violations. We therefore consider that Russia has not complied with § 22.8 of Resolution 1633 (2008).

82. While press accredited in Moscow has had access to the break-away regions of South Ossetia and Abkhazia, continued restrictions on journalists’ freedom of movement, including the refusal of access to the two regions from undisputed Georgian territory, are in contradiction with § 22.9 of Resolution 1633 (2008).

83. The Russian authorities have asserted that the former peace agreements with respect to South Ossetia and Abkhazia are now replaced by the bi-lateral “friendship and co-operation” treaties between Russia and these break-away regions and that they see no role for any “additional” international peace keeping format, as demanded in § 22.4. However, we take note of the fact that the issue of peacekeeping has been included into the agenda of the December round of talks in Geneva. We hope that these talks will lead to concrete and constructive results which would imply that Russia is complying with this demand of the Assembly.

84. While we welcome the prompt withdrawal of the areas adjacent to the break-away regions of Abkhazia and South Ossetia, Russia has so far failed to withdraw its military forces to the positions ex ante the war in violation of the Ceasefire agreement of 12 August, as well as the Sarkozy-Medvedev agreement of 8 September 2008 and the demand of the Assembly. In addition, the continuing attacks and provocations on Georgian villages and police forces, originating from the South Ossetian side of the administrative border are, as mentioned by the Head of the EU Monitoring Mission, a clear violation of the Ceasefire agreement. We would like to stress that Russia is directly responsible for any violations of this agreement at the behest of the South Ossetian de facto authorities. We therefore regret to note that Russia has not implemented all points of the Ceasefire agreement of 12 August 2008, as demanded by the Assembly in § 22.1 of Resolution 1633 (2008).



85. We are extremely concerned by Russia's failure to stop the ongoing looting, pillaging and ethnic cleansing in South Ossetia and to bring its perpetrators to justice. Russia has therefore not complied with the Assembly demands to ensure effective respect for all human rights under the ECHR in the territories under its control (§ 22.7), take urgent measures to ensure the safety of all persons within the region of South Ossetia (§ 23.1), as well as to stamp out lawlessness in accordance with Article 43 of the Hague Convention (§ 23.1.1).

86. Russia's continuing refusal to give access to OSCE and EU monitors to South Ossetia, as well as access to EU monitors to Abkhazia, are in contradiction with the demands formulated by the Assembly in § 22.2 and § 23.3 of Resolution 1633 (2008).

87. As mentioned in the recent report of the OSCE/ODIHR<sup>6</sup> dealing with the human rights situation in the former conflict areas, prepared at the request of the Finnish Chairman-in-Office of the OCSE, Russia and the South Ossetian de facto authorities are placing unreasonable restrictions on the access of humanitarian organisations to South Ossetia and Abkhazia. Moreover, the right of return of IDPs from those areas is severely restricted or refused outright. We have therefore to consider that Russia is not complying with § 23.1.2, § 23.4 and § 23.7 of Resolution 1633 (2008).

88. Russia has been actively encouraging and assisting ethnic South Ossetians to file applications against Georgia with the European Court of Human Rights. However, as stated by the OSCE High Commissioner on National Minorities, the restrictions on the right of return of IDPs from the areas under control of the de facto South Ossetian leadership is in contradiction to the provisional measures ordered by the International Court of Justice in the Hague. We therefore do not consider that Russia has complied with § 22.10 of Resolution 1633 (2008).

89. Regrettably, Russia has not yet signed the UN Convention on Cluster weapons. In addition, the relations and rhetoric between Russia and Georgia are still tense and influenced by the war. We cannot therefore consider that Russia has complied with § 22.6 and § 22.11 of Resolution 1633 (2008).

90. The Russian authorities, as well as the Federal Parliament, have publicly stated that they do not intend to withdraw their recognition of the independence of South Ossetia and Abkhazia, contrary to Assembly demands as formulated in § 22.2 of Resolution 1633 (2008).

## **IX. Preliminary considerations**

91. We reiterate the position taken and demands made by the Assembly in Resolution 1633 (2008).

92. We fully support the establishment by the EU, on 2 December 2008, of an independent international fact-finding mission to investigate the origins and the course of the conflict in Georgia, including with regard to international law, humanitarian law and human rights, and the accusations made in that context. We urge the member states of the Council of Europe that are also members of the EU to ensure that the report of this mission is also presented to the Council of Europe and recommend to the Assembly to include a debate on its findings at a future part-session.

93. We welcome the support of Russia and Georgia for the establishment of this independent fact-finding mission and their declared willingness to fully co-operate with it. We call upon Russia and Georgia to effectively, fully and unconditionally co-operate with the mission.

94. We welcome the constructive approach and political will of the Georgian authorities to comply with the demands of the Assembly expressed in Resolution 1633 (2008). As a result, Georgia has complied with many, but not all, demands of the Assembly expressed in this resolution. We call upon the Georgian authorities to ensure that all remaining outstanding demands are promptly and fully complied with.

95. We welcome, in particular, the establishment of an Inquiry Commission by the Georgian Parliament as evidence that it is willing to reflect on the actions and mistakes of the Georgian authorities in the outbreak and the course of the war. We stress that the credibility of the work of this Commission, as well as the investigations by the Georgian General Prosecutor into possible violations of human rights and humanitarian law by Georgia, are crucial to ensure that Georgia is in full compliance with Resolution 1633 (2008).

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<sup>6</sup> OSCE/ODIHR report on "human rights in the war-affected areas, following the conflict in Georgia" (CIO.GAL/182/08), 1 December 2008

96. We are concerned that some provisions of the Georgian law on the occupied territories may be at variance with principles of international human rights law, including the European Convention on Human Rights. We therefore call upon the Georgian authorities to submit this law to the Venice Commission for opinion and to implement its recommendations.

97. We regret that Russia has not yet complied with a significant number of key demands made by the Assembly, including the many demands that are not related to, and therefore have no effect on, the question of the status of the two break-away regions.

98. We condemn the ongoing violations of human rights and international law, such as looting, pillaging and ethnic cleansing that are taking place in South Ossetia and which Russia has failed to stop. We reiterate that Russia is fully responsible for any human rights violations in the territories under its effective military control. We therefore call upon Russia to bring these practices to an immediate halt, to prosecute all perpetrators and to implement fully all Assembly demands aimed at protecting the human rights of all individuals in the two break-away regions.

99. We are seriously concerned that the escalation of tensions and provocations along the administrative borders is undermining the stability in the region and could lead to renewed clashes or an outbreak of hostilities. The access of international monitors to South Ossetia and Abkhazia and the establishment of a new internationalised peacekeeping format and force are therefore crucial to establish security and guarantee the stability in the region.



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26 January 2009

## **Implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia**

### Report

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Co-rapporteurs: Mr Luc VAN DEN BRANDE, Belgium, Group of the European People's Party, Mr Mátyás EÖRSI, Hungary, Alliance of Liberals and Democrats for Europe

### *Summary*

The Monitoring Committee considered the implementation by Georgia and Russia of the recommendations and demands made by the Assembly in Resolution 1633 on “the consequences of the war between Georgia and Russia”, which was adopted in October 2008. Based on the analysis made by the co-rapporteurs, the committee concluded that Georgia has complied with many, but not all, of the Assembly’s demands. However, the committee concluded with regret that Russia has not yet complied with the majority of the demands made by the Assembly, including the many demands that are not related to, and therefore have no effect on, the question of the status of the two break-away regions of South Ossetia and Abkhazia.

The committee is seriously concerned that the escalation of tensions and provocations along the administrative borders of the break-away regions of South Ossetia and Abkhazia is undermining the stability of the region and could lead to renewed clashes or an outbreak of hostilities. Full and unconditional access of international monitors to South Ossetia and Abkhazia, as well as the establishment of a new internationalised peacekeeping force in the region, are essential to guaranteeing stability and security. The committee reiterated its support for the territorial integrity of Georgia. It expressed its concern about the ongoing human rights violations, including ethnic cleansing in South Ossetia and called upon Russia and the facto authorities to bring these practices to an immediate halt and their perpetrators to justice.

The committee considers it unacceptable that, as a result of the consequences of the war between Russia and Georgia, persons residing in Abkhazia and South Ossetia should not be effectively covered by the human rights protection mechanisms granted to them as citizens of a Council of Europe member state under the European Convention on Human Rights, as well as other relevant Council of Europe conventions. It therefore proposes the development of a comprehensive action plan to ensure that the rights guaranteed under the Convention are effectively secured for persons residing in South Ossetia and Abkhazia.

The establishment of a genuine dialogue is the only way forward for the resolution of any conflict and to secure long-term stability in the region. The committee therefore proposes the setting up of a special ad hoc committee, in which both Georgian and Russian parliamentarians should be invited to participate, to discuss their differences and develop concrete proposals to address the consequences of the war.

**A. Draft resolution**

1. On 2 October 2008, the Parliamentary Assembly adopted Resolution 1633 (2008) on the consequences of the war between Georgia and Russia. In this resolution, the Assembly strongly condemned the outbreak of war between two of its member states and considered that, during the war and its immediate aftermath, both countries had violated human rights and humanitarian law principles, as well as the Statute of the Council of Europe and specific accession commitments. Therefore, the Assembly placed a series of concrete demands on both Georgia and Russia, as well as on the de facto authorities in South Ossetia and in Abkhazia. In so doing, the Assembly provided a transparent, impartial and concrete road map to address the consequences of the war, not only for the parties concerned, but also for the Assembly itself.

2. The Assembly welcomes the establishment, by the European Union (EU), on 2 December 2008, of an independent international fact-finding mission on the conflict in Georgia to investigate the origins and the course of the conflict, including with regard to international law, humanitarian law and human rights and the accusations made in that context. This is a crucial step towards establishing the truth and providing the basis for future reconciliation between Russia and Georgia. In this respect, the Assembly:

2.1. welcomes the support of both Russia and Georgia for the establishment of an independent international inquiry into the outbreak of the war and their declared willingness to fully co-operate with it;

2.2. calls upon Russia and Georgia to now effectively, fully and unconditionally co-operate with the EU fact-finding mission;

2.3. calls upon all Council of Europe member states and states that have observer status with the Organisation to make available to the fact-finding mission any information, including satellite data, that may be of relevance to the investigation;

2.4. calls upon the member states of the Council of Europe which are also EU members to ensure that the report of the EU mission is also presented to the Council of Europe in order for its findings to be debated before the Assembly;

2.5. resolves to return to the issue of the causes and precise circumstances surrounding the outbreak of the war once the report of the EU mission has been presented.

3. The Assembly welcomes the constructive approach shown by all parties, after a difficult start on 15 October 2008, in the subsequent rounds of Geneva talks on the modalities of security and stability in Abkhazia and South Ossetia. The Assembly supports the principle that representatives of the South Ossetian and Abkhaz peoples, from both the de facto authorities and those that favour integration with Georgia, should participate in these talks. It also considers legitimate the demand of the Georgian authorities that their status in the talks should not violate Georgia's sovereignty and territorial integrity. The Assembly therefore calls upon all parties to agree on a formula ensuring their participation without prejudice to the status of the two break-away regions.

4. The Assembly is seriously concerned that the escalation of tensions and provocations along the administrative borders of the break-away regions of South Ossetia and Abkhazia is undermining the stability of the region and could lead to renewed clashes or an outbreak of hostilities. It considers that the full and unconditional access of international monitors to South Ossetia and Abkhazia, as well as the establishment of a new internationalised peacekeeping force in the region, are essential to guaranteeing stability and security. The Assembly therefore:

4.1. regrets the continued refusal of Russia and the de facto authorities to allow access to Organization for Security and Co-operation in Europe (OSCE) monitors to South Ossetia and to EU monitors to both South Ossetia and Abkhazia;

4.2. deeply regrets the closure of the OSCE mission in Georgia as a result of Russian objections over its exact mandate and calls upon all parties, and especially the Russian authorities, to accept a

formula for the mandate of the OSCE mission, including its military monitoring operation, in Georgia that would not prejudice the status of the two break-away regions;

4.3. welcomes the continued access of United Nations Observer Mission in Georgia (UNOMIG) observers to Abkhazia and calls upon all parties not to take any action that would endanger the renewal of the mandate of UNOMIG by the UN Security Council on 15 February 2009.

5. The Assembly reaffirms its full support for the sovereignty, and territorial integrity of Georgia, as well as the inviolability of its borders. In this respect, it regrets the unanimous ratification by both houses of the Russian Parliament of the "Friendship and Co-operation" treaties between Russia and the two break-away regions, in violation of these principles, as well as of the ceasefire agreement of 12 August 2008.

6. The Assembly condemns the ongoing ethnic cleansing and other human rights violations in South Ossetia, as well as the failure of Russia and the de facto authorities to bring these practices to a halt and their perpetrators to justice. The Assembly reiterates that, under international law, Russia bears full responsibility for violations of human rights and humanitarian law in the areas under its de facto control.

7. With respect to Georgia, the Assembly:

7.1. welcomes the constructive approach and clear political will of the Georgian authorities to comply with the demands of the Assembly as expressed in Resolution 1633 (2008) and considers that Georgia has complied with many, but not all, of its demands;

7.2. calls upon the Georgian authorities to ensure that all remaining outstanding demands are promptly and fully complied with;

7.3. welcomes the establishment of an inquiry commission by the Georgian Parliament as evidence that it is willing to reflect on the actions and mistakes committed by the Georgian authorities in the outbreak and in the course of the war. The Assembly takes note that this commission finalised its work and publicised its report in December 2008 and calls upon the parliament to review its conclusions in the light of the forthcoming report of the EU fact-finding mission;

7.4. in the light of the overwhelming evidence to the effect that both Georgia and Russia violated human rights and humanitarian law in the course of the war, welcomes the investigation launched by the Georgian General Prosecutor's Office into alleged human rights and humanitarian law violations committed by all sides in the course of the war and its aftermath and calls upon it impartially to investigate any alleged violations brought to its attention and ensure that the perpetrators are brought to justice;

7.5. is concerned that provisions in the Georgian law on the occupied territories may be at odds with principles of international human rights law, including the European Convention on Human Rights, and therefore calls upon Georgia to promptly implement any recommendations contained in the forthcoming opinion of the European Commission for Democracy through Law (Venice Commission) on this law which was requested by the Monitoring Committee of the Assembly;

7.6. calls upon Georgia to refrain from any actions that could provoke or increase tensions along the administrative borders with South Ossetia and Abkhazia.

8. With respect to Russia, the Assembly:

8.1. takes note of the expressed intention of the Russian authorities to engage in a constructive and open dialogue with the Assembly in relation to the conflict;

8.2. welcomes the readiness expressed by the Russian parliamentarians to engage in a dialogue with their Georgian counterparts under the aegis of the Assembly;

8.3. regrets that Russia has not yet complied with the majority of the demands made by the Assembly, including the many demands that are not related to, and therefore have no effect on, the question of the status of the two break-away regions;

8.4. calls upon Russia to fully and unconditionally implement all points of the ceasefire agreement of 12 August 2008;

8.5. participate unconditionally in the negotiations with a view to renewing the mandate of the OSCE Mission in Georgia, including its military monitoring operation;

8.6. calls upon Russia not to create any obstacles for the renewal of the UNOMIG mandate in Abkhazia;

8.7. calls upon Russia to allow, without further delay, the unconditional access of all international monitors to South Ossetia and Abkhazia, especially to allow access of OSCE monitors to South Ossetia and access of EU monitors to South Ossetia and Abkhazia;

8.8. calls upon Russia and the de facto authorities of South Ossetia to bring to an immediate halt all acts of ethnic cleansing and other human rights violations that continue to occur in South Ossetia and bring the perpetrators promptly to justice;

8.9. calls upon Russia and the de facto authorities of both regions to bring to an immediate halt the provocations and attacks from the South Ossetian and Abkhaz sides of the administrative border and to refrain from any actions that could provoke or increase tensions along the administrative borders with South Ossetia and Abkhazia;

8.10. calls upon Russia and the de facto authorities to fully ensure the right of return of all IDPs to the areas under their effective control;

8.11. in the light of the overwhelming evidence to the effect that both Georgia and Russia violated human rights and humanitarian law in the course of the war and in its aftermath, regrets that the Russian Prosecutor's Office has not yet started any investigation into alleged human rights and humanitarian law violations committed by Russian and South Ossetian forces allied to it. The Assembly calls upon Russia to initiate such an investigation without further delay and to ensure that the perpetrators are brought to justice;

8.12. calls upon Russia to work constructively towards the creation of a new peacekeeping format and internationalised peacekeeping force.

9. The Assembly calls upon both Russia and Georgia to:

9.1. allow unhindered and unconditional access of humanitarian organisations and humanitarian aid to the areas of South Ossetia and Abkhazia;

9.2. sign, without further delay, the United Nations Convention on Cluster Munitions;

9.3. implement the interim measures ordered by the European Court of Human Rights and the International Court of Justice, as well as any forthcoming judgments of these Courts concerning alleged violations of human rights in the course of the conflict, and to co-operate fully and unconditionally with any possible investigation by the International Criminal Court.

10. The Assembly welcomes the ongoing efforts by the Human Rights Commissioner of the Council of Europe to protect human rights and humanitarian security in the region. It calls upon both Russia and Georgia to ensure that the six principles he formulated in this respect are fully and effectively implemented.

11. The Assembly is especially concerned about the human rights and humanitarian situation in the Akhgori district, as well as about the status of this district which, while technically a part of the former Autonomous Oblast of South Ossetia, was never under the control of the de facto authorities and has always been mainly populated by ethnic Georgians. In this respect, it takes note that the

Akhlagori district was occupied by Russian forces on 15 August 2008, three days after the signing of the ceasefire agreement.

12. The Assembly considers it unacceptable that persons residing in Abkhazia and South Ossetia should not be effectively covered by the human rights protection mechanisms granted to them as citizens of a Council of Europe member state under the European Convention on Human Rights, as well as other relevant Council of Europe conventions, as a result of the consequences of the war between Russia and Georgia. Such a human rights protection black hole should not be allowed to exist within the Council of Europe area. The Assembly therefore invites the Secretary General of the Council of Europe to develop a comprehensive action plan to ensure that the rights guaranteed under the Convention are effectively secured for persons residing in South Ossetia and Abkhazia. This could include the establishment of a field presence in the two break-away regions, as demanded by the Assembly in Resolution 1633 (2008). In the absence of other credible investigations, this field presence should also investigate and document human rights violations committed during and in the aftermath of the war.

13. The Assembly reconfirms its conviction that the establishment of a genuine dialogue is the only way forward for the resolution of any conflict and to secure long-term stability in the region. It therefore tasks its Bureau to set up a special ad hoc committee, in which both Georgian and Russian parliamentarians will participate, to discuss their differences and develop concrete proposals to address the consequences of the war, in line with paragraph 31 of Resolution 1633 (2008).

14. The Assembly asks its Monitoring Committee to monitor the follow-up given by Russia and Georgia to this Resolution, as well as its Resolution 1633 (2008), and to report back to the Assembly at a future part-session. It also reiterates its request that the Monitoring Committee steps up its monitoring procedure with respect to both Georgia and Russia.

## **B. Explanatory memorandum, by Mr Van den Brande and Mr Eörsi**

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### I. Introduction

1. On 2 October 2008, the Parliamentary Assembly adopted Resolution 1633 (2008) on the consequences of the war between Georgia and Russia. In this resolution, the Assembly strongly condemned the outbreak of war between two of its member states and considered that, during the war and its immediate aftermath, both countries had violated human rights and international humanitarian law, as well as the Statute of the Council of Europe and specific accession commitments.

2. While recognising that the war did not start on 7 August 2008, the Assembly considered that the shelling of Tskhinvali, without warning, by Georgia marked a new level of escalation and constituted a disproportionate use of armed force, albeit within its own territory, which violated international humanitarian law and Georgia's commitment to resolve the conflict peacefully. At the same time, the Russian response, including large scale military operations in Georgia, outside its own territory and the original conflict zone, failed to respect the principle of proportionality and international humanitarian law, and constituted a violation of the principles of the Council of Europe, as well as statutory obligations and specific accession commitments of Russia as a member state of this Organisation. The Assembly was especially concerned about the failure of Russia to stop the looting, destruction of property and acts of ethnic cleansing, and its failure to protect the ethnic Georgian civilian population, in the areas under its de facto control, despite its duties under the Hague Convention (IV) on the Laws and Customs of War on Land. The Assembly considered the occupation of a significant part of the territory of Georgia by Russia and the subsequent recognition of the independence of the break-away regions of South Ossetia and Abkhazia by Russia to be a direct violation of the sovereignty and territorial integrity of Georgia, as well as the inviolability of its frontiers, which it strongly condemned.

3. The Assembly remained especially concerned about the immediate implications of the war, especially the human suffering it caused and the human rights abuses that were committed during and after the war, including the large scale wanton destruction of property and looting, as well as the credible reports that ethnic cleansing was taking place in the areas under effective control of Russia and the de facto South Ossetian authorities. In Resolution 1633 (2008), in order to address these concerns, the Assembly formulated a series of precise and concrete demands to Russia and Georgia. In addition to the full and unconditional implementation of the ceasefire agreement of 12 August 2008, in particular the obligation for Russia to withdraw its troops to their positions *ex ante* the war, the Assembly called upon the Russian and Georgian authorities, *inter alia*, to:

- co-operate fully in the establishment of an independent international investigation into the precise circumstances surrounding the outbreak of the war;
- co-operate fully with all international monitoring missions – especially those from the Organization for Security and Co-operation in Europe (OSCE) and European Union (EU) – and allow these monitors unrestricted access to South Ossetia and Abkhazia;
- bring an immediate halt to, and investigate all reports of, human rights abuses and acts of ethnic cleansing in the two break-away territories and the so-called “buffer zone”;
- investigate any alleged violations of humanitarian law and the laws on the conduct of war that occurred during the war and bring the perpetrators to justice;
- ensure the right of return of all internally displaced persons (IDPs) as a result of this conflict and implement the six principles outlined by the Human Rights Commissioner of the Council of Europe;
- work towards the creation of a new peacekeeping format and internationalise the peacekeeping force.



The Assembly demanded that the de facto authorities in South Ossetia co-operate fully with any international monitoring missions and that they stamp out lawlessness, protect the security of all persons in the areas under their control and ensure the effective implementation of the six principles outlined by the Human Rights Commissioner of the Council of Europe. Russia was called upon to withdraw its recognition of the independence of South Ossetia and Abkhazia and to respect fully the sovereignty and territorial integrity of Georgia and the inviolability of its frontiers.

4. At the same time, the Assembly considered that the establishment of a dialogue was the best way forward to overcome the consequences of the war and to ensure the long-term stability of the region. However, a meaningful dialogue should be backed up by political will and concrete action. The Assembly therefore considered compliance with its demands in Resolution 1633 (2008) to be minimum requirements for a meaningful dialogue.

5. Following the adoption of Assembly Resolution 1633 (2008), the Bureau of the Assembly, at its meeting on 3 October 2008, decided to place on the agenda of the Standing Committee meeting in Madrid, on 28 November 2008, an item on “the follow-up given to Resolution 1633 (2008)” and to include in the preliminary draft agenda of the January 2009 part-session of the Assembly a report on the implementation of Resolution 1633 (2008). The Monitoring Committee was seized on this matter for report and the Political Affairs Committee and the Committee on Legal Affairs and Human Rights for opinion. The Bureau also asked the Committee on Migration, Refugees and Population to prepare a report on the “humanitarian consequences of the war between Georgia and Russia”, which could also be debated during the January 2009 part-session. In addition, the Bureau decided to ask the Presidential Committee to visit Tbilisi and Moscow to discuss with the authorities, at the highest level, the implementation of Assembly Resolution 1633 (2008) and to report back to the Standing Committee on the follow-up given to this resolution.

6. The Presidential Committee visited Georgia on 30 and 31 October 2008. The visit of the Presidential Committee to Russia was foreseen to take place on 13 and 14 November 2008. However, these dates coincided with the EU-Russia Summit in Nice. Many of the high-level meetings requested therefore could not take place, resulting in a programme that would not meet the requirements set by the Bureau for this visit. It was therefore decided to postpone the visit to Moscow to 18 and 19 January 2009. The findings by the Presidential Committee on these visits, in which both co-rapporteurs participated, are reflected in this report.<sup>1</sup>

## **II. Implementation of the ceasefire agreement**

### *i. Withdrawal of troops*

7. The 12 August 2008 ceasefire agreement contains six points:

- non-use of force;
- definitive cessation of hostilities;
- access for humanitarian aid;
- withdrawal of Georgian military forces to their usual bases;
- withdrawal of Russian military forces to the lines they held before the hostilities broke out. While waiting for an international body, the Russian peacekeeping forces will implement additional security measures;
- opening of international discussions on the modalities of security and stability in Abkhazia and South Ossetia.

8. Following a delay in the implementation of the ceasefire agreement by Russia, Mr Nicolas Sarkozy, President of the French Republic, in his capacity as President of the European Council,

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1. See also the memorandum prepared by Mr Lluís Maria de Puig, President of the Assembly, for the Bureau of the Assembly, Doc. AS/Bur (2008) 81 rev., which the Bureau declassified at its meeting in Madrid, on 27 November 2008.

joined by Mr José Manuel Barroso, President of the European Commission, Mr Javier Solana, High Representative for the Common Foreign and Security Policy, and Mr Bernard Kouchner, French Minister for Foreign and European Affairs, travelled to Moscow on 8 September 2008 to press the Russian authorities to unconditionally implement the ceasefire agreement, as well as to discuss the initial phase of its implementation.

9. In the agreement reached at this meeting, the Russian authorities reaffirmed their commitment to fully implement the six-point ceasefire agreement and agreed that Russia:

- would withdraw its troops from the areas adjacent to Abkhazia and South-Ossetia within ten days after the deployment of an EU monitoring mission on 1 October 2008;
- would allow UN observers to remain in Abkhazia and allow OSCE monitors access to all of their previous areas of deployment, including in South Ossetia;

It was also agreed to start the talks under point 6 of the ceasefire agreement on 15 October 2008 in Geneva.

10. The exact status of the Sarkozy-Medvedev agreement of 8 September has led to some controversy. While the international community and the Georgian authorities insist that the 8 September agreement outlines the first phase of the implementation of the 12 August ceasefire agreement and in no manner supersedes it, the Russian position seems to be that this agreement replaces certain aspects of the ceasefire agreement, most notably with regard to the withdrawal of Russian troops. This was also clear during the Assembly's debate on 2 October 2008 on the consequences of the war between Georgia and Russia, when the Russian delegation sought to replace references to the ceasefire agreement with references to the "Sarkozy-Medvedev" agreement of 8 September 2008.

11. According to international monitors, Georgian troops have in general withdrawn to their usual bases, with the exception of those that used to be based in areas that are currently under the control of Russia. The Russian authorities, however, dispute that Georgian troop withdrawals are in line with the ceasefire agreement. In December 2008, in response to increased tensions along the administrative border with South Ossetia, the Georgian police started the deployment of Cobra armoured vehicles in the area adjacent to the administrative border. In the view of the Russian authorities, this deployment is in violation of the 12 August ceasefire agreement. The Head of the EU Monitoring Mission stated that, although deployment of these armoured vehicles "is not in violation of the relevant provisions of the six-point plan of 12 August and the Implementation Agreement of 8 September", the EU Monitoring Mission had advised against their deployment as it would not reduce the tensions in the region.

12. On 9 October, Russia completed its withdrawal of troops from the zones adjacent to South Ossetia and Abkhazia, after the deployment of the EU observers in these areas on 1 October 2008. However, Russian forces maintained a checkpoint in Perevi, near the administrative border with South Ossetia, but within the undisputed territory of Georgia. The maintenance of military troops in Perevi is in violation of not only the 12 August ceasefire agreement, but also of the Sarkozy-Medvedev agreement of 8 September 2008. In a statement on 16 November 2008, the EU insisted that Perevi is well outside the administrative borders of the break-away region of South Ossetia and therefore should be vacated, without delay, by Russian troops and South Ossetian militia.

13. According to the 12 August ceasefire agreement, Russia should withdraw its troops to the positions held before the start of the conflict. This implies that the presence of Russian troops in these two regions should be limited to the positions and strengths as defined in the 1992 Sochi agreement with respect to the conflict zone in South Ossetia and the 1994 Commonwealth of Independent States (CIS) treaty with respect to Abkhazia; this would limit the number of Russian troops in South Ossetia to 500 and in Abkhazia to less than 3 000. However, the Russian authorities assert that, with the recognition of the independence of South Ossetia and Abkhazia by Russia, the presence of Russian troops in these two regions is now governed by bilateral agreements with the de facto authorities of these regions. On 17 September, Russia signed far-reaching "friendship and co-operation" treaties with South Ossetia and Abkhazia. These treaties foresee the establishment of military bases and the stationing of up to 3 800 Russian troops in each of these two regions. Therefore they maintain that,

with the withdrawal from the zones adjacent to these regions, Russia has fulfilled its obligations under the ceasefire agreement. On 20 October, President Medvedev transmitted both treaties to the State Duma for ratification. Both treaties were unanimously ratified by the State Duma on 29 October 2008 and by the Council of the Federation on 11 November 2008. Russia has currently stationed several thousands of troops in each of the break-away regions.

14. The deployment of Russian troops foreseen in these “friendship and co-operation” treaties, and indeed the continued presence of Russian troops over and above the strengths and positions as outlined in the 1992 and 1994 agreements, is in violation of the ceasefire agreement of 12 August, as well as the demands made by the Assembly in Resolution 1633 (2008). On 1 September 2008, the European Council concluded that: “The military forces which have not yet withdrawn to the lines held prior to the outbreak of hostilities must do so without delay”. In the conclusions of its meeting on 15 and 16 October 2008, the European Council noted “with satisfaction that Russian troops have withdrawn from the zones adjacent to South Ossetia and Abkhazia as an essential additional step in the implementation of the agreements of 12 August and 8 September”. These two conclusions were reconfirmed during the meeting of the General Affairs and External Relations Council on 10 and 11 November 2008, which concluded that: “All points regarding the withdrawal of Russian troops from Georgia and the implementation of the agreements of 12 August and 8 September, as set out in the European Council conclusions of 1 September and 15 and 16 October, remain valid and relevant, including those concerning access to certain areas”. In an interview on 13 November, President Medvedev acknowledged that “no text, and that includes our agreement with President Sarkozy, governs our military contingent” in South Ossetia and Abkhazia, stressing that it was up to Russia itself to decide upon its military deployment in these two break-away regions.

15. This issue is of particular importance with respect to the Akhagori district of South Ossetia and the ethnic Georgian areas of Upper Abkhazia. While administratively part of the former Autonomous Oblast of South Ossetia, whose administrative borders are now recognised by Russia as the “state borders” of South Ossetia, the Akhagori district, which is mainly populated by ethnic Georgians, has always been under the control of the central authorities in Tbilisi and was not part of the conflict zone. Indeed, Russian troops only occupied this district on 15 August, three days after the signing of the ceasefire agreement on 12 August. Similarly, the ethnic Georgian areas in upper Abkhazia had been under the control of the central authorities in Tbilisi until the Georgian troops were driven out by Abkhaz separatist forces, purportedly with the help of Russian troops, on 8 August 2008.

*ii. Security situation: non-use of force and cessation of hostilities*

16. Following the deployment of EU monitors and the withdrawal of Russian troops from the zones adjacent to the break-away regions of South-Ossetia and Abkhazia, Georgian police forces, including the Ministry of the Interior special police forces, moved back into these zones to ensure security in those areas. With the return of the Georgian police, the security vacuum that existed in these zones dissolved and IDPs returned in large numbers to these areas. The security situation in the areas is generally calm.

17. While initially limited to a few isolated incidents, the situation along the administrative borders of South Ossetia and Abkhazia has been escalating during the last months, with an increasing number of violent incidents and provocations being reported. OSCE and EU monitors regularly report cases where Georgian villages and Georgian police posts along the administrative border with South Ossetia have come under fire from small arms and grenade launchers from the Ossetian side. The OSCE and EU monitors have not been able to confirm allegations that Ossetian villages have come under fire from the Georgian side, due to the refusal by Russia and the de facto authorities in South Ossetia to allow access of EU and OSCE monitors to the region. In their meeting with the Presidential Committee in Georgia, the international monitors indicated that the number of reported incidents and provocations along the administrative border with South Ossetia had started to approach the levels seen in the months before the outbreak of the military hostilities in August, raising fears of possible new clashes in these volatile regions.

18. On 22 and 24 October, two Abkhaz officials from the de facto authorities were killed in the Gali region, while, on 24 October, a local Georgian governor was killed in Muzhava on the administrative border with Abkhazia. On 15 November, a Georgian policeman was killed near the

administrative border with Abkhazia. EU monitors reportedly came under fire from the Abkhaz side when investigating this incident. Reportedly, Georgian policemen regularly come under fire from the South Ossetian side of the administrative border, which has resulted in a number of casualties recently. On 10 November, a bomb explosion killed a police officer in Dvani, near the administrative border of South Ossetia, while another one was killed and three injured when a second bomb was detonated when they were investigating the scene of the first explosion. The EU Monitoring Mission called this attack an unacceptable breach of the ceasefire agreement by its perpetrators.

19. In addition to the attacks, there are continuing reports of bands of South Ossetian marauders crossing the administrative border in order to loot and terrorise Georgian villages and villagers close to the administrative border. We regret that Russia, despite its overwhelming troop presence, has so far failed to stop these incursions into undisputed Georgian territory.

20. Regrettably, the Russian authorities and South Ossetian de facto authorities have increased their rhetoric against the international observer missions in what seems to be an attempt to cast doubt on their impartiality. On 20 October, the de facto authorities in Tskhinvali accused the EU monitors of being biased against South Ossetia and, on 23 October, the Russian Foreign Minister criticised the EU monitors of being biased and not doing enough to ensure the security in the zones adjacent to South Ossetia and Abkhazia. This was dismissed by the Head of the EU Monitoring Mission.

21. In their meetings with the Presidential Committee, the Russian authorities also expressed their concern that the increased tensions along the administrative borders with South Ossetia and Abkhazia could lead to renewed hostilities between Russia and Georgia. The Russian authorities claim that the increase in tensions is mainly the result of Georgian provocation. They allege that Georgia has established armed civilian units with the aim of destabilising the security situation in the areas adjacent to the administrative border. These allegations have not been confirmed by independent international monitors.

22. We are seriously concerned that this increase in tensions and provocations could undermine the overall security and stability in the region and could lead to renewed clashes or even military hostilities. This underlines the urgent need for access of international monitors to the two break-away regions and for the establishment of a new international peacekeeping force as demanded by the Assembly.

### *iii. International discussions on the modalities of security and stability in Abkhazia and South Ossetia*

23. The opening of international discussions on the modalities of security and stability in Abkhazia and South Ossetia is the sixth point of the 12 August ceasefire agreement. During the Sarkozy-Medvedev meeting on 8 September 2008, it was agreed to start the talks under this point on 15 October 2008, in Geneva.

24. The first round of talks in Geneva, under the co-sponsorship of the UN, EU and OSCE and with the participation of the United States, did not lead to any results and was suspended on the same day, after the Russian and Georgian delegations failed to meet face to face.

25. The main stumbling block during the 15 October talks was the participation of representatives from the South Ossetian and Abkhaz de facto authorities. The Russian authorities insisted that the Abkhaz and South Ossetian representatives should be given a status equal to that of Georgia and Russia. This was refused by Georgia and the international community, which considered that this would imply recognising the statehood of these two regions. As a result, Russia refused to participate in the plenary opening session of the talks. The Georgian side agreed that representatives of the de facto authorities could participate in the informal working groups, but insisted that representatives of the Abkhaz and South Ossetian communities that favour integration with Georgia should also participate in these working groups. This was refused by the de facto authorities. As a result, it was decided to postpone the talks to 19 November, so as to give the negotiators time to work on the "procedural difficulties".

26. The second round of talks, held on 19 November 2008 in Geneva, was considered constructive by all participants and hailed by its co-sponsors as an important step forward. In order to avoid a new stalemate, the talks took place in informal working groups where all participants,

including representatives of the de facto authorities, participated as individuals. During the talks, it was agreed by all participants to suspend the discussions on the most polemical issues to a future round and to focus on the security situation, as well as on the return of IDPs and freedom of movement across the administrative borders. It was agreed that a new round of talks would take place on 17 and 18 December in Geneva, during which, *inter alia*, a broader discussion on peacekeeping missions would also be included in the agenda. The third round of talks, held on 17 and 18 December, took place in the same format as the talks in November and with the same constructive attitude of the participants. During this round of talks, the participants agreed on most of the details regarding concrete mechanisms to address security-related incidents and disputes. It was agreed to discuss the outstanding issues in relation to these mechanisms during the next round of talks, which is foreseen to take place on 17 and 18 February 2009.

27. We welcome the constructive attitude displayed by all participants during the second and third rounds of talks, which could play a crucial role in increasing the stability in the regions. However, we note that the talks remain fragile and that, to date, no plenary sessions have taken place. We hope that the same constructive spirit as witnessed in Geneva on 19 November and 17 and 18 December will also prevail in order to find a solution for the format of these plenary sessions. This would allow all the different representatives of the South Ossetian and Abkhaz people to participate, while respecting Georgia's legitimate concern that no status equal to that of Georgia and Russia can be given to the representatives of the de facto authorities, as this would amount to an implicit recognition of the two break-away regions in violation of Georgia's sovereignty and territorial integrity.

### III. Access of international monitoring missions to the South Ossetian and Abkhazian regions

28. In Resolution 1633 (2008), the Assembly demanded that Russia, Georgia and the de facto authorities in South Ossetia co-operate with all international monitoring missions, specifically those of the UN, OSCE and the EU, and explicitly insisted that those observer missions should be given full and unconditional access to the areas under the control of Russia and the de facto authorities. In addition, in the Medvedev-Sarkozy agreement of 8 September 2008, Russia agreed to allow UN observers to remain in Abkhazia and to allow OSCE monitors access to all of their previous areas of deployment, including in South Ossetia.

29. On 9 October, the UN Security Council adopted Resolution 1839 which extended the UNOMIG<sup>2</sup> mandate until 15 February 2009, allowing for the continued presence of UN monitors in Abkhazia until that date, in line with the Sarkozy-Medvedev agreement. However, beyond that date, the future of the UNOMIG presence is uncertain: Russia and the Abkhaz de facto authorities demand changes to its mandate and the dropping of the reference to Georgia from its name. This could put into question the continued presence of UN observers in that region after 15 February. Some officials from the Abkhaz de facto authorities are reported to have privately informed western diplomats that they would prefer a continued UN presence, in some format or another. We call upon Russia not to veto the extension of the UNOMIG's mandate in Abkhazia on grounds related to the status of the break-away region.

30. Georgia has given its full co-operation to the international monitoring missions and has allowed these missions, as well as other international humanitarian bodies, full and unconditional access to the areas under its control.

31. To our great concern, and in violation of the Sarkozy-Medvedev agreement and Assembly demands, OSCE observers have not been granted access to South Ossetia by Russia and the South Ossetian de facto authorities. In addition, EU observers have not been granted access to South Ossetia and Abkhazia, as requested by the EU and the international community, including the Assembly in Resolution 1633 (2008). This has, *inter alia*, hindered the investigation of reports of violence along the administrative borders and the improvement of the security situation in zones along the administrative borders of these two regions, as well as the return of IDPs to South Ossetia and Abkhazia.

32. The refusal to give access to international monitors to South Ossetia, which negatively affects the security situation, further endangers the overall stability in these volatile regions and could

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2. UNOMIG is an abbreviation for United Nations Observer Mission in Georgia.

potentially lead to renewed confrontations. We find this unacceptable, especially taking into account the fact that the unconditional access of international monitors to the two break-away regions does not, as such, affect the question of their status.

33 On 22 December 2008, Russia blocked the extension of the mandate of the OSCE Mission in Georgia, as a result of its objection to any linkage between the OSCE activities in South Ossetia and the rest of Georgia. The proposal by the Finnish Chairman-in-Office of the OSCE to establish two mutually independent field offices, directed by a special representative of the Chairman-in-Office in Vienna, was, regrettably, not acceptable to the Russian authorities. Taking into account the increased tensions along the administrative borders, we deeply regret the de facto vetoing by one OSCE member state, Russia, of the renewal of the mandate of the OSCE Mission in Georgia. The negotiations over the mandate of the OSCE Mission in Georgia are ongoing under the current Greek Chairmanship of the OSCE and we urge all parties, including Russia, to accept a formula for the extension of the mandate of the OSCE Mission in Georgia, including its military monitoring operation, that would not prejudice the status of the two break-away regions;

34. These developments reinforce our above-mentioned concerns with regard to the extension of the UNOMIG's mandate in Abkhazia.

#### **IV. Independent international investigation into the precise circumstances surrounding the outbreak of the war, as well as investigations into alleged violations of human rights and international law during the war and its aftermath**

35. An independent international investigation into the precise circumstances surrounding the outbreak of the war, as well as the exact sequence of events in August 2008, is one of the key demands of the Assembly expressed in Resolution 1633 (2008). Recent media reports, from different sides, giving support to the claims made by the Russian or the Georgian authorities, only serve to show the extent of the controversy and the conflicting accounts regarding the circumstances surrounding the outbreak of the war. This underscores the need for an independent international investigation, as demanded by the Assembly.

36. We welcome the fact that, from the outset, the Georgian authorities publicly stated their full support for the establishment of such an independent international inquiry, as well as their readiness to give it their full co-operation. This support was reiterated to the Presidential Committee during its visit to Tbilisi on 30 and 31 October 2008. We also welcome the fact that, in a meeting with the Council on Foreign Relations in Washington, on 15 November, President Medvedev stated that Russia would equally welcome the establishment of such an independent international investigation and that Russia was ready to co-operate fully with it.

37. The EU established, on 2 December 2008, an independent international fact-finding mission on the conflict in Georgia to investigate the origins and the course of the conflict, including with regard to international law,<sup>3</sup> humanitarian law and human rights and the accusations made in that context.<sup>4</sup> Ms Heidi Tagliavini has been appointed head of the fact-finding mission for the period from 2 December 2008 to 31 July 2009. Ms Tagliavini was former Deputy State Secretary of Switzerland and, from 2002 to 2006, the Head of UNOMIG in Georgia. The geographical scope and time span of the investigation will be sufficiently broad to determine all the possible causes of the conflict. The results of the investigation will be presented to the parties to the conflict and to the EU Council, the OSCE and the United Nations (UN) in the form of a report. Taking into account the important human rights implications of the war between Georgia and Russia and the fact that both are members of the Council of Europe, we consider it important that the report of the fact-finding mission should also be presented to the Council of Europe and its Assembly. We therefore call upon the member states of the Council of Europe which are also EU members to ensure that the report of the EU mission is also presented to the Council of Europe in order for its findings to be debated before the Assembly.

38. In order to ensure the independence of the investigations, Ms Tagliavini has complete freedom to decide on the composition of the mission, as well as its procedures and working methods. The fact-finding mission shall comprise recognised experts, in particular lawyers, historians, military staff and human rights experts. The implementation of the EU Council's decision on the fact-finding

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3. Including the Helsinki Final Act.

4. Including allegations of war crimes.

mission shall be reviewed by the Council before 31 July 2009 and the work of the mission may be prolonged, if necessary.

39. We welcome the establishment of the independent international fact-finding mission and reiterate the demand of the Assembly that both Georgia and Russia fully and unconditionally co-operate with its investigations. In addition, we call upon all Council of Europe member states and states that have observer status with the Organisation, to make available to this fact-finding mission any information, including satellite data, which may be of relevance to the investigation. We equally welcome the support of Russia and Georgia for establishment of the mission and their declared willingness to co-operate with it. We would, however, like to stress that only their full, effective, and unconditional co-operation with the investigation will mean that they have met the Assembly's demands in this respect. In the light of this important development, we will not touch further upon the possible causes of, and circumstances leading to, this war. We recommend that the Assembly comes back to this issue when the fact-finding mission has published its report and findings.

40. In parallel with the discussions on an international inquiry, the Parliament of Georgia started its own inquiry into the circumstances of the war, the exact sequence of events in August and the decisions taken by the Georgian executive authorities. For this purpose, on 7 October 2008, the parliament established a special ad hoc commission which is chaired by a member of the parliamentary opposition, Mr Paata Davitaia. The inquiry commission was to report back to the parliament, but had the power to refer issues to the General Prosecutor for investigation, if it found that possible criminal actions may have taken place.

41. In order to ensure the complete transparency of its work, the commission met in public, unless issues affecting national security were discussed, and its meetings were broadcast live on television. In addition, the full transcript of its proceedings was published, in both Georgian and English, on the website of the Georgian Parliament. Moreover, the public was exhorted to provide information, as well as raise any questions they wished to see answered by the commission.

42. The commission started its work on 10 October and heard testimonies from key decision makers during the war, including from President Saakashvili, the Minister of Integration, the Minister for Foreign Affairs, the Secretary of the National Security Council, the Head of the Security Services, the Chief of Staff of the Georgian armed forces and the Speaker of the Parliament. The ruling party publicly stated that any of its officials that failed to fully co-operate with the inquiry commission would face dire political consequences. Although the commission did not have the constitutional power to summon the president to testify, President Saakashvili stressed that "not a single official is immune" from being questioned by the inquiry commission and that he would be ready "to come and answer all questions" put to him by the commission. He subsequently testified to the commission on 28 November 2008.

43. From our meetings with the chairman of the commission, we were convinced of the clear political will of the commission to fully investigate the circumstances of the war and to address the many questions that have been raised in this context. We believe that this is an example of how parliamentary democracies should function, by making the events that led to the outbreak of the war, as well as its conduct and the different responsibilities in relation to it, subject to a wide public debate. However, in this context, we regret that the questioning of the former Georgian Ambassador to Moscow, who has been publicly critical of the authorities' conduct of the crisis since his dismissal in June 2008 for unrelated reasons, resulted in a brawl between him and some members of the ruling party.

44. The commission finalised its work and published its report on 18 December 2008. Although critical of the authorities' actions during the war, it largely confirms the official Georgian version of the events that led to the outbreak of the hostilities. Taking into account the ongoing work of the EU fact-finding mission, we call upon the Parliament of Georgia to review its conclusions in the light of the forthcoming report of this mission once it has been published.

45. We are not aware of the establishment of any similar commission, with a comparable mandate, composition and powers, by the Parliament of Russia. In his meeting with the ad hoc committee of the Assembly to study the situation on the ground in Russia and Georgia, which visited Moscow from 21 to 23 September 2008, the Chairman of the Council of the Federation indicated that

the Council was considering setting up an ad hoc committee to study the conduct and origins of the war, as well as the actions of the Russian authorities in relation to this. We therefore would urge the Council of the Federation to establish an inquiry committee with the same scope and mandate as that established by the Georgian Parliament.

46. Since the adoption of Resolution 1633 (2008), a number of reports have been published by, *inter alia*, such respected non-governmental organisations as Amnesty International and Human Rights Watch, which have documentary evidence and witness testimonies that give credence to the claims that both Russia and Georgia committed violations of human rights and international humanitarian law – possibly including war crimes – in the course and aftermath of the war. Such violations include the indiscriminate and disproportionate use of armed force, the forceful displacement of civilians, looting, pillage, wanton seizure and destruction of property and acts of ethnic cleansing. We are seriously concerned about reports that the looting and pillaging, as well as harassment of civilians, hostage-taking and acts of ethnic cleansing, are still continuing in areas under Russian control. In addition, the UNOSAT satellite images reveal the massive damage to Georgian villages that predominantly occurred after cessation of hostilities.

47. In Resolution 1633 (2008), the Assembly demanded that Russia and Georgia “stamp out lawlessness”, investigate all allegations of human rights violations committed during the war and its aftermath and hold the perpetrators to account before domestic courts.

48. The inquiry commission of the Georgian Parliament had the mandate to investigate allegations of violations of human rights and international humanitarian law committed by Georgia in the course of the war. As already mentioned, it had the power to refer to the General Prosecutor for investigation any allegations of criminal behaviour in this respect. Although the Commission has finalised its investigations, we are not aware of any cases having been referred to the General Prosecutor’s Office.

49. On 9 August 2008, the General Prosecutor’s Office of Georgia, for its part, launched an investigation into deliberate violations of international humanitarian law during the war and its aftermath. The Prosecutor’s Office has made clear that this investigation is aimed at all violations, regardless of who, on either side, has committed them. The Georgian Government has stated that it will fully co-operate with these investigations.

50. The Investigative Committee of the General Prosecutor’s Office of Russia launched an investigation into genocide committed by Georgian troops against Russian citizens (ethnic Ossetians) in South Ossetia. In addition, it opened an investigation into crimes committed by Georgia against the Russian military. It would seem that there is no intention to investigate possible violations of human rights and humanitarian law committed by Russian forces and forces under the control of the de facto South Ossetian authorities. Indeed, the special Investigation Committee reportedly closed its investigations on the ground in South Ossetia in mid-September, at a time when credible reports indicated that looting and pillaging, as well as acts of ethnic cleansing were taking place on a daily basis in the areas under Russian control, including in the so-called “buffer zone”. On 23 December 2008, the Head of the Investigation Commission of the Russian General Prosecutor’s Office announced that the commission had finalised its investigations into the deaths of 162 South Ossetian civilians – a considerably lower number of civilian deaths of than originally announced by the Russian authorities – and of 48 members of the Russian military troops during the war and that it had collected sufficient evidence to bring charges of genocide against Georgia for its treatment of South Ossetians. In addition, he alleged that the commission had found irrefutable evidence that nationals of a number of other countries had provided assistance to Georgian military forces during the war.

51. To our knowledge, neither the investigation of the General Prosecutor’s Office of Georgia, nor that of the General Prosecutor’s Office of Russia, have to date resulted in any persons being charged.

52. Amnesty International has reported that the Public Chamber of Russia, a consultative body of NGOs, established, on 12 August 2008, a Public Commission on “War Crimes in South Ossetia and Civilian Victims Aid”.

53. The Russian authorities have been actively encouraging and assisting ethnic Ossetians to file applications with the European Court of Human Rights against alleged human rights violations



committed by Georgia in the course of the war. On 10 October 2008, the European Court of Human Rights announced that it had received over 2 700 individual applications from South Ossetians against Georgia. By January 2009, the number of applications filed had increased to over 3 300. The unprecedented number of applications is having a considerable impact on the already heavy workload of the Court, especially in the absence of the reform of the Court foreseen in Protocol No. 14 to the European Convention on Human Rights (ECHR). On 16 January 2009, the European Court of Human Rights announced that it would urgently examine seven applications of South Ossetians against Georgia, which it considers to be representative of the over 3 300 similar applications that have been filed with the Court. These cases have now been communicated to the Georgian Government under Rule 54, paragraph 2.b of the Rules of Procedure of the Court.

54. Georgia has filed an inter-state application against Russia with the European Court of Human Rights and, on 12 August 2008, upon the request of the Georgian authorities, the European Court of Human Rights indicated interim measures to Russia and Georgia under Rule 39 of the Court.

55. Georgia has also filed a request for the indication of provisional measures with the International Court of Justice (ICJ) in The Hague in order to preserve its rights under the International Convention on the Elimination of All Forms of Racial Discrimination "to protect its citizens against violent discriminatory acts by Russian armed forces, acting in concert with separatist militia and foreign mercenaries". On 15 October 2008, the ICJ held that the case fell under its jurisdiction and ordered provisional measures to be taken by both Georgia and Russia.

56. Under the Rome Statute, the International Criminal Court (ICC) has jurisdiction over possible war crimes and crimes against humanity. As Georgia has ratified the Rome Statute, the ICC has jurisdiction over such crimes committed on the territory of Georgia in the course of the conflict, irrespective of whether they were committed by Georgian or Russian citizens, notwithstanding the fact that Russia has not yet ratified the Statute. In addition, as Russia has signed the Rome Statute, according to the Vienna Convention on the Law of Treaties, it is bound to refrain from any action that would defeat the Statute's object and purpose. The Prosecutor of the ICC has reportedly started his preliminary analysis of the information received. This is the first formal step in deciding whether to seek authorisation from the Pre-Trial Chamber to open a formal investigation.

#### **V. Humanitarian consequences of the war**

57. The humanitarian consequences of the war between Georgia and Russia are the subject of a separate report by the Committee on Migration, Refugees and Population. We will therefore not deal extensively with these issues in the context of this report.

58. Following the re-establishment of a security environment in the zones adjacent to the break-away regions of Abkhazia and South Ossetia, many IDPs have returned to these areas. On 17 October 2008, the UNHCR reported that, from the originally recorded 133 000 IDPs in Georgia, more than 100 000 had returned to their homes, and that 20 000 of these had returned to the former "buffer zone". However, many homes in the areas adjacent to South Ossetia have been looted and destroyed by South Ossetian militias in the aftermath of the conflict. The UN estimates that around 11 500 IDPs cannot return to their original residences in the zones adjacent to South Ossetia. The Georgian Ombudsman estimates that, at present, a total of 23 000 IDPs cannot return to their pre-war places of residence. Moreover, occasional incursions by South Ossetian marauders make many IDPs fearful to return permanently to the areas close to the administrative border.

59. The return of IDPs to ethnic Georgian villages in South Ossetia and Abkhazia is considerably more difficult, if not outright impossible. Amidst continuing reports of acts of ethnic cleansing, most IDPs fear for their safety if they return, especially in the absence of independent international monitors from the EU and OSCE. In addition, most ethnic Georgian villages in South Ossetia have been looted and razed.

60. The return of ethnic Georgian IDPs to the break-away region of South Ossetia is further complicated by the insistence of the de facto authorities that IDPs returning to it accept the South Ossetian "nationality" and rescind the Georgian one. Ethnic Georgians in the Gali District of Abkhazia are reportedly also being put under pressure to accept Abkhazian passports. The Abkhaz de facto Foreign Minister, Mr Sergey Shamba, has informed OSCE/ODIHR officials that Georgian IDPs would

be welcome to return to the Gali district and the upper Kodori Gorge. However, he said that the return of IDPs (including the IDPs from the 1994 conflict) to other areas of Abkhazia would be “impossible” under the current circumstances.

61. A further complication is the result of restrictions imposed on the freedom of movement for civilians. Civilian movement across the administrative border has until now been possible on a limited, ad hoc, basis. However, with the entry into force of the “friendship and co-operation” agreements between Russia and the break-away regions, which include an open border agreement between the parties, the administrative borders of these regions will be manned by Russian border guards, ending any possibilities for the free movement of civilians across the administrative borders. In this context, the de facto leaderships in South Ossetia and Abkhazia have indicated that they plan to implement a visa regime for Georgians in the very near future.

62. The situation in the Akhagori district of South Ossetia, which is a predominantly ethnic Georgian area that was not directly affected by the war in August and which, prior to the war, was never under the control of the de facto authorities, is a matter of special concern. Indeed, Russian troops occupied this district on 15 August, some three days after the signing of the ceasefire agreement on 12 August.

63. Recent reports by Human Rights Watch and the Russian human rights NGOs, Memorial and Demos Centre, have documented extensive evidence that systematic looting, pillaging, hostage taking and attacks on ethnic Georgians by South Ossetian militias continue to take place in the Akhagori district of South Ossetia and that the Russian forces have done nothing to stop them. We strongly condemn the ethnic cleansing in the Akhagori district by South Ossetian militia, as well as Russia’s unwillingness to stop this from happening or to bring its perpetrators to justice. We would like to reiterate that, under international law, Russia bears full responsibility for violations of human rights and humanitarian law committed in the areas under its de facto control, including those committed at the behest of the de facto authorities in Tshkinvali.

64. As a result of the continuing attacks on ethnic Georgians, many of them have fled the Akhagori district due to safety concerns. In addition, many more have left due to fears that the administrative border with Georgia will be closed or because they will be obliged to accept the South Ossetian nationality if they stay. According to the UNHCR, Georgia registered more than 1 700 IDPs from the Akhagori area in October alone.

65. Humanitarian aid has been reaching the two break-away regions, mainly via Russia. However, significant obstacles remain for the access of humanitarian organisations and aid as a result of the insistence by Georgia, on the one hand, that access to the two break-away regions takes place via Georgia, and by Russia and the de facto authorities, on the other hand, that access takes place via Russia.

66. The UN and other international (humanitarian) organisations have been given unrestricted access by the Georgian authorities to the zones adjacent to South Ossetia and Abkhazia. Regrettably, the de facto authorities have allowed only limited access for these organisations, with the exception of the International Committee of the Red Cross (ICRC), to the territories under their control.

67. In his report to the Committee of Ministers of the Council of Europe, the Commissioner for Human Rights expressed his concern about the possible negative impact of the law on the occupied territories that was adopted by the Georgian Parliament on 28 October 2008. According to this law, access for foreigners and stateless persons to the occupied territories is subject to authorisation by the Georgian authorities, while entry into these areas without such an authorisation would be a criminal offence under Georgian law. Moreover, this law restricts economic activity with the two regions and declares null and void any certificate issued by the de facto authorities, including civil certificates and property deeds. In his report, the Commissioner expressed concern that certain provisions in the law on the occupied territories may be at variance with principles of international human rights law, including the European Convention on Human Rights. For this reason, the Monitoring Committee, at its meeting on 17 December, decided to submit this law to the European Commission for Democracy through Law (Venice Commission) for opinion. We call on the Georgian

authorities to implement any recommendations contained in the future opinion of the Venice Commission.

68. Problems in the supply of gas from Georgia to the region of South Ossetia, as well as the supply of drinking water from the break-away region of South Ossetia to the villages in the zones adjacent to the administrative borders have led to mutual recriminations between Russia and Georgia. The Georgian authorities have accused Russia and the South Ossetian de facto authorities of blocking the water supply to the areas adjacent to the administrative border, while Russia has accused the Georgian authorities of halting the gas supply to South Ossetia. The Georgian authorities expressed their readiness to resume the gas supply to Tskhinvali, but asserted that the gas pipeline to Tskhinvali had been damaged during the war in the area close to the administrative border, and that it could not be repaired without adequate security guarantees from Russia. OSCE-mediated contacts between the two sides revealed continuing damage to the pipeline on 31 December 2008. On 21 January 2009, the Georgian gas company announced that the pipeline had been fully repaired and that it was ready to resume the supply of gas as soon as it received authorisation from the Georgian government. Furthermore, on 28 December 2008, Georgia and Russia reached an agreement on the joint management of the Enguri Hydro power central, which is situated on the administrative border with Abkhazia. We welcome this agreement, which will ensure an uninterrupted electricity supply to Abkhazia and the rest of Georgia. We hope that the same constructive approach will prevail in other disputes over energy and water supplies.

#### **VI. Recognition of independence of the break-away regions of Abkhazia and South Ossetia by Russia**

69. In Resolution 1633 (2008), the Assembly condemned the recognition of the break-away regions of Abkhazia and South Ossetia by Russia as a violation of Georgia's sovereignty, territorial integrity and the inviolability of its recognised international borders. The Assembly therefore called upon Russia to withdraw its recognition and urged all member states, as well as states holding observer status with the Organisation, not to recognise the independence of these two regions. The Assembly regretted that the recognition by Russia was prompted by a unanimous demand of both houses of the Russian Parliament.

70. The Russian authorities, as well as the Federal Parliament, have publicly stated that they do not intend to withdraw their recognition of the independence of South Ossetia and Abkhazia. The "friendship and co-operation" treaties signed by Russia with South Ossetia and Abkhazia on 17 September 2008, which were unanimously ratified by the State Duma and Council of the Federation on 29 October and 11 November 2008 respectively, further confirmed this position. Under the treaties, Russia has pledged to help the two break-away regions to protect their borders and will be responsible for controlling them, and their signatories have granted each other the right to set up military bases on their respective territories. The treaties also formalised economic co-operation between Russia and the two break-away regions, and allowed dual citizenship for Russian, Abkhaz and South Ossetian residents.

71. The recognition of the independence of Abkhazia and South Ossetia and the subsequent signing and ratification of the "friendship and co-operation" treaties not only violate the ceasefire agreement, international law, the Statute and principles of the Council of Europe and Russia's accession commitments, but also impede the normalisation of the current situation and further affect the stability in the region. In this context, we also regret that Russia seems to be making the implicit recognition of the independence of the two break-away regions by the international community, including by our Assembly, a point in its co-operation with international organisations, as borne out by its insistence that the representatives of the de facto authorities of the two break-away regions should be given state status in the Geneva talks.

72. On 23 December 2008, the Russian Ministry of Foreign Affairs and its counterpart in the de facto authorities in Abkhazia signed a memorandum of understanding on co-operation in which they agreed, *inter alia*, to strive for the formation of mutually advantageous relations in the field of international co-operation and in which Russia pledges to facilitate the entry of "the Republic of Abkhazia" into international organisations of which Russia is a member.

#### **VII. Creation of a new peacekeeping format and internationalisation of the peacekeeping force**

73. In Resolution 1633 (2008), the Assembly called upon Russia and Georgia to work towards the creation of a new peacekeeping format and to internationalise the peacekeeping force.

74. Georgia formally withdrew from the 1992 Sochi and 1994 Moscow agreements that established the pre-war peacekeeping formats on 27 August 2008, and has indicated that it would welcome a peacekeeping force that would include European peacekeepers. The Georgian authorities have not ruled out their acceptance of a possible Russian participation in such a peacekeeping force. The Russian authorities have announced that the former peace agreements have now been replaced by the bilateral friendship and co-operation treaties between Russia and the break-away regions and have stated that they see no role for any "additional" international peacekeeping format.

75. We would like to stress that Russia, as a party to the conflict, cannot be the sole provider of peacekeeping troops and the sole guarantor of peace and security in the two break-away regions. As we have mentioned before, the absence of an international peacekeeping force, especially in combination with the presence of a large number of Russian troops, undermines the stability in the region, as well as the possibilities for the normalisation of the situation resulting from the war. In that respect, we welcome the fact that the issue of peace keeping was on the agenda for the December round of talks in Geneva, although no concrete results have, as yet, been achieved. We call for a continued constructive approach by all participants in future talks.

#### **VIII. Overview of implementation of the demands of the Assembly as expressed in Resolution 1633 (2008)**

##### *i. Georgia*

76. On the basis of the recent developments described in this report, we consider that Georgia has implemented the following demands of the Assembly outlined in Resolution 1633 (2008). Notably, it has:

- implemented fully and unconditionally the ceasefire agreement of 12 August 2008 (paragraph 22.1 of the Resolution);
- given its fullest co-operation to international monitors and allowed full access to the territories under its control (paragraphs 22.2 and 23.3);
- taken measures to ensure the safety of citizens – including the removal of mines and unexploded ordnances – in the territories under its control, and allowed for the voluntary return of IDPs to those territories (paragraphs 23.1, 23.2 and 23.4);
- worked towards a new peacekeeping format and worked to internationalise the peacekeeping force (paragraph 22.4);
- made use of available means of peaceful conflict resolution (paragraph 22.10);
- participated unconditionally in the Geneva negotiations foreseen in point 6 of the ceasefire agreement (paragraph 22.5). We consider to be justified the condition laid down by the Georgian authorities that the participation of the de facto authorities of the two break-away regions should not be taken to signify any implicit recognition of them and that this condition does not contradict the Assembly's corresponding demand.

77. The Georgian authorities have stressed that they would welcome the establishment of, and would co-operate unconditionally with, an independent international inquiry into the war and the circumstances surrounding it (paragraph 22.3). They can therefore be said to have taken all the necessary steps to comply with this demand by the Assembly, even though a final judgment can only be made when the inquiry has been completed and Georgia's co-operation in it has been fully assessed.

78. The Georgian authorities have taken concrete measures to effectively implement the six principles formulated by the Council of Europe Commissioner for Human Rights, in compliance with paragraph 23.7 of Resolution 1633 (2008). We note that the implementation of several of these

principles, including the exchange of prisoners of war, the unconditional return of IDPs and the provision of adequate accommodation for them, are still ongoing. We therefore urge the Georgian authorities to continue to implement the Commissioner's six principles, as well as the related demands made in sub-paragraphs 23.4 and 23.5 of Resolution 1633 (2009).

79. Overall, Georgia is seeking to ensure effective respect for all human rights under the ECHR and humanitarian norms under the 1949 Geneva conventions and their additional protocols, in the territories under its control, in compliance with paragraph 22.7 of the resolution. However, we share the concerns expressed by the Commissioner for Human Rights that certain provisions in the new law on the occupied territories may be at variance with principles of international human rights law, including the European Convention on Human Rights. We therefore call upon the Georgian authorities to implement any recommendation contained in the forthcoming opinion of the Venice Commission, which was requested by the Monitoring Committee. This would also ensure full compliance with paragraph 22.7 of Resolution 1633 (2008).

80. The Georgian authorities have allowed unhindered access by the press to the part of the conflict zone under its control, in line with paragraph 22.9. However, we are concerned that the provisions in the law on the occupied territories that make it obligatory for foreign nationals to obtain prior authorisation from the Georgian authorities to visit the Georgian territories under Russian control could hinder the free access of the press to those parts of the conflict zone, in contradiction with paragraph 22.9.

81. The Georgian General Prosecutor's Office has opened an investigation into violations of humanitarian and human rights law that took place during the war and its immediate aftermath. This investigation explicitly also includes possible violations committed by Georgia. In addition, the parliamentary inquiry commission had the mandate to investigate the war and look into possible human rights and humanitarian law violations committed by all sides during the war, including the right to refer cases to the General Prosecutor for investigation. We therefore welcome the efforts of the Georgian authorities to comply with paragraph 22.8. The investigations of the General Prosecutor are still ongoing and we are not aware that they have as yet resulted in any persons being charged. In the light of the overwhelming and credible evidence mentioned in this report that human rights and humanitarian law were violated by both sides during the war, including by Georgia, full compliance with this demand of the Assembly can only be assessed on the basis of the outcome of these investigations and the impartial manner in which the allegations of violations are addressed. We therefore call upon the Georgian authorities to inform the Monitoring Committee of the Assembly, on a regular basis, about the progress of the investigations conducted by the General Prosecutor's Office. We consider that compliance with this Assembly demand is still pending.

82. Regrettably, Georgia has not yet signed the UN Convention on Cluster Munitions. In addition, the relations and rhetoric between Russia and Georgia are still tense and influenced by the war. We cannot therefore consider that Georgia has complied with paragraphs 22.6 and 22.11 of Resolution 1633 (2008).

#### *ii. De facto authorities in South Ossetia*

83. On the basis of the recent developments described in this report, we consider that, with regard to the demands addressed to the de facto authorities in South Ossetia, the latter have generally complied with the demand to exchange prisoners of war (paragraph 23.5), although we are concerned about reports that hostage taking still occurs, in contravention of paragraph 23.5.

84. Regrettably, the South Ossetian de facto authorities have failed to co-operate with international monitoring missions, as demanded in paragraph 23.3, and are placing unreasonable restrictions on the access of humanitarian organisations to South Ossetia, in contravention of the demand of the Assembly in paragraph 23.1.2. In addition, the South Ossetian de facto authorities have failed to stamp out lawlessness and to guarantee security in the areas under their de facto control, as demanded in paragraph 23.1. and paragraph 23.1.1. They have also failed to guarantee the right of return of all IDPs from the areas under their control. We therefore consider that they have not complied with the demands formulated in paragraph 23.3, paragraph 23.4 and paragraph 23.7 of Resolution 1633 (2008).

*iii. Russia*

85. On the basis of the recent developments described in this report, we consider that Russia has implemented the following demands of the Assembly outlined in Resolution 1633 (2008):

- removal of mines and unexploded ordnances and raising awareness among the affected population about the danger posed by such devices. We understand that this difficult task is ongoing (paragraph 23.2 of the resolution);
- release and exchange of prisoners of war (paragraph 23.5), on the understanding that this is also an ongoing process;
- on the basis of the constructive proceedings during the latest round of the Geneva talks, we would consider that Russia has complied with paragraph 22.5 of Resolution 1633 (2008) regarding participation in the Geneva talks. While we support the principle that different representatives of the Abkhaz and South Ossetian people, both those of the de facto authorities and those favouring integration with Georgia, should participate in these talks, we consider that Russia's insistence that representatives of the de facto authorities should be given state status equal to that of Georgia and Russia in these talks, infringes on Georgia's sovereignty and territorial integrity and could raise questions regarding Russia's continued compliance with this point.

86. The Russian authorities have indicated that they would welcome the establishment of, and would co-operate unconditionally with, an independent international inquiry into the war and its circumstances (paragraph 22.3). They can therefore be said to have taken all the necessary steps to comply with this demand of the Assembly, even though a final judgment can only be made when the inquiry has been completed and Russia's co-operation with it has been fully assessed.

87. The Russian General Prosecutor initiated investigations into human rights and humanitarian law violations committed by Georgian troops during the course of the war against Russian citizens and against Russian servicemen. These investigations were closed on 18 December 2008. However, despite several credible reports that provide evidence that human rights and humanitarian law were also violated by Russia and the South Ossetian forces allied to it during the war and its aftermath, no investigation has been started by the Russian General Prosecutor into such alleged violations. We therefore consider that Russia has not complied with paragraph 22.8 of Resolution 1633 (2008).

88. While press accredited in Moscow has had access to the break-away regions of South Ossetia and Abkhazia, continued restrictions on journalists' freedom of movement, including the refusal of access to the two regions from undisputed Georgian territory, are in contradiction with paragraph 22.9 of Resolution 1633 (2008).

89. The Russian authorities have asserted that the former peace agreements with respect to South Ossetia and Abkhazia have now been replaced by the bilateral "friendship and co-operation" treaties between Russia and these break-away regions and that they see no role for any "additional" international peacekeeping format, as demanded in paragraph 22.4. However, we take note of the fact that the issue of peacekeeping was included in the agenda of the December round of talks in Geneva. We hope that these talks will lead to concrete and constructive results which would imply that Russia is complying with this demand by the Assembly.

90. While we welcome the prompt withdrawal from the areas adjacent to the break-away regions of Abkhazia and South Ossetia, Russia has so far failed to withdraw its military forces to the positions *ex ante* the war, in violation of the ceasefire agreement of 12 August, as well as the Sarkozy-Medvedev agreement of 8 September 2008 and the demand of the Assembly. In addition, the continuing provocation and attacks on Georgian villages and police forces, originating from the South Ossetian side of the administrative border are, as mentioned by the Head of the EU Monitoring Mission, a clear violation of the ceasefire agreement. We would like to stress that Russia is directly responsible for any violations of this agreement at the behest of the South Ossetian de facto authorities. We therefore regret to note that Russia has not implemented all points of the ceasefire agreement of 12 August 2008, as demanded by the Assembly in paragraph 22.1 of Resolution 1633 (2008).

91. We are extremely concerned by Russia's failure to stop the ongoing looting, pillaging and ethnic cleansing in South Ossetia and to bring its perpetrators to justice. Russia has therefore not complied with the Assembly's demands to ensure effective respect for all human rights under the ECHR in the territories under its control (paragraph 22.7) and take urgent measures to ensure the safety of all persons within the region of South Ossetia (paragraph 23.1), as well as to stamp out lawlessness in accordance with Article 43 of the Hague Convention (paragraph 23.1.1).

92. Russia's continuing refusal to give access to OSCE and EU monitors to South Ossetia, as well as access to EU monitors to Abkhazia, are in contradiction with the demands formulated by the Assembly in paragraph 22.2 and paragraph 23.3 of Resolution 1633 (2008).

93. As mentioned in the recent report of the OSCE/ODIHR<sup>5</sup> dealing with the human rights situation in the former conflict areas, prepared at the request of the Finnish Chairman-in-Office of the OCSE, Russia and the South Ossetian de facto authorities are placing unreasonable restrictions on the access of humanitarian organisations to South Ossetia and Abkhazia. Moreover, the right of return of IDPs from those areas is refused outright or severely restricted. We have therefore to consider that Russia is not complying with paragraph 23.1.2, paragraph 23.4 and paragraph 23.7 of Resolution 1633 (2008).

94. Russia has been actively encouraging and assisting ethnic South Ossetians to file applications against Georgia with the European Court of Human Rights. However, as stated by the OSCE High Commissioner on National Minorities, the restrictions on the right of return of IDPs from the areas under control of the de facto South Ossetian leadership is in contradiction to the provisional measures ordered by the International Court of Justice in The Hague. We therefore do not consider that Russia has complied with paragraph 22.10 of Resolution 1633 (2008).

95. Regrettably, Russia has not yet signed the UN Convention on Cluster Munitions. In addition, the relations and rhetoric between Russia and Georgia are still tense and influenced by the war. We cannot therefore consider that Russia has complied with paragraph 22.6 and paragraph 22.11 of Resolution 1633 (2008).

96. The Russian authorities, as well as the Federal Parliament, have publicly stated that they do not intend to withdraw their recognition of the independence of South Ossetia and Abkhazia, contrary to Assembly demands as formulated in paragraph 22.2 of Resolution 1633 (2008).

## **IX. Conclusions**

97. We reiterate the position taken and demands made by the Assembly in Resolution 1633 (2008).

98. We fully support the establishment by the EU, on 2 December 2008, of an independent international fact-finding mission to investigate the circumstances surrounding the outbreak and the course of the conflict in Georgia, including with regard to international law, humanitarian law and human rights, and the accusations made in that context. We urge the member states of the Council of Europe that are also members of the EU to ensure that the report of this mission is also presented to the Council of Europe and recommend to the Assembly to include a debate on its findings at a future part-session.

99. We welcome the support of Russia and Georgia for the establishment of this independent fact-finding mission and their declared willingness to fully co-operate with it. We call upon Russia and Georgia to co-operate effectively, fully and unconditionally with the mission.

100. We welcome the constructive approach and political will of the Georgian authorities to comply with the demands of the Assembly expressed in Resolution 1633 (2008). As a result, Georgia has complied with many, but not all, demands of the Assembly expressed in this resolution. We call upon the Georgian authorities to ensure that all remaining outstanding demands are promptly and fully complied with.

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5. OSCE/ODIHR report on "human rights in the war-affected areas, following the conflict in Georgia" (CIO.GAL/182/08), 1 December 2008.

101. We welcome, in particular, the establishment of an inquiry commission by the Georgian Parliament as evidence that it is willing to reflect on the actions and mistakes of the Georgian authorities at the outbreak and during the course of the war. We call upon the parliament to review the conclusions of this commission in the light of the forthcoming report of the EU fact-finding mission.

102. We are concerned that some provisions of the Georgian law on the occupied territories may be at variance with principles of international human rights law, including the European Convention on Human Rights. We therefore call upon the Georgian authorities to promptly implement any recommendation contained in the forthcoming opinion of the Venice Commission, which was requested by the Monitoring Committee.

103. We regret that Russia has not yet complied with a significant number of key demands made by the Assembly, including the many demands that are not related to, and therefore have no effect on, the question of the status of the two break-away regions.

104. We condemn the ongoing violations of human rights and international law, such as looting, pillaging and ethnic cleansing that are taking place in South Ossetia and which Russia has failed to stop. We reiterate that Russia is fully responsible for any human rights violations in the territories under its effective military control. We therefore call upon Russia to bring these practices to an immediate halt, to prosecute all perpetrators and to implement fully all Assembly demands aimed at protecting the human rights of all individuals in the two break-away regions.

105. We are seriously concerned that the escalation of tensions and provocation along the administrative borders is undermining the stability in the region and could lead to renewed clashes or an outbreak of hostilities. The access of international monitors to South Ossetia and Abkhazia and the establishment of a new internationalised peacekeeping format and force are therefore crucial to establishing security and guaranteeing the stability in the region.

106. We welcome the fact that, during the visit of the Presidential Committee to Moscow, the Russian authorities expressed a willingness to engage in an open and constructive dialogue with the Assembly. In this context, we would like to stress that the issue of the status of the two break-away regions should not be used as an argument by Russia not to address other Assembly concerns raised in Resolutions 1633 (2008), as well as in this explanatory memorandum, most notably those related to the short- and long-term stability along the administrative borders with South Ossetia and Abkhazia, the respect of human rights for all Georgian citizens and the humanitarian consequences of the war between Georgia and Russia.

107. We welcome the readiness expressed by both Russian and Georgian parliamentarians to engage in a dialogue with each other under the aegis of the Assembly. We therefore call upon the Assembly to set up a special ad hoc committee, in which both Georgian and Russian parliamentarians will participate, to discuss their differences and develop concrete proposals to address the consequences of the war, in line with paragraph 31 of Resolution 1633 (2008).

108. We consider it unacceptable that persons residing in Abkhazia and South Ossetia should not be effectively covered by the human rights protection mechanisms granted to them as citizens of a Council of Europe member state under the European Convention on Human Rights, as well as other relevant Council of Europe conventions, as a result of the consequences of the war between Russia and Georgia. Such a black hole of human rights protection should not be allowed to exist within the Council of Europe area. The relevant bodies of the Council of Europe should develop a comprehensive action plan to ensure that the rights guaranteed under the Convention are effectively secured for persons residing in South Ossetia and Abkhazia. This could include the establishment of a field presence in the two break-away regions, as demanded by the Assembly in Resolution 1633 (2008). In the absence of other credible investigations, this field presence should also investigate and document human rights violations committed during and in the aftermath of the war.

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*Reporting committee:* Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee).



*Reference to committee:* Resolution No. 1115 (1997).

*Draft resolution* unanimously adopted by the committee on 26 January 2009.

*Members of the committee:* Mr Serhiy **Holovaty** (Chairperson), Mr György **Frunda** (1st Vice-Chairperson), Mr Konstantin **Kosachev** (2nd Vice-Chairperson), Mr Leonid **Slutsky** (3rd Vice-Chairperson), Mr Aydin Abbasov, Mr Pedro Agramunt, Mr Miloš Aligrudić, Mrs Meritxell Batet Lamaña, Mr Ryszard Bender, Mr József Berényi, Mr Luc **van den Brande**, Mr Mevlüt Çavuşoğlu, Mr Sergej Chelemendik, Ms Lise **Christoffersen**, Mr Boriss **Cilevičs**, Mr Georges **Colombier**, Mr Telmo Correia, Mrs Herta Däubler-Gmelin, Mr Joseph Debono Grech, Mr Juris Dobelis, Mrs Josette Durrieu, Mr Mátyás **Eörsi**, Ms Mirjana **Ferić-Vac**, Mr Jean-Charles Gardetto, Mr József Gedei, Mr Marcel Glesener, Mr Charles Goerens, Mr Andreas **Gross**, Mr Michael Hagberg, Mr Holger Haibach, Ms Gultakin Hajiyeva, Mr Michael **Hancock**, Mr Davit Harutyunyan, Mrs Olha **Herasym'yuk**, Mr Andres **Herkel**, Mr Raffi Hovannisian, Mr Kastriot **Islami**, Mr Miloš Jevtić, Mrs Evguenia Jivkova, Mr Hakki Keskin, Mrs Katerina Konečná, Mr Andros Kyprianou, Mr Jaakko **Laakso**, Mrs Sabine **Leutheusser-Schnarrenberger**, Mr Göran **Lindblad**, Mr René van der Linden, Mr Eduard Lintner, Mr Pietro Marcenaro, Mr Dick Marty, Mr Miloš **Melčák**, Mr João Bosco Mota Amaral, Mr Theodoros Pangalos, Mr Ivan Popescu, Ms Maria Postoico, Mr Christos **Pourgourides**, Mr John Prescott, Mr Andrea Rigoni, Mr Armen **Rustamyan**, Mr Indrek **Saar**, Mr Oliver Sambevski, Mr Kimmo **Sasi**, Mr Samad Seyidov, Mr Christoph Strässer, Mrs Chiora **Taktakishvili**, Mr Mihai Tudose, Mr Egidijus **Vareikis**, Mr José Vera Jardim, Mr Piotr **Wach**, Mr Robert **Walter**, Mr David Wilshire, Mrs Renate **Wohlwend**, Mrs Karin S. Woldseth, Mrs Gisela Wurm, Mr Boris Zala.

NB: The names of the members who took part in the meeting are printed in **bold**.

*Secretariat of the committee:* Mrs Chatzivassiliou, Mr Klein, Ms Trévisan, Mr Karpenko.



**Doc. 11789**  
12 January 2009

## Humanitarian consequences of the war between Georgia and Russia

Report  
Committee on Migration, Refugees and Population  
Rapporteur: Mrs Corien W. A. JONKER, Netherlands, Group of the European People's Party

### *Summary*

The Committee on Migration, Refugees and Population remains greatly concerned by the humanitarian situation following the war between Georgia and Russia.

Although many of the 192 000 people displaced by the war have been able to return to their homes, there still remain many people with humanitarian needs as returnees, as displaced persons or as persons who have remained in the former conflict zones.

The committee is particularly concerned about the security situation of ethnic Georgians living in the Gali region of Abkhazia and the Kodori Valley. It is also greatly concerned about the security situation of ethnic Georgians remaining in South Ossetia, those living close to the de facto "border" with South Ossetia and those remaining in the Akhgori district.

The committee welcomes the US\$4.5 billion of aid pledged to Georgia and urges the Government of Georgia to account for this aid in a transparent manner. It also urges the government to implement an action plan for displaced persons from both the old conflicts and the recent conflicts.

The committee calls for full support for the preparation of a replacement mandate for the United Nations Observer Mission in Georgia (UNOMIG) and a strengthening of the mandate and capacity of the European Union Monitoring Mission (EUMM) which needs to be given access to South Ossetia and Abkhazia.

The Committee of Ministers should examine how to contribute to human rights protection in South Ossetia and Abkhazia, considering a possible contribution to any UN or other international presence. The committee calls on the Committee of Ministers to continue to support human rights training for monitors.

### **A. Draft resolution**

1. The Parliamentary Assembly, referring to its Resolution 1633 (2008) on the consequences of the war between Georgia and Russia, considers that one of the immediate priorities is to deal with the humanitarian consequences of the war.
2. Following the breakout of war in August 2008, it has been estimated that 133 000 persons were displaced in Georgia from South Ossetia and the so-called "buffer zone" and Abkhazia.

According to estimates from the Russian authorities, over 36 000 South Ossetians sought refuge in North Ossetia.

3. Since August 2008, about 100 000 internally displaced persons in Georgia have returned to their homes, mostly in the former so-called "buffer zone" with South Ossetia. There remain approximately 23 000 persons with little prospect of early return. Of those who fled to Russia, all but around 2 000 persons have returned to South Ossetia.

4. Notwithstanding the large scale return of persons after the conflict, considerable concerns remain about the humanitarian situation and human rights of those who have returned, those who cannot return and those who have remained, in spite of the serious security problems.

5. Hand in hand with the plight of these recent internally displaced persons and refugees, there exist continuing concerns for 222 000 internally displaced persons from the earlier conflicts and also refugees whose long-term plight remains in urgent need of solution.

6. There are still concerns about all acts which could contribute to ethnic cleansing of Georgians from the conflict areas and areas of occupation.

7. The number of missing from the recent conflict remains unclear.

8. The situation in South Ossetia remains extremely complicated for the civilian population. They are cut off from the rest of Georgia, with little or no access to international humanitarian aid and human rights monitoring. They are facing great hardship during the winter months, due in particular to shortages of food and non-food items, electricity and gas. For those with damaged or destroyed houses the situation is even more difficult. For the few ethnic Georgians remaining, the security situation remains delicate and they are reportedly increasingly under pressure to renounce their Georgian passports.

9. The situation in the former so-called "buffer zone" remains tense, with persons continuing to be killed by sniper fire, mines, unexploded ordnance and booby traps. While the rapid deployment of the European Union Monitoring Mission (EUMM) has allowed many persons to return to their homes in the former so-called "buffer zone" before the onset of winter, the mission would need a stronger mandate and greater manpower to cover the security needs of all those close to the de facto border with South Ossetia.

10. Grave concerns remain for the persons continuing to reside in the Akhalkalaki district. Approximately 5 100 persons have already fled this region and there are fears that even more people will leave the region due to the lack of security combined with the harsh winter conditions and the lack of food and non-food items, gas, heating and financial assistance and income.

11. Large numbers of internally displaced persons (IDPs) have returned to the former so-called "buffer zone". The Assembly notes with concern that some of these returns have been made at very short notice with little information and choice being given to IDPs as to their return, compromising the right to voluntary return in safety and in dignity. Reportedly 100 returnees have left their homes a second time in view of the unsatisfactory security situation in some areas of the former so-called "buffer zone".

12. The situation of those Georgians who returned to the Gali region remains precarious. The closing of the de facto border with the rest of Georgia has had a great impact on the population in the Gali region. It has become increasingly difficult for this population to maintain family contacts, sell their produce, have access to health or pick up financial entitlements on the other side of the de facto border.

13. The security situation in the Gali region also remains tense, with persons reluctant to leave their homes after dark. There continue to be reports of intimidation. Furthermore, steps continue to be taken to stop teaching in the Georgian language in schools in the lower Gali region. The cumulative effect of these measures, the lack of security and the fear that international organisations may pull out from the region will contribute to more and more persons leaving the Gali region and crossing the de

facto border into Georgia. If the border remains closed, a major movement of the Georgian ethnic population can be anticipated.

14. The United Nations Observer Mission in Georgia (UNOMIG) is in the process of renegotiating a mandate for its presence in Abkhazia following the nulling and voiding of the Moscow agreement on which its mandate was based. UNOMIG plays an extremely important role in Abkhazia and in particular in the Gali region and the Kodori Valley where its regular patrols in the countryside provide some welcome security for the local residents.

15. There are also great concerns over the future of the 1 500 persons who fled the Kodori Valley when this was occupied by the Abkhaz forces in August 2008. Approximately 100 persons have remained in the Kodori valley and although the International Committee of the Red Cross (ICRC) and the United Nations High Commissioner for Refugees (UNHCR) have had access to them, they are likely to face an extremely difficult winter.

16. The Assembly welcomes the role played by the Council of Europe Commissioner for Human Rights and his six principles for urgent protection of human rights and humanitarian security drawn up after his August 2008 visit.

17. The Assembly welcomes the overwhelming international response to the humanitarian and protection needs of the internally displaced persons in Georgia. US\$4.5 billion have been pledged as a result of the Georgian Crisis Flash Appeal and the Joint Needs Assessment put together in the aftermath of the war. It commends the many international organisations and non-governmental organisations that have moved swiftly to support the Georgian population and Government.

18. The Georgian Government has shown a strong commitment to tackling the humanitarian issues its population is facing, learning from mistakes made following the previous conflicts.

19. The government has moved quickly to provide durable solutions for those internally displaced persons who have little or no prospect of return in the near future. The building of over 6 000 small, two bedroom family houses can be welcomed, notwithstanding that there are criticisms over the location of these houses, away from basic amenities and in areas with few economic prospects. There are also concerns about the lack of clarity on the criteria for the allocation of such housing. The government has also taken urgent steps to winterise 137 collective centres for IDPs with assistance from many international actors.

20. Other important steps taken include assistance for the most vulnerable and those with psychological problems arising from the conflict. Schools in Georgia, including in the former so-called "buffer zone" have been re-opened and are functioning and school supplies have been distributed to the children. Free primary medical aid has been provided but needs to be extended over the winter.

21. The Assembly also recognises the generous response of Russia to the needs of the refugees from South Ossetia and the assistance provided to them on their return to South Ossetia. It however deplores the restrictions placed on the delivery of international humanitarian aid for the region and the insistence that all aid for South Ossetia be brought through Russia rather than through Georgia.

22. The Assembly deplores the fact that humanitarian access has fallen victim to political considerations by the parties to the conflict and is also concerned at provisions of the new Georgian Law on the Occupied Territories, which may restrict access and the delivery of humanitarian aid to all areas by humanitarian actors and may not be in line with, and may violate, relevant international obligations.

23. The Assembly also deplores that because of the restrictions imposed by the de facto authorities in South Ossetia on the entry into South Ossetia from the Georgian side, it was not possible for the Assembly to gather first-hand information on the situation of the population in this region.

24. In view of the above-mentioned considerations, the Assembly calls on Georgia, Russia and the de facto authorities in South Ossetia and Abkhazia to:

- 24.1. abide unconditionally by the international humanitarian and human rights law; and in particular, respect their obligations and commitments under the 1907 Hague Convention (IV), the 1949 Geneva Conventions and its Protocols, and the European Convention on Human Rights;
- 24.2. investigate and where appropriate prosecute all human rights violations and violations of humanitarian law promptly, independently and impartially, and allow the relevant human rights ombudspersons to carry out their own independent enquiries;
- 24.3. ensure that reparations for violations of international human rights and humanitarian law are provided, including restitution of property and payment of compensation;
- 24.4. provide immediate and unimpeded access at all times, to all conflict areas for all humanitarian actors from either Georgia or Russia so that they may reach IDPs and other civilians at risk without further delay. They should refrain from any steps that may impede such access;
- 24.5. guarantee the voluntary right to return of all persons displaced by the recent conflict and the earlier conflicts, ensuring that the return is in safety and in dignity. This right to return is the starting point of any sustainable solution to internal displacement and international humanitarian law obliges all parties concerned, once military action is over, to do their best to remedy the harm inflicted on civilians and ensure that refugees and displaced persons are safely returned to their places of residence;
- 24.6. ensure respect for the right of IDPs, whether displaced recently or by earlier conflicts, to freely choose whether they want to return, integrate locally or resettle in another part of the country, and take measures to allow the displaced to participate fully in the planning and management of their return, resettlement and reintegration;
- 24.7. release and exchange immediately all prisoners of war and persons detained as a result of the conflict and exchange all mortal remains;
- 24.8. ensure that all hostages are released and exchanged without delay and that the practice of hostage taking is criminally prosecuted and eradicated;
- 24.9. solve the issue of missing persons both from the recent conflict and the earlier conflict, reconstituting, as necessary, the working commissions on all sides and co-operating closely with the ICRC;
- 24.10. exchange information on mines and unexploded ordnance and remove, together with the assistance of the Halo Trust and other experts in the area, all remaining explosive remnants of war. Ensure that all areas of danger are mapped, fenced and identified for the local population and that awareness-raising programmes of the dangers of these explosive remnants continue to be run for those at risk, whether they are civilians, police officers, members of the authorities or others;
- 24.11. take measures to effectively protect the property left behind both by old and new internally displaced persons with a view to securing restitution of such property in the future;
- 24.12. respect responsibilities under the European Convention on Human Rights and also under the 1907 Hague Convention (IV) on the Laws and Customs of War on Land. Under these standards, the parties concerned remain responsible for violations of human rights and humanitarian law in all areas under their de facto control;
- 24.13. agree on the strengthening of the European Union Monitoring Mission (EUMM) to allow it to have a stronger presence and to have access to both sides of the de facto border zone and former conflict zones since occupied;
- 24.14. agree to the extension of the mandate of the European Union Monitoring Mission (EUMM) to cover protection and possibly peace-keeping covering both sides of the de facto borders of South Ossetia and Abkhazia and other parts of the former conflict zones since occupied;

24.15. allow the OSCE monitors access to both sides of the de facto South Ossetian border and to agree on an increase in the number of these monitors including in other parts of the former conflict zones since occupied;

24.16. take fully into account and implement the Council of Europe Commissioner for Human Rights' six principles for urgent protection of human rights and humanitarian security drawn up after his August 2008 visit to the region, and his follow-up recommendations.

25. The Assembly calls on Russia and the de facto authorities in South Ossetia and Abkhazia to:

25.1. guarantee the safety and security of all persons under their de facto control, not only in South Ossetia and Abkhazia but also in the occupied territories of the Akhagori district and Perevi, and in the Kodori Valley;

25.2. ensure that no further measures are taken which have the effect of forcing persons to leave their homes and homelands, contributing to ethnic cleansing;

25.3. stop, prevent and protect against onward going lawlessness, including physical assaults, robberies, intimidation, harassment, looting, kidnapping, torching and destruction of property, and prosecute all those involved in such acts;

25.4. support a new, enhanced, replacement mandate for UNOMIG in Georgia, including in Abkhazia and possibly also in South Ossetia, and allow EUMM and the OSCE to carry out their respective mandates.

26. The Assembly calls on Georgia to:

26.1. improve the security of all those living in the de facto border and former conflict zones, including by increasing police patrolling at night in the most sensitive areas and not just at de facto border posts;

26.2. improve the provisions of primary humanitarian aid including food and non food items and firewood to villages in the former so-called "buffer zone" adjacent to South Ossetia;

26.3. adopt a revised strategy and action plan for new and old internally displaced persons and ensure that assistance to both old and new displaced persons is provided on the basis of simple, rational, clear and transparent criteria of real need and vulnerability rather than status;

26.4. ensure that internally displaced persons are systematically informed and consulted to allow them to make a free and informed choice as to whether to locally integrate, return or resettle on a temporary or permanent basis. Furthermore, mandated international organisations such as UNHCR, should be involved in the resettlement and return process;

26.5. guarantee that those who have not been displaced but who are experiencing problems as a result of the conflict receive appropriate aid;

26.6. continue to provide primary medical aid and psychological assistance to internally displaced persons and returnees, and in particular take into account the needs of children;

26.7. take measures to ensure that internally displaced women and children do not become victims of trafficking or violence;

26.8. find solutions to alleviate the debt of internally displaced persons who have lost their homes and their incomes and who have no means to repay their banking loans;

26.9. improve the flow of information to internally displaced persons about their rights and entitlements and allow them to participate in decisions affecting their future.

27. The Assembly calls on all member states and states with observer status with the Organisation to:

27.1. continue to provide support and commit resources in order to:

27.1.1. urgently address the acute humanitarian needs of the newly displaced, including but not limited to shelter;

27.1.2. support the most vulnerable, including children, the elderly, the sick, the disabled, single mothers, the infirm and the traumatised;

27.1.3. reach durable solutions for both the old and the newly displaced populations, with a clear protection component;

27.1.4. implement all the components of the Georgian Government's Action Plan for Internally Displaced Persons – with amendments, agreed with key international actors, to account for the newly displaced population;

27.1.5. ensure a smooth transition from emergency aid to early recovery and development aid for Georgia;

27.2. ensure accountability and transparency by the beneficiaries of the aid, whether this be the government, local authorities, international organisations, non-governmental organisations or others;

27.3. support the United Nations in negotiating a new mandate for the United Nations Observer Mission in Georgia (UNOMIG).

28. The Assembly calls on the European Union to ensure that the European Monitoring Mission (EUMM) receives the necessary resources to carry out its mission and that:

28.1. the staff of the EUMM are fully trained in human rights standards;

28.2. patrols are provided with Georgian interpreters;

28.3. further offices along the de facto border are opened in order to allow patrols to reach all parts of the former so-called "buffer zone" within a reasonably short period of time.

29. The Assembly invites the Council of Europe's Development Bank to consider action with a view to assisting those affected by the conflict, including displaced persons and those displaced by the earlier conflicts, as well as contributing to reconstruction in the areas affected, including in South Ossetia and Abkhazia.

## **B. Draft recommendation**

1. The Parliamentary Assembly refers to its Resolution ... (2009) on the humanitarian consequences of the war between Georgia and Russia.

2. It believes that there is an important role for the international community to play in South Ossetia and in Abkhazia in order to ensure the promotion and protection of human rights and humanitarian law. It believes that the Council of Europe should have a role on human rights in this area, without any prejudice to the territorial integrity of Georgia.

3. Therefore the Assembly recommends that the Committee of Ministers:

3.1. continue to liaise with the EU, OSCE and other international actors;

3.2. provide support for the human rights training of European Union Monitoring Mission (EUMM) members;

3.3. examine with the United Nations, as a matter of urgency, how it could contribute to the work of a new United Nations mission covering Abkhazia to replace the current United Nations Observer Mission in Georgia (UNOMIG), including a possible Council of Europe presence;

3.4. provide support and funding to the Council of Europe Commissioner for a human rights programme in South Ossetia and Abkhazia.

4. The Assembly also recommends that the Committee of Ministers invites the relevant sectors of the Council of Europe to:

4.1. provide training to local authorities and law enforcement agents on the awareness of human rights as well as the specific economic, social, cultural and psychological needs of internally displaced persons in line with the Committee of Ministers' Recommendation Rec(2006)6 and the UN Guiding Principles on internally displaced persons;

4.2. examine the possibility of providing training in Georgia for government officials, at national and local level, on spending and accounting for international aid and assistance in a transparent manner;

4.3. provide training to non-governmental organisations on the monitoring of aid and assistance run by the government and local authorities;

4.4. organise a multilateral meeting for government officials dealing with internally displaced persons issues to allow them the opportunity of learning how these issues are dealt with in other countries;

4.5. organise a multilateral meeting for non-governmental organisations specialising in IDP issues, to allow them the benefit of learning from each others' different experiences.

### **C. Explanatory memorandum,<sup>1</sup> by Mrs Jonker**

#### **I. Introduction**

1. In October 2008, the Parliamentary Assembly adopted Resolution 1633 on the consequences of the war between Georgia and Russia. This resolution recognises the need for priority to be given to the humanitarian consequences of the war and called for further work to be carried out on this subject.

2. In the light of this call, the Committee on Migration, Refugees and Population was invited to prepare a report and Mrs Jonker was appointed to carry out this work. In order to gather information for the report she travelled to the region between 16 and 22 November 2008, first visiting Abkhazia, starting in Sukhumi before heading down through the Gali district and back to Tbilisi. She then had contacts with all relevant actors – governmental, international and non-governmental – in Tbilisi, before visiting the former so-called "buffer zone" and having contacts with the different organisations active in Gori and the surrounding region.

3. The rapporteur had hoped to visit South Ossetia and Tskhinvali, but was informed on the day before her departure, through the Russian delegation to the Parliamentary Assembly, that the South Ossetian de facto authorities would not permit her to enter South Ossetia from Georgia and that she should enter instead through Russia. This was not possible to organise.

4. This report is based on the findings of the rapporteur during the course of her visit and on the opinion she prepared and presented to the Assembly in October on the consequences of the war between Georgia and Russia (see Doc.11730).

5. The rapporteur would like to pay tribute to the different people she met in the course of her visit who were working to tackle the many humanitarian needs of those affected by the conflict. She would like to thank them for the time they took to brief her and for their professionalism and commitment. She would particularly like to thank the United Nations Observer Mission in Georgia (UNOMIG) for setting up her programme in Abkhazia, and the Georgian Parliamentary Assembly

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1. In this document, the term "Abkhazia" and "South Ossetia" are used for readers' convenience, without prejudice to the Assembly's position on the territorial integrity of Georgia.



delegation and the Special Representative of the Secretary General of the Council of Europe in Georgia for organising the remaining parts of the programme.

6. The focus of this report is humanitarian issues. The rapporteur has not chosen to examine political issues arising from the conflict. Neither has she sought to adjudicate on human rights violations or humanitarian law violations committed by both sides in the context of the war, such as the intentional or avoidable killing or wounding of civilians and the destruction of property. These are matters which are the subject of a large number of individual applications to the European Court of Human Rights against both sides. They are also matters dealt with by inter-state cases brought by Georgia against Russia before the European Court of Human Rights and the International Court of Justice.<sup>2</sup> The rapporteur supports all calls, including by the Commissioner for Human Rights of the Council of Europe, for an independent and impartial investigation of violations of humanitarian law and human rights during the conflict.

## **II. Statistics on displacement**

7. Since August 2008, about 100 000 internally displaced persons (IDPs) in Georgia have returned to their homes, mostly in the former so-called "buffer zone" with South Ossetia. There remain approximately 23 000 IDPs with little prospect of early return and according to UNHCR approximately 37 500 people will remain displaced over the winter. Of those who fled to Russia, all but around 2 000 people have returned to South Ossetia.

8. Hand in hand with the plight of these IDPs and refugees, there exists continuing concerns for 222 000 IDPs from the earlier conflicts and also refugees whose long-term plight remains in urgent need of solution.

## **III. Persons killed or wounded**

9. The total number of deaths and persons wounded continues to be a controversy. According to the Georgian side they suffered 326 people killed. On the Russian and South Ossetian side, 133 people have been reported killed.

## **IV. People missing as a result of the conflict**

10. The number of the missing as a result of the recent conflict remains uncertain.

11. The rapporteur considers that accurate information on the names of the civilian and military personnel missing on all sides needs to be made available. It is also essential that the issue of the missing from the previous conflicts is also taken into account and that the relevant commissions for missing persons on all sides function. In this respect the rapporteur considers it important that the commission on missing persons in South Ossetia is re-established. In Abkhazia the draft law on missing persons still needs to be adopted and the commission previously established must be re-invigorated. In Georgia the work of the commission on missing persons needs to be bolstered and a new head and deputy head of the commission need to be appointed. The precise work that these commissions should carry out is highlighted in Parliamentary Resolution 1553 (2007) on missing persons in Armenia, Azerbaijan and Georgia from the conflicts over the Nagorno-Karabakh, Abkhazia and South Ossetia regions. The rapporteur urges all parties to the recent and past conflicts to work closely with the International Committee of the Red Cross (ICRC) on this issue.

## **V. Prisoners of war and hostages**

12. The rapporteur notes the important work carried out by the ICRC and also by the Council of Europe Commissioner for Human Rights in arranging for the release and exchange of prisoners of war and other persons detained as a result of the conflict. The rapporteur fully supports all calls for

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2. Many of these issues are also raised in the recent Amnesty International report entitled "Civilians in the line of fire. The Georgia-Russia conflict". This report was published on 18 November 2008 and is available on the website of Amnesty International ([www.amnesty.org](http://www.amnesty.org)) and also documented in the recent report of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) entitled "Human rights in the war-affected areas following the conflict in Georgia" This report was published on 27 November 2008 and is available on the OSCE/ODIHR ([www.osce.org](http://www.osce.org)).

the release and exchange of these persons and calls for action to be taken by the relevant authorities to eliminate the practice of hostage taking.

13. It is important that cases of hostage taking are not carried out with impunity and that they are prosecuted by the relevant authorities.

#### **VI. The situation in Abkhazia**

14. Abkhazia itself was not directly touched by the war between Georgia and Russia, although the Kodori valley was occupied by Abkhaz forces in August 2008. Approximately 1 500 persons from this region fled from the area. Approximately 100 people remained in their homes and they face a harsh winter, largely cut off from the outside world. The ICRC and UNHCR have had access to these persons to ensure that they receive sufficient assistance to tide them through the winter. The issue of return for those who fled remains, however, uncertain for the moment.

15. The situation in the Gali region, which is the southernmost region of Abkhazia populated almost entirely by Georgians remains precarious. Even before the conflict erupted Georgians in Gali were suffering from the closure of the de facto "border" with Georgia, albeit that the de facto "border" remained porous. Since the conflict, Georgians in the Gali region have felt even less secure and even more cut off. It has become increasingly difficult and dangerous to cross the de facto "border" for family contacts, medical treatment and commercial purposes or to claim subsidies, pensions or other sums paid by the Georgian authorities. Furthermore the security situation remains tense with people reluctant to leave their homes after dark and with fast moving Russian and Abkhaz armoured vehicles moving along the roads. There is a fear of military conscription and discrimination, even if many people pay bribes to avoid this. There continue to be reports of harassment, with persons being forced to work without pay or being forced to pay unofficial "taxes" on their produce. The rapporteur enquired about the issue of "passportisation" and was led to understand that while many ethnic Georgians feared not receiving public services, including health care if they did not take up Abkhaz "passports", there was no great pressure being put on persons in the Gali region in this respect. Indeed, amongst those who had applied for the Abkhaz "passports", very few had received them.

16. The rapporteur, when visiting the Gali region as part of a UNOMIG patrol, was struck by the number of deserted and destroyed or damaged properties left over from the earlier conflict. From her contacts in one of the villages it was clear that persons were once again gradually leaving the region, as evidenced by the falling number of children in schools. All was not, however, bleak and the rapporteur also had the benefit of seeing a number of aid projects being carried out. For example she witnessed the "Shelter Project" being carried out by the Norwegian Refugee Council which was helping to repair roofs for damaged houses and a further project to provide running water to homes in various villages.

17. The rapporteur was, however, concerned to hear that in the lower Gali region, schools and teachers were coming under increasing pressure to stop teaching in Georgian and to cease using Georgian textbooks. In the upper Gali region such teaching had already apparently been stopped.

18. The rapporteur had the opportunity to meet with school teachers, civil society representatives, human rights activists and medical workers, all of whom attested to the different problems outlined above. There was real concern that the international community might pull out from Abkhazia and there was a plea for this not to happen.

19. The rapporteur is aware that ethnic Georgians (Mingrelians) in the Gali region are effectively in a minority situation in Abkhazia. They are in need of minority protection and minority rights. The rapporteur considers that the de facto authorities should take full account of international minority rights including those under the Framework Convention for the Protection of National Minorities.

20. It is difficult to ascertain how many ethnic Georgians remain in the Gali region, with UN estimates of about 45 000 people who had fled but had returned and a total population of between 60 000 and 70 000. The Abkhaz figures are, however, much higher and Georgian figures much lower. What is clear, however, is that the numbers are now falling and if this situation is to be stopped, much greater attention needs to be paid to the plight of those living in this region by the international community. As already noted, people in the region are becoming increasingly fearful that the

international organisations, governmental and non-governmental, will gradually withdraw. Of most concern at the moment is UNOMIG and the question of its continued presence in Abkhazia. It is currently operating without a mandate since the Moscow agreement was made null and void.

21. In the view of the rapporteur, it is essential that a new mandate is worked out for a UN presence in Abkhazia and in particular for the Gali region where the mere presence of UN observers and patrols provides some welcome security for the local people.

22. The rapporteur considers it extremely important that the Council of Europe be further involved in Abkhazia and provide support for the United Nations in any future mission it undertakes in this region as a follow up to UNOMIG. Furthermore, the rapporteur considers that there is an urgent need for the Council of Europe Commissioner for Human Rights to visit the region again to raise awareness of the problems still being faced by people living in this region and to establish ways in which to tackle the human rights problems of these people.

#### **VII. The Kodori Valley**

23. Abkhaz troops attacked the Kodori Valley on 9 August 2008 and took over the area after the local population and Georgian servicemen fled the area. Approximately 5 100 ethnic Georgians (Svans) fled the occupied area and it is thought that about 100 people remained.

24. It is not clear whether those who fled the area will be able and allowed to return after the winter. For those persons who did not leave the area, the winter will be long and harsh. The rapporteur understands that the ICRC and UNHCR have had access to these people and that they have been able to provide some assistance to them.

25. The rapporteur considers that return of the people who fled should be a priority for the spring and that pressure should be put on the de facto Abkhaz authorities and the Russian authorities to ensure that this return takes place in safety and in dignity.

#### **VIII. The situation in South Ossetia**

26. The rapporteur was unable to visit South Ossetia notwithstanding her request passed on by the Russian delegation of the Parliamentary Assembly to the de facto authorities in South Ossetia. She was informed that there were no cross-over points at the de facto "border" with Georgia and that foreign delegations had to enter South Ossetia from Russia. The rapporteur was invited to find a possibility to enter South Ossetia from the territory of Russia.

27. The rapporteur received this information the day before she was due to fly to Georgia on her visit and it was not possible for her to change her programme in the way suggested by the de facto South Ossetian authorities.

28. As a result of this, the rapporteur is not able to comment in any detail on the current situation in South Ossetia, either in terms of the humanitarian situation of the few Georgians still remaining in South Ossetia or in terms of the situation of the population at large and the refugees who have returned from Russia after the end of the conflict.

29. The rapporteur did, however, visit the region briefly with the ad hoc committee of the Parliamentary Assembly's Bureau on 26 September 2008. It is clear to the rapporteur that the situation in South Ossetia remains extremely complicated for the remaining Georgian population. They are cut off from the rest of Georgia with little access to international humanitarian aid and with little international human rights monitoring of their situation. Many are reportedly being pressurised into taking South Ossetian passports. One of the few human rights actors able to have regular access to the region has been the Council of Europe's Commissioner for Human Rights and the rapporteur commends him for his work and public statements on the situation in the region.

30. The UN Office for the Coordination of Humanitarian Affairs (OCHA) led an inter-agency mission to South Ossetia from 16 to 20 September 2008 to obtain an overall picture of the humanitarian needs and this included representatives from the Office of the High Commissioner for Human Rights (OHCHR), the United Nations Development Programme (UNDP), the Office of the UN

High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the World Food Programme (WFP) and the World Health Organization (WHO). The ICRC is the only international organisation to be present on the ground in Tskhinvali and has been providing humanitarian aid from the first days of the conflict through to the present.

31. The population as a whole in South Ossetia is facing great hardship during the winter months with food and non-food items, electricity and gas being in short supply. Those with damaged or destroyed housing are in a particularly difficult situation. The rapporteur is greatly concerned by this situation and encourages the de facto South Ossetian authorities to allow humanitarian aid also from Georgia, and for the Georgian authorities to ensure that the recent Law on the Occupied Territories is not applied in such a way as to prevent humanitarian aid reaching people in need in South Ossetia.

#### **IX. The situation in the former so-called "buffer zone" with South Ossetia**

32. The rapporteur visited the former so-called "buffer zone" and spoke with international organisations and non-governmental organisations (NGOs) and a number of locals in the area. She saw many destroyed properties, in particular as she approached the de facto "border" close to Tskhinvali.

33. The withdrawal of the Russian troops, the deployment of the EUMM, the monitoring by the OSCE and the deployment of Georgian police in the former so-called "buffer zone" have all contributed to improving the security in this region. The security, however, close to the de facto "border" remains problematic, to such an extent that many people are unable to return and those that have returned continue to feel extremely insecure. There are continuing incidents of sniper fire, kidnappings and roaming militia from South Ossetia intimidating locals and demanding food and drink. There were complaints that the local Georgian police were not sufficiently present and not patrolling at night and limiting their presence to the de facto "border" points.

34. The local population continue to express fears about unexploded ordnance and mines, the difficulties of accessing firewood or fields close to the de facto "border". They also express insecurity and fear at the sound of Russian helicopters flying overhead. The rapporteur during her visit was informed about a number of shooting incidents where Georgian police or officials and others were targeted by sniper fire. The rapporteur was also informed about booby traps, such as the incident in the Dvani area on 10 November when a booby trapped South Ossetian flag was taken down by Georgian police, killing two people and injuring three others.

35. The rapporteur is greatly concerned by the ongoing lack of security in the zones closest to the de facto "border". There clearly needs to be monitoring of the situation on both sides of the de facto "border" by both the EUMM and by the OSCE monitors (see point XI). The authorities in South Ossetia need to clamp down on the activities of militias operating from South Ossetia and the Georgian police need to provide a stronger presence, in particular at night, not just at the de facto "border" points, but throughout the villages in the most sensitive areas.

36. The rapporteur noted during her visit the very real danger and ease with which confrontations at the de facto "border" could quickly get out of hand. Many of the de facto "border" points have armed Georgian police and South Ossetian forces facing each other at short distances. There is a clear need for another solution, such as a demilitarised zone or international peace keepers on the de facto "border".

#### **X. The situation in the Akhagori region and in Perevi**

37. These are both areas which have been occupied by the Russian and South Ossetian forces outside of the pre-conflict de facto "border" of South Ossetia. Russian and South Ossetian forces have refused to pull back from their positions, notwithstanding international pressure on them to do so. Approximately 5 100 persons have already fled the region of Akhagori and there are fears that even more people will leave due to the lack of security, combined with the harsh winter conditions and the lack of food, gas, heating and financial assistance and income.

#### **XI. The role of the European Union Monitoring Mission (EUMM)**

38. The rapid deployment of the EUMM on 1 October 2008 has allowed the Russian forces to withdraw from most of the former so-called “buffer zone”. This has allowed many displaced persons to return to their homes before the onset of winter.

39. The mission has over 200 monitors working in the field. Monitors are unarmed and have the mandate of monitoring rather than protection. They currently cover the Georgian side of the de facto “border” with South Ossetia and Abkhazia as they have not been granted access to the other sides.

40. The rapporteur welcomes the prompt deployment of the mission and the news that they have received and continue to receive human rights training from the Council of Europe. Their mere presence in the former so-called “buffer zone” allows many in the zone to feel more secure and also provides a calming influence at the de facto “border” points where armed South Ossetian irregular forces and Georgian police face each other, sometimes no more than 50 metres apart.

41. The rapporteur greatly regrets that the monitors have no possibility for crossing the de facto “border” into South Ossetia. She also regrets that the monitors only have a monitoring mandate and not a protection mandate. She considers it imperative that the monitors have access to South Ossetia and Abkhazia and that either they be given a protection mandate or that consideration be given to developing their mandate into a peace-keeping mandate both sides of the de facto “border”. Should this not be appropriate, consideration should be given to providing such a mandate to another body such as the United Nations.

42. The rapporteur, while understanding the speed with which the EUMM has had to establish itself, has noted from her meetings with the EUMM and other persons in Georgia, a number of problems which need to be ironed out in the operation of the mission. The monitors are either Russian speakers or have access to Russian interpreters. While this would be important if they were able to work on the South Ossetian side of the de facto “border”, what they currently require is Georgian speakers and Georgian interpreters. The mission suffers from a lack of institutional memory from past European Union monitoring missions, the vehicles are from a variety of different countries creating problems of servicing and spares and the patrols are often based too widely apart, making it virtually impossible to reach certain areas during the hours of their patrols. Some commentators complained that the monitors were never seen beyond their vehicles and the rapporteur was led to understand that monitors were under instruction to remain on the roads. The rapporteur noted a certain frustration from different organisations that the reports of the EUMM were not made available. The rapporteur shares this frustration as she does not have access to these reports either. She considers that the EUMM should be providing at least some of its report to all concerned actors in the region or providing them with alternative reports if certain information is considered sensitive.

43. The rapporteur welcomes that the monitors have started to undertake night patrols alongside day patrols and from her conversations with a number of monitors she was impressed by the level of their individual commitment. The rapporteur encourages the European Union to provide full support to the monitoring operation and encourages the relevant authorities to facilitate the EUMM in carrying out its mandate and to revise the mandate as necessary.

## **XII. The monitoring role of the OSCE**

44. The OSCE is carrying out valuable monitoring work in the former so-called “buffer zone” with South Ossetia. The information available from the reports they prepare provides a good insight into the ongoing security concerns in this zone. This is particularly important as the reports of the EUMM are not generally available.

45. The rapporteur considers it important that the OSCE monitors be given access to South Ossetia to carry out their monitoring and that their numbers be increased.

## **XIII. IDPs and humanitarian aid in areas under the control of Georgia**

46. The Georgian Government has shown a strong commitment to tackle the humanitarian issues its population is facing, learning from mistakes made following the earlier conflicts over Abkhazia and South Ossetia.

47. The government has moved quickly to provide durable solutions for those IDPs who have little or no prospect of return in the near future. The building of over 6 000 small family houses can be welcomed. These houses have a surface area of 65 square metres, gardens of approximately 400 square metres and some have inside bathrooms. They are equipped with basic furniture, crockery and the new residents have each been given a settling in allowance of 200 lari per head.

48. The rapporteur visited some of these houses during her visit to Georgia and they appear well built. There are, nonetheless, some criticisms which can be raised, namely the lack of bathrooms in certain houses and the location of these houses away from basic amenities and in areas with few economic prospects. There are also concerns about the lack of clarity as to the criteria for allocation of such housing. Furthermore, the fact that all the houses are the same size gives the impression that “one size fits all” when clearly this is not the case, not only in terms of size of the houses and families, but also the appropriateness of the houses for certain people with specific needs, such as the elderly.

49. As many of the people housed in these new homes are unlikely to return to their homes in the near future, it is important that the government now works on ensuring amenities and infrastructure in the vicinity (such as schools, shops and health-care clinics), that adequate arable land in the vicinity is provided to those with agrarian backgrounds and that employment opportunities are facilitated in the areas where the houses are built.

50. Along with the new houses built, the government has been working on the winterisation of 137 collective centres for IDPs. This is being done with assistance from many international actors. The rapporteur visited a collective centre in Tbilisi which housed both old and new IDPs. The building was a former hotel (Hotel Abkhazeti) where families were housed in single rooms, some with bathroom and some without. Cooking was being carried out on balconies and in the corridors. The collective centre was extremely dilapidated and dangerous and the rapporteur was informed that a number of persons had been killed in a fire in the building a few years earlier and that another person had tragically fallen to his death down the unprotected stairwell. The rapporteur considers that it is urgent to speed up rehabilitation work on the collective centres and provide more suitable accommodation to the many remaining IDPs in these centres whether they are recently displaced or those displaced from the earlier conflict.

51. For those persons who have damaged property from the recent conflict and who remained or returned, the rapporteur has concerns about their living conditions. While much work has been carried out to “winterise” these properties, providing at least one warm room, replacing broken windows, making available plastic sheeting, materials for building, for example, much of this work was carried out late in the year. This work needs to continue as a priority through the winter months.

52. The authorities have taken important steps to provide assistance to the most vulnerable, including those with psychological problems arising from the conflict. Schools in Georgia, including in the former so-called “buffer zone” have been re-opened and are functioning and school supplies have been distributed to the children. Free primary medical aid has been provided but needs to be extended over the winter.

53. The rapporteur welcomes the overwhelming international response to the humanitarian and protection needs of the IDPs in Georgia. US\$4.5 billion has been pledged as a result of the Crisis Flash Appeal and the Joint Needs Assessment put together in the aftermath of the war. In terms of implementation, the government is assisted by an interagency co-ordination mechanism involving international organisations and NGOs, based on a cluster approach. Under this approach there is one lead agency which works with other agencies on individual issues such as education, food distribution, health, legal, information and other services, livelihoods, mine action, non-food items, child protection, shelter, cash assistance to host families, returnees and others, and water and sanitation. The UNHCR, for example, has the lead on protection issues, while WHO has the lead on health issues.

54. Notwithstanding the good work that has been carried out to date, the rapporteur considers that certain action has to be undertaken as a matter of priority by the Georgian authorities.

55. It is important to improve the provisions of primary humanitarian aid including food and firewood to villages in the former so-called “buffer zone” adjacent to South Ossetia. It is also important

to ensure that those who were not displaced by the conflict, but who are nonetheless affected by the conflict, receive appropriate aid. Furthermore there are still serious security concerns in the former so-called “buffer zone” and it is imperative that the police increase their patrols in these areas, in particular during the night.

56. One of the priorities for the Georgian Government is to adopt a revised strategy and action plan for new and old IDPs and ensure that assistance to these persons is provided on the basis of simple, rational, clear and transparent criteria of real need and vulnerability rather than status.

57. One of the complaints that the rapporteur heard on numerous occasions was that IDPs were not being systematically informed and consulted about their situation, their future and their entitlements. The rapporteur considers that it is important that information and communication channels are improved and that initiatives such as the creation of an information centre for IDPs in Gori are repeated elsewhere in Georgia. IDPs must be in possession of all relevant information in order to allow them to make a free and informed choice as to whether to integrate locally, return or resettle on a temporary or permanent basis.

58. The rapporteur also heard during her visit of the dangers of trafficking of newly displaced persons and that problems of violence against women existed, notwithstanding that few individuals were prepared to speak out on the subject. The rapporteur considers that the authorities must tackle these two issues.

59. The rapporteur also heard from a number of sources, including from the Public Defender of Georgia, that many persons affected by the conflict are unable to pay their banking loans. The problem is particularly acute for those who have lost their homes and their incomes. Solutions need to be found to help people in this situation.

60. The rapporteur is also greatly concerned by the new Law on the Occupied Territories which seeks to limit economic and other transactions with Abkhazia and South Ossetia. The rapporteur considers that it is important that this law is not applied in such a way as to worsen the humanitarian and human rights situation of those living on the other side of the de facto “borders” or in any way to impede the access of humanitarian aid.

61. The rapporteur encourages the Georgian authorities to seek expertise on the law and any implementing legislation from the European Commission for Democracy through Law (Venice Commission) to make sure it does not infringe any human rights or humanitarian standards.

#### **XIV. Conclusions**

62. The rapporteur regrets that at the time of preparing this report she had not had the opportunity to carry out a full visit to South Ossetia. She remains ready to travel to South Ossetia in order to supplement the information in this report, or to prepare a separate report on South Ossetia, should this be the wish of the Assembly.

63. The humanitarian consequences of the war between Georgia and Russia are far from solved and the position is changing rapidly on the ground from week to week, season to season. The rapporteur remains greatly concerned about the security situation of the ethnic Georgians remaining in South Ossetia and Abkhazia and in the occupied zones. She is also acutely aware of the hardships faced by all those affected by the conflict, whether because of loss of loved ones, loss of property or livelihood, or because of the extremely difficult living conditions in collective centres, new homes or destroyed or damaged homes, where heating and availability of food may continue to be a problem during the winter months.

64. The rapporteur was, however, heartened by the effort being made by many to tackle the humanitarian challenges arising from the conflict and considers that the Parliamentary Assembly of the Council of Europe should keep the issue as a priority on its agenda.

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*Reporting committee:* Committee on Migration, Refugees and Population.

*Reference to committee:* Bureau's decision, Reference No. 3495 of 24 November 2008.

*Draft recommendation and draft resolution* unanimously adopted by the committee on 11 December 2008.

*Members of the committee:* Mrs Corien W.A. **Jonker** (Chairperson), Mr Doug **Henderson** (1st Vice-Chairperson), Mr Pedro **Agramunt** (2nd Vice-Chairperson), Mr Alessandro Rossi (3rd Vice-Chairperson), Mrs Tina **Acketoft**, Mr Francis **Agius**, Mr Ioannis Baniias, Ms Donka Banović, Mr Márton Braun, Mr André Bugnon, Mr Mevlüt **Çavuşoğlu**, Mr Sergej Chelemendik, Mr Vannino Chiti, Mr Christopher Chope (alternate: Mr Bill **Etherington**), Mr Boriss Cilevičs, Mrs Minodora Cliveti, Mr Telmo Correia, Mrs Claire **Curtis-Thomas**, Mr Ivica Dačić, Mr Taulant Dedja, Mr Nikolaos Dendias, Mr Arcadio **Díaz Tejera**, Mr Mitko **Dimitrov**, Mr Karl Donabauer, Mr Tuur Elzinga, Mr Valeriy Fedorov, Mr Oleksandr Feldman, Mrs Doris Fiala, Mr Bernard Fournier, Mr Paul Giacobbi, Mrs Gunn Karin Gjul, Mrs Angelika Graf, Mr John Greenway (alternate: Mr Humfrey **Malins**), Mr Tony Gregory, Mr Andrzej Grzyb, Mr Michael **Hagberg**, Mrs Gultakin Hajiyeva, Mr Davit Harutyunyan (alternate: Mrs Hermine **Naghdalyan**), Mr Jürgen Herrmann, Mr Bernd Heynemann, Mr Jean Huss, Mr Ilie Ilaşcu, Mr Tadeusz **Iwiński**, Mr Mustafa **Jemiliev**, Mr Tomáš Jirsa, Mr Reijo Kallio, Mr Hakki Keskin, Mr Guiorgui Kandelaki (alternate: Mr David **Darchiashvili**), Mr Egidijus Klumbys, Mr Ruslan Kondratov, Mr Dimitrij Kovačič, Mr Andros Kyprianou, Mr Geert **Lambert**, Mr Younal Loutfi (alternate: Mrs Aneliya **Atanasova**), Mr Andrija Mandić, Mr Jean-Pierre Masseret (alternate: Mr Denis **Jacquat**), Mr Slavko Matić, Mrs Ana Catarina Mendonça, Mr Gebhard Negele, Mr Hryhoriy **Omelchenko**, Mr Morten Østergaard, Mr Alexey Ostrovsky, Mr Grigore Petrenco, Mr Cezar Florin Preda, Mr Milorad Pupovac, Mr Frédéric Reiss, Mrs Mailis **Reps**, Mr Gonzalo Robles Orozco (alternate: Mr Gabino **Puche**), Mr Giacomo Santini, Mrs Michaela Sburny, Mr Samad Seyidov, Mr Steingrímur J. Sigfússon, Mrs Miet Smet, Mr Giacomo Stucchi, Mr Vilmos **Szabó**, Mr Tuğrul **Türkeş**, Mrs Özlem Türköne, Mr Michał Wojtczak, Mr Marco Zacchera, Mr Yury Zelenskiy, Mr Andrej Zernovski, Mr Jiří Zlatuška.

NB: The names of the members who took part in the meeting are printed in **bold**.

*Secretariat of the committee:* Mr Lervik, Mr Neville, Mrs Odrats, Mr Ekström.





COMMISSIONER FOR HUMAN RIGHTS

COUNCIL OF EUROPE



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# **HUMAN RIGHTS IN AREAS AFFECTED BY THE SOUTH OSSETIA CONFLICT**

## **SPECIAL MISSION TO GEORGIA AND RUSSIAN FEDERATION**

**By Thomas Hammarberg  
Council of Europe Commissioner for Human Rights**

**Vladikavkaz, Tskhinvali, Gori, Tbilisi and Moscow  
22-29 August 2008**

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## Executive summary

1. Commissioner Thomas Hammarberg and his delegation visited Vladikavkaz, Tskhinvali, Gori, Tbilisi and Moscow from 22 to 29 August 2008 in order to assess the human rights situation in the areas affected by the South Ossetia conflict. His mission was about human rights and humanitarian protection and he did not go into other political issues. He talked with a great number of displaced persons and other victims. He also met leading representatives of the governments and international organisations and cooperated closely with the Ombudsmen.
2. Though the death toll resulting from the warfare was lower than first reported, the Commissioner concluded that a very large number of people had been victimised. More than half of the population in South Ossetia fled, the overwhelming majority of them after the Georgian artillery and tank attack on Tskhinvali and the assaults on Georgian villages by South Ossetian militia and criminal gangs. Lawlessness spread in the 'buffer zone' controlled by Russia between Tskhinvali and Karaleti and forced many to leave even from there. When several houses and apartment buildings in Gori were hit by Russian rockets, a further wave of displacement took place.
3. The return of displaced persons has now started but is delayed for the majority of them as safety has not been guaranteed. The 'policing vacuum' in the 'buffer zone' is still unresolved. Large areas must also be demined from cluster bombs, mines and unexploded ordnance devices which now threaten ordinary people, including those who normally work in the fields.
4. Though there is certainly a need for political solutions and clear decisions on effective and durable security arrangements in order for human rights to be protected, several important steps can be taken already now by the parties themselves and by the international community to meet the most urgent human rights requirements.
5. The Commissioner presents six principles for urgent protection of human rights and humanitarian security:
  - 1) *The right to return of those who fled or were displaced must be guaranteed. This requires that their safety is protected and that their homes are made liveable again. The repair of damaged houses is an urgent priority. Affected persons have the right to be informed about relevant developments, their different options, and no one must be returned against their will.*
  - 2) *Those who fled or were displaced must be ensured adequate living conditions until they can return home. This requires competent coordination of the assistance from both governmental and intergovernmental actors. Not only material needs but also psychological and psycho-social damages must be addressed.*
  - 3) *The whole area affected by the warfare must be demined. Cluster bombs, mines, unexploded ordnances and other dangerous devices must be located, removed and destroyed. Until this is done the targeted terrain must be marked and the population clearly informed about the dangers. The parties to the conflict need to declare what type of weapons and ammunition were used, when and where. International contribution to this effort will be required and should be welcomed by both parties.*

- 4) *Physical assault, torching of houses and looting must be totally stopped and persons responsible for such crimes apprehended and held to account. The problem of the 'policing vacuum' in the so-called 'buffer zone' between Tskhinvali and Karaleti must be resolved urgently.*
- 5) *Prisoners of War, other detainees and persons stranded in unsafe situations must be protected and rescued through continued humanitarian efforts. The established mechanism for dialogue and mutual exchanges of such cases – which the Commissioner assisted during his visit - should be kept in place and fully supported, also by the international community. There is a need to establish a coordinated system for assembling and acting upon information on missing persons.*
- 6) *International presence and assistance are needed in the area affected by the conflict. The programs of UNHCR, UNICEF, ICRC and other agencies should be supported and the OSCE be given authority and resources to expand its mission. Apart from cease-fire observers and police presence, there is a need for specialised human rights monitors who could also operate in coordination with the domestic ombudsmen. The protection of minorities must be a key priority and positive inter-community relations must be encouraged.*

## **I. Introduction**

6. The Council of Europe Commissioner for Human Rights carried out a special mission to areas affected by the South Ossetian conflict from 22 to 29 August 2008. The Commissioner was accompanied by Ulrika Sundberg, ambassador, Alexandre Guesel, deputy to the Director, and Irene Kitsou-Milonas, legal advisor.
7. The purpose of the visit was to assess the human rights conditions with a focus on the situation of the victims of the hostilities. Particular attention was given to plight of persons displaced and their possibility for safe and voluntary return.
8. The Commissioner made clear throughout the visit that in accordance with his terms of reference he would not pass any political judgment on the situation. His main concern was to ensure that the human rights of the persons affected are taken into account and respected as far and thoroughly as possible.
9. The Commissioner visited South Ossetia in February 2007 and held talks with the de facto leadership and representatives of civil society on the human rights situation. During the same week, the Commissioner met the leader of the alternative Government of the South Ossetia, Dimitri Sanakoev. These meetings did not imply any form of diplomatic or political recognition and were held without prejudice to the search of a lasting solution to the conflict. Rather they were based on a strong wish from the Commissioner to contribute actively to finding solutions to immediate humanitarian or human rights concerns and to enhance the protection of the victims of the conflict. The present visit pursued the same goal.
10. Article 3 of Resolution (99) 50 regulating the Commissioner's mandate states that he shall contribute to the promotion of the effective observance and full enjoyment of human rights in the member States. In 2003, the Parliamentary Assembly of the Council of Europe adopted the recommendation 1606 on areas where the European Convention on Human Rights (the ECHR or the Convention) cannot be implemented. The main thrust of the recommendation was to ensure that there are no gaps in the

protection system of human rights throughout the European continent. In the same vein, the Committee of Ministers adopted on 21 January 2004 the Declaration on the protection of human rights during armed conflict, internal disturbances and tensions. The possible role which could be played by the Commissioner in those situations was highlighted. The Committee commended the activities already undertaken by the Commissioner on Human Rights with a view to the prevention of human rights violations and “*encourage[d] the Commissioner to continue to pay particular attention to situations where there is a threat or where there are allegations of serious and massive violations of human rights, notably by further developing fact-finding and the formulation of targeted recommendations to which appropriate follow up should be given.*”

## II. Applicability of the European Convention on Human Rights

11. The ECHR is applicable at all times, also during armed conflict, unless the State party has explicitly derogated from its obligation under Article 15. According to Article 15§2, no derogations may be made with respect to Article 2 (except in respect of deaths resulting from lawful acts of war), to Article 3 (prohibition of torture), to Article 4§1 (prohibition of slavery and servitude) and to Article 7 (no punishment without a law)<sup>1</sup>. These rights are complemented by the fundamental guarantees set out in the First Additional Protocol to the Geneva Conventions of 1949 which has been ratified by both parties and is considered also customary law<sup>2</sup>.
12. According to Article 15§3 of the ECHR, any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. No information on derogation had been submitted by either party, prior to the visit of the Commissioner. However, on 10 August 2008, Georgia did inform the Secretary General of the Council of Europe that on 9 August 2008, the President of Georgia had invoked his right under articles 73(1) (f) and 46 (1) of the Constitution and declared state of war in the whole territory for fifteen days. The President’s decision was approved by the Georgian Parliament. In the same *note verbale* informing of the state of war, it was specifically pointed out that no derogation for any rights under the ECHR had been made. The Government of Georgia addressed on 4 September 2008 a *note verbale* to the Secretary General of the Council of Europe informing him that it had passed Ordinance N552 on 29 August 2008, which stipulates the commencement of procedures to promptly terminate all peace keeping operations in the former autonomous provinces Abkhazia and South Ossetia as well as Georgia. Furthermore, the Permanent Representative of Georgia to the Council of Europe informed the Committee of Ministers on 3 September 2008, that a state of emergency had replaced the martial law in the country, beginning on 4 September 2008.
13. No such notification had been received from the Russian Federation. President Medvedev had given a statement on 8 August 2008 noting that the Russian Federation was exercising its right to self-defense under Article 51 on the UN Charter and had responded to a Georgian attack on its peacekeepers in the Joint Peace keeping force headquarters in Tskhinvali, which was set up under the 1992 Sochi ceasefire agreement.

<sup>1</sup> See also Article 4 of Protocol no 7 (right not to be tried or punished twice)

<sup>2</sup> Article 75 of the First Additional Protocol to the Geneva Conventions of 1949 relating to the Protection of Victims of International Armed Conflicts, adopted 8 June 1977

14. On 11 August 2008, the Georgian Government requested the European Court of Human Rights to indicate interim measures to the effect that the Russian Government should “refrain from taking any measures which may threaten the life or state of health of the civilian population and to allow the Georgian emergency forces to carry out all the necessary measures in order to provide assistance to the remaining injured civilian population and soldiers via humanitarian corridor”. The Agent of the Georgian Government informed the Court that this request was made in the context of an application directed against the Russian Federation alleging violations of Articles 2 (right to life) and 3 (prohibition of torture, inhuman and degrading treatment) of the CHR and Article 1 of Protocol No. 1 (protection of property) to the Convention. As of 5 September 2008, an inter-state application from Georgia had still not been received by the Court.
15. On 12 August 2008, the President of the Court decided to apply Rule 39 of the Rules of Court (interim measures) considering that the current situation gave rise to a real and continuing risk of serious violations of the Convention. With a view to preventing such violations, the President called upon *both* State Parties concerned to comply with their engagements under the Convention particularly, in respect of Articles 2 and 3 of the Convention and inform the Court as soon as possible of the measures taken by to ensure full compliance with the Convention.
16. During his visit, the Commissioner discussed with both the Russian Federation and Georgian Foreign Ministries the Rule 39§3 ruling. Information on the measures taken to ensure compliance with Articles 2 and 3 of the Convention was submitted by the Georgian Government on 21 August 2008, and the Russian Government on 22 August 2008. A new time-limit for submitting additional information in this regard has been set by the Court for 8 September 2008.
17. On 29 August 2008, diplomatic relations between the two countries were scaled down. However, both countries will retain consular presence to ensure issuance of passports and other vital documents for the victims of the conflict. The same day, the Georgian Parliament also passed a law which abrogates all bilateral treaties between the two countries.

### **III. Mission programme**

18. The Commissioner began his special mission on 22 August 2008 in Vladikavkaz, Republic of North Ossetia of the Russian Federation, where he traveled together with the Federal Ombudsman of the Russian Federation, Vladimir Lukin. Upon arrival to Vladikavkaz, they went to the cemetery in Beslan to pay respect to the victims, who perished during the terrorist act in September 2004.
19. On 23 August 2008, the Commissioner visited the monastery in Alagir, which serves as a transit- and processing centre for the displaced arriving from South Ossetia. He met women and children who had fled from Tskhinvali and neighboring villages and held detailed interviews with them. The Commissioner visited also the central hospital in Vladikavkaz, where he talked with the medical staff and persons who had been wounded during the hostilities.
20. The Commissioner and the Federal Ombudsman then proceeded to the Georgian school in Vladikavkaz and met with leaders of the local Georgian community and the director of the school. In addition, the Commissioner had meetings with representatives

of local non- governmental and international organizations, providing assistance to the displaced. The Commissioner also met with the President of North Ossetia, Teymuraz Mamsurov, and Prime Minister, Nikolay Khlyntsov. Furthermore there were talks with the Vice Prime Minister, Yermak Dzansolov.

21. On 24 August 2008, the Commissioner left the Russian Federation and traveled to Tskhinvali, South Ossetia. He used the same road as the fleeing civilians and went through the Roki tunnel. Before arriving in the regional capital Tskhinvali, the Commissioner passed through the Georgian villages south of Java. In Tskhinvali, he visited severely damaged residential areas, the hospital and the base of the Russian peace keeping monitors, where he spoke with the representative of the Military Procurator. The Commissioner had meetings with the de facto acting Prime Minister, Boris Chochiev, and the de facto Ombudsman of South Ossetia, David Sanakoev.
22. He also went to neighbouring villages, which had all been affected by the active hostilities. During his visit to the village of Khetagurovo, two Georgian soldiers were discovered, who had been captured by the villagers during the hostilities. The Commissioner managed to convince the village leadership to allow the two military men to go with the Commissioner's convoy to be exchanged at the Karaleti checkpoint. Through telephone contacts with the Vice Minister of Defence and the Chairman of the Defence and Security Committee of the Parliament, Mr. Givi Targamadze, in Tbilisi an exchange of seventeen persons was organised that evening.
23. On 25 August 2008, the Commissioner visited a collective center in Tbilisi as well as a temporary camp, near to the airport, where he talked to displaced persons. Further, he had meetings with the diplomatic community and with representatives of the international and regional organisations. He then traveled to the city of Gori, where he met the Governor of the Gori district, Vladimer Vardzelashvili, and representatives of local authorities in charge of catering for the internally displaced. He visited a majority of the houses affected by bombs, shellings or fire together with the Georgian Ombudsman, Sozar Subari.
24. On 26 August 2008, the Commissioner met with the State Minister for Reintegration, Temur Yakobashvili, the Minister of Justice, Nika Gvaramia, the Deputy Minister of Interior, Eka Zguladze, the Minister for Refugees and Resettlement, Tamar Martiashvili, the Minister of Foreign Affairs, Eka Tkheshelashvili, and the Deputy Minister, Giga Bokeria.
25. On 27 August 2008, the Commissioner had numerous conversations with the two negotiators, David Sanakoev and Givi Targamadze, and decided to return to Tskhinvali to assist in the release and exchange of detained persons, including 85 civilians who were kept in the police station in severe conditions (see also chapter on *Protection of detainees and persons in hiding*). He again traveled through the Georgian villages in the 'buffer zone', established by the Russian military forces, between Tskhinvali and the check point in Karaleti.
26. Part of the Commissioner's delegation returned on 27 August 2008 to Gori to visit the new reception camp, as well as schools and kindergartens hosting displaced persons, where they met victims, transferred from Tbilisi as well as newly arrived displaced persons.
27. Before leaving Georgia, the Commissioner reported 27 August 2008 on his preliminary findings and areas of concern to the President of Georgia, Mikheil Saakashvili.



28. On 28 August 2008 he went to Moscow and reported to the Speaker of the Duma, Boris Gryzlov, the Chairman of the Council of the Federation, Sergey Mironov, and the Deputy Minister of Foreign Affairs, Grigory Karasin. On the 1 September 2008, he had a telephone conversation with the Minister of Foreign Affairs, Sergey Lavrov, speaking on behalf of the President Medvedev.
29. The Commissioner wishes to thank the Georgian Government, the Government of the Russian Federation, the authorities of North Ossetia and the de facto authorities of South Ossetia for inviting him and for facilitating his visit throughout the region. The level of cooperation on both sides was very positive. Furthermore, the Commissioner would in particular like to thank the Russian Federal Ombudsman, Vladimir Lukin, the Georgian Ombudsman, Sozar Subari, and the de facto Ombudsman in South Ossetia, David Sanakoev, for their relentless efforts in facilitating his visit and for their active contribution in trying to find solutions to the acute humanitarian and human rights problems. The contribution by these institutions - under difficult circumstances - underlines the importance of their independence. Finally, the Commissioner would like to thank the Parliamentarian, Givi Targamadze, for his efforts on the Georgian side to ensure that exchanges of prisoners of war, detained or stranded civilians actually could occur.
30. The Commissioner reported to the Committee of Ministers of the Council of Europe on 3 September 2008, where he presented six principles for urgent protection of human rights and humanitarian security. The underpinning of these six principles are developed in the present report.

#### **IV. Right to return**

31. The Commissioner met a great number of displaced persons, who had left their homes due to the hostilities. All the victims with whom the Commissioner met in North and South Ossetia as well as in Georgia, stated very clearly that they wanted to return to their homes, but only if and when their security was fully guaranteed. They all said they felt that they had been forced to leave.
32. Displaced persons have a right to return to their homes, irrespective of their religion, ethnicity or nationality<sup>3</sup>. Though international human rights law has focused more on the right of return from another country, there is sufficient basis for a conclusion that it is an obligation of concerned governments to do everything possible in order to protect the right to return also inside countries<sup>4</sup>. The dispute about the future status of South Ossetia is no justification for denying anyone of those displaced persons their right to return home.
33. It should be noted that the displaced persons' right to return is underpinned by provisions of the ECHR, such as those regarding the peaceful enjoyment of one's

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<sup>3</sup> The right to return to one's country has been enshrined in Article 3, paragraph 2, of Protocol No. 4 to the ECHR. No one shall be deprived of the right to enter the territory of the state of which he is a national. Also Article 12§4 of the ICCPR states "No one shall be arbitrarily deprived of the right to enter his own country". See also Human Rights Committee General Comment on Article 12 of the ICCPR (November 1999): "§20. The wording of article 12, paragraph 4, does not distinguish between nationals and aliens ("no one"). Thus, the persons entitled to exercise this right can be identified only by interpreting the meaning of the phrase "his own country". The scope of "his own country" is broader than the concept "country of his nationality". It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien.

<sup>4</sup> See also Principle No. 28 of the UN Guiding Principles on Internal Displacement



possessions (Article 1 of Protocol No.1) and the right to respect for one's home (Article 8)<sup>5</sup>.

34. In the Commissioner's view, the full respect for the right to return is a *sine qua non* for finding a solution to this conflict, which would be durable and offer protection for everyone's human rights. The Commissioner raised the right of return with high government officials in both Tbilisi and Moscow and noted positively that they all recognized the importance of the unconditional implementation of the right to return for all victims, without any distinction whatsoever.
35. This right must be fully and effectively respected in any attempt to broker a sustainable peace agreement. The right to return should encompass the whole area of conflict, not only the 'buffer zone', but also South Ossetia itself. Of course such a return must be accompanied with actions and measures which secure the respect of all human rights, including the specific minority rights and the voluntariness, dignity and safety of the individuals concerned.
36. Respecting the choice of the individual victims has to be the guiding principle - in accordance with the 1998 UN Guiding Principles on Internal Displacement<sup>6</sup>. The options must be made clear to the individual: voluntary, safe and dignified return or voluntary resettlement in another part of the country or local integration.
37. Displaced persons should, however, not be coerced either directly or indirectly to return to their former homes, particularly not at this stage where many of them have gone through very traumatic experiences. The right to return is an individual one, thus only the person concerned may elect not to exercise it. This right persists, even when sovereignty over the territory is contested or has changed hands.
38. Those who are unable to return to their homes, because they are occupied or have been destroyed, are entitled to restitution or compensation. However, compensation cannot be seen as a substitute for the right to return to one's former home, if that is the individual's choice<sup>7</sup>. The right to restitution or full and effective compensation is a distinct right from the right to return and should be considered part of any restorative justice initiative.
39. The international community has a duty to ensure that claims of a right to return are resolved fairly, that individual holders of this right are permitted freely and in an informed manner to choose whether or not to exercise it, and that returns proceed in an orderly manner, without arbitrary or unlawful time limitations. The international community must contribute generously and support those who choose to exercise their right to return as well as those who seek resettlement.
40. The international community must also offer aid to assist the permanent settlement of those who choose to remain locally. However, neither the options of local integration and resettlement, nor their absence, should extinguish the right to return; the purpose must be to allow the individual to end his or her displaced status.

<sup>5</sup> See e.g. *Loizidou v Turkey*, judgment of 18/12/1996, concerning the applicant's lack of access to her property and loss of control thereof after she became a displaced person in Cyprus, *Khamidov v Russia*, judgment of 15/11/2007, concerning, inter alia, the violation of the displaced applicant's right to respect for his home and his right to peaceful enjoyment of his possessions in Chechnya.

<sup>6</sup> <http://www2.ohchr.org/english/issues/idp/standards.htm>.

<sup>7</sup> See also the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons – the Pinheiro Principles

## V. Rights of displaced persons to care and support

41. The number of people who were killed as a consequence of the armed conflict appears to be lower than first indicated. The estimate the Commissioner received from the Russian authorities on confirmed deaths was 133 persons. The number of wounded attended to in Tskhinvali was 220 persons. In Vladikavkaz, 250 patients had been treated, out of whom 30 had to be transferred to Moscow for intensive care. The Georgian authorities gave information that 216 persons had been killed - out of which 73 had died during the hostilities in Gori - and around 1,000 persons have been injured.
42. Assuming that there is little overlap between these figures from the two sides, it appears still that the death toll when established will be in the hundreds, rather than in the thousands. However, several displaced persons the Commissioner met reported that dead bodies had been buried in gardens or in the fields by locals, when the corpses had begun to decompose. Estimates are also made difficult by the fact that there are a number of people whose fate is unknown and are missing.
43. The statistics on displacement are more certain and they are clearly overwhelming. As of 22 August 2008, the total number of persons affected by the conflict and forcibly displaced on both sides was estimated by UNHCR to 158,700. 120 700 persons were displaced in Georgia and 38 000 had sought refuge in North Ossetia. By 5 September 2008, according to OCHA, only 6,828 persons, including 480 children, still remained in North Ossetia. As of 5 September, the UNHCR estimated that the number of displaced persons in Georgia proper amounted to 80,000.

### *Displaced persons in North Ossetia*

44. According to the Russian authorities, on 22 August 2008, 17,912 had returned to South Ossetia and 12,995 had remained in North Ossetia, awaiting the finalization of the ongoing reconstruction effort. The majority were staying with relatives. 4,252 displaced persons were accommodated in 58 temporary shelters.
45. The monastery in Alagir, which the Commissioner visited, accommodated elderly, single mothers and children. This monastery had served as a registration point and transfer centre during the initial days of the conflict and the material conditions of the reception centre were quite good.
46. By the time of the Commissioner's visit, most men had returned to assess the damages and assist in the reconstruction efforts. There were no reports of unmet humanitarian needs among the victims. Certain UN agencies praised the Russian authorities, in particular EMERCOM, for their prompt and effective response to the humanitarian needs of the victims of the conflict. No special appeal has been made for international humanitarian relief or reconstruction efforts in North or South Ossetia.
47. The Russian authorities were establishing lists concerning all the displaced persons as well as their damaged or lost property. 50,000 rubles (approximately 2000 USD) per family were awarded as initial compensation for losses. Most of the interlocutors expressed their satisfaction with this amount, but some added that the money would only take them through the winter. The local authorities were starting to assess the real extent of the damages in the affected areas. The Commissioner was told that the Russian authorities estimate the total damages of the conflict in South Ossetia to amount to 4, 5 billion rubles (approximately 1,8 BUSD).

48. Though massive reconstruction work was on its way, many of the interviewed victims hesitated to go back, mainly out of fear. However, they all wanted to return in time for school start on 1 September, and the local authorities were organising returns by buses. The Commissioner met some of those returning. The local North Ossetian authorities were prepared to accommodate an additional 2,250 school children this year for those who choose not to go back yet. As the humanitarian and security situation was improving for Ossetians, great numbers of displaced have now returned.
49. The displaced persons wanted to have firm assurances and guarantees that violence would not break out again. Some of them said that it was the second or third time they had had to flee from Georgian attacks. They described to the Commissioner the events that forced them to leave.
50. According to them, the Georgian attack on Tskhinvali and neighbouring villages started just before midnight on the night between 7-8 August 2008. They had initially sought shelter in the basements of their houses or with neighbours, where some of them had spent up to three days without little or no water and food. A few reported having to keep dead bodies with them. Most of them had tried to flee on 9-10 August, through the forests or using the upper bypass road or the main road, Dzara road. Some said that Georgian troops had dropped bombs on the civilians running on Dzara road and were shelling evacuation convoys. They told the Commissioner that they had seen unexploded ordnances lying around. One elderly lady had tried to escape through the forests with her children, after having spent two nights in her basement, but then the South Ossetian militia had found her and taken her to Java, north of Tskhinvali.
51. In the hospital of Vladikavkaz, the Commissioner met one wounded person, who told him that he and his friends had been injured when the Georgian troops shelled his basement. Another patient said that he had been forced out of his hiding place, when Georgian troops had flooded his basement. One patient, who was severely injured, said she was wounded when she was fleeing on Dzara road under the shelling of Georgians troops. The patient further said that the Georgian troops were dropping bombs on civilians who were fleeing. Another patient told the Commissioner that the Georgian troops had used *grad* multiple rocket launchers against her village, when the villagers were trying to flee.
52. Some of what the Commissioner was told may in fact be second-hand information which easily could get exaggerated in the existing atmosphere. Clearly, however, many of those who fled had gone through deeply traumatizing experiences. It is important that their versions will be heard when consolidated work is started in order to clarify the truth of what happened during these devastating days.

### ***Displaced persons in Georgia***

53. Every eleventh person in Georgia is now an internally displaced person. The country has more than 220,000 internally displaced persons from the 1991-92 conflict, most of them from Abkhazia. According to Georgian authorities, the number of displaced due to the recent hostilities amounted to 121,000 persons, out of which 80,000 are considered able to return. 40-50,000 persons emanate from the active hostilities in the Gori-district, and during the stay of the Commissioner many of them were able to return to their homes except for those whose houses were damaged. The Deputy Minister of Interior told the Commissioner that there are 158 children, separated from their parents. The displaced had been accommodated temporarily in 645 schools, in collective centers, kindergartens or temporary camps, but the majority was staying with relatives.

However, around 30,000 persons are expected to become long term internally displaced, in dire need of more permanent accommodation.

54. Some 5,000 internally displaced persons came from the villages in the 'buffer zone' between Tskhinvali and the checkpoint in Karaleti. They were not expected to be able to return before a new satisfactory security arrangement had been found. Their personal security needed to be assured and reconstruction work needed to begin. The Governor of Gori told the Commissioner that 31 villages in the 'buffer zone' were inaccessible to the Georgian authorities, at the moment of the visit, for an assessment of the reconstruction needs.
55. Properly registered displaced persons are given legal status as internally displaced and are eligible for social allowances, 22 LAR (approximately 30 USD) per month, and access to all social services. However, all displaced persons due to the conflict had not yet been properly registered by the end of August. The Georgian authorities, notably the Civil Registry Agency, planned to remedy this situation as well as issuing new identification documents to those who needed, once all the displaced had arrived in Gori.
56. The Georgian authorities seemed to face great challenges in creating the proper infrastructure for managing the flows of displaced persons and in ensuring that humanitarian assistance reached the victims. The UN has launched an emergency appeal for Georgia of 59 MUSD, in order to cover the immediate needs of the displaced.
57. The Commissioner visited a collective center, set up in a former military headquarter, for internally displaced in Tbilisi. The majority of those he met had left their home with nothing and still lacked almost everything: from beds, mattresses, blankets, food, medical assistance, trauma treatment to access to education for the children and proper information about available services and entitlements. One single mother and her child had only the floor to sleep on. The displaced persons appeared to be traumatized and in need of psychological and psycho-social care. The premises was clearly unsafe for the children, who were running in the staircase, which lacked banisters. Broken windows were lying around in the corridors. Lift shafts were wide open and debris was being thrown down in them. There was only one kitchen per floor for 80 families, no reception or information booth and no TV. The displaced had not been informed of the options available to them and several said they felt pushed to go to Gori.
58. A great number of the displaced with whom the Commissioner met originated from the Georgian villages north of Tskhinvali. Some of them told the Commissioner that locals had organised evacuation already on 4 and 5 August 2008. Some elderly persons had opted to stay on, as they did not want to leave their homes. The evacuation buses or cars had gone either to Gori or Tbilisi. Those who stayed on had been forced to hide until 11-13 August 2008, before they could attempt to flee. A number of elderly men from the Georgian villages told the Commissioner that the militia had found them and had beaten them, robbed and looted as well as put fire to their houses. Some of them had been forced to watch their houses burning down. The Georgian villagers also told the Commissioner that they had been taken to the police station in Tskhinvali by the South Ossetian militia. The Georgians, who had been found by Russian troops, told the Commissioner they had been taken to the closest checkpoint and released.
59. During the Commissioner's visit to Tbilisi, the Georgian Government decided to move the displaced persons from the capital to Gori, which still bears traces of the hostilities.

The Government officials argued that this decision was taken in order to evacuate the schools so that the ordinary school activities could start at least around mid-October. However, the kindergartens would remain closed, in order to continue to host the displaced.

60. On 27 August 2008, a part of the Commissioner's delegation visited the new reception camp in Gori, which was being set up by the UN's humanitarian organisations. They were informed by the local authorities that the arriving displaced persons were going to be hosted either in the kindergartens or in the new temporary tent camp. The displaced had already started to arrive on 27 August, despite the fact that the camp was not formally opened or fully operational yet. The UN-system emphasized to the delegation that the camp was a temporary solution. By 5 September, some 250 persons had arrived from Tbilisi. Most of them said that they had felt compelled to leave as no food had been distributed to them for several days in Tbilisi. In total some 6,400 displaced are currently hosted in Gori.
61. The delegation was informed by the Gori authorities that the longer term displaced persons, some 4,000 families, would be accommodated in wooden prefabricated houses over the winter. The total need is however estimated to 10,000 families, around 40,000 persons.
62. The Commissioner emphasized in his conversations with the responsible Georgian ministers the principle of voluntary return. He noted that those affected civilians with whom he had talked, especially those who were sent from Tbilisi to Gori, had not received information about their options. He also stressed that the move of displaced persons out of Tbilisi to Gori should not include those from Abkhazia or other areas in the western part of the country, as they should preferably be staying as close to home as possible. Several victims told the Commissioner that they had been informed about the move to Gori through hearsay. They had no official source of information and they were not aware of their options. The Georgian authorities told the Commissioner that they relied on TV to disseminate information and a telephone hotline.
63. There is a return movement to homes in Gori and other safe neighbouring villages. At the same time there are new flows of displacement coming from areas where inter-community violence was reported. Georgian authorities stated that ethnic Georgians were chased out by South Ossetians of the village Akhagori and the Commissioner's delegation tried to locate the persons, who had fled from there with the help of the local authorities in Gori. However, they were not able to locate these displaced during the time of the visit.
64. The Commissioner is concerned over the delays that have occurred in providing the victims in particular the internally displaced persons with locally acceptable food and adequate relief and support. He welcomes the fact that there is now a permanent Government-appointed Humanitarian Coordinator and that coordination of national and international efforts now seem to be on its way to ensure swift and effective delivery of the aid to the remaining some 80,000 displaced.
65. The humanitarian assistance must be provided on a fair, transparent and non-discriminatory basis to all persons in need, also the long term displaced persons. Particular attention needs to be paid to providing psychological and psycho-social care to the traumatized population and special attention must be given to the affected children. In this regard, he welcomes the decision by the European Union to hold a donor conference for the victims of this conflict.

66. The Commissioner is of the view that the Georgian authorities need international assistance in order to coordinate efforts and manage the population movements. He therefore welcomes the setting up of a national task force within the Government structures to coordinate the national response. Besides internal coordination, there is indeed also a need to coordinate with the international organisations. Attempts in this direction were being made, notably in Gori. The Commissioner hopes that these first steps will bear fruit and quickly ensure adequate and non-discriminatory provision of humanitarian aid to the victims, wherever they are.

## **VI. Right to be protected against the danger from explosive remnants of warfare**

67. International humanitarian law imposes a duty on all parties to a conflict to protect civilians and respect the distinction between military targets and civilian objects.
68. The parties should under all circumstances take precautionary measures and avoid or minimize harm to civilians and civilian objects. Direct attacks against civilians and civilian objects, whether for reprisal or any other reason, are prohibited.
69. Indiscriminate attacks which do not attempt to distinguish between military targets and civilians or civilian objects are prohibited. Also the use of inherently indiscriminate weapons is prohibited.
70. Disproportionate attacks aimed at legitimate military target, but with a disproportionate impact on the civilians are also prohibited. No party is allowed to use civilian objects such as schools or hospitals to shield fighters or weapons.
71. There are a number of reports from the displaced persons directed against one of the parties to the conflict regarding indiscriminate or disproportionate use of force resulting in civilian casualties. There have also been reports of deliberate targeting of civilians or sites which are protected under humanitarian law, such as hospitals, schools or even peace keepers.
72. The reported use of certain weapon types by the civilian victims in densely populated areas does raise questions of legality under humanitarian law. Among such reports are those which claim that the Georgian forces used *grad* multiple rocket launchers in their attacks against residential areas in Tskhinvali.
73. The main hospital building in Tskhinvali, particularly its main surgery room, had been hit by rockets, and all the in-patients and wounded had had to go to the basement and be attended to under severely difficult circumstances. He also saw completely destroyed residential areas in the city. In a neighbouring village, the school building had been shelled. Also a house belonging to a Georgian elderly woman had been hit by a rocket.
74. During his visit in Tskhinvali, the Commissioner observed also that the main building of the Russian peace keeping force as well as the base's medical dispensary had been hit by heavy artillery. Also, the OSCE headquarters had been hit and caused damage.
75. It has further been reported that both Georgia and Russia have used different types of cluster bombs of the types M85S (Georgia) and RBK 250 (Russian Federation), resulting in civilian casualties.



76. The Georgian forces have been reported to have used them on two occasions against civilians who were trying to flee on Dzara road, which was the main escape route. The Georgian government has officially admitted using cluster bombs in the area of Roki Tunnel and on Russian troops moving on Dzara road.
77. The Russian forces have been reported by Human Rights Watch to have used cluster bombs in its attacks against Gori and Ruisi. There have also been reports of disproportional use of force by the Russian forces, when attacking military installations in Gori. The Commissioner saw several houses and apartment buildings which had been damaged in the city, including a couple of apartment houses which had been severely burnt out.
78. Very severe damages have been caused on the villages in South Ossetia with a majority Georgian population. Those villages between Tskhinvali and Java have been destroyed, reportedly by South Ossetian militia and criminal gangs.
79. At this juncture, the Commissioner will not venture into issues of accountability for these alleged grave breaches of humanitarian law. Clearly, they should be investigated and the perpetrators brought to justice.
80. The Commissioner adds his voice to the calls for ratification of all humanitarian instruments which prohibit or restrict the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects, such as antipersonnel landmines or cluster munitions. However, in this report, he wishes to emphasize the urgent need to now start clearing and removing the explosive remnants of war in the affected areas, so that the displaced persons can start to go back home as soon as possible and return to normal life.
81. Demining is a precondition for any effective exercise of the victims' right to return. Remnants of war pose a risk not only to the returning civilians but also to the peace keepers or observers, other monitors and humanitarian workers and must be removed and destroyed. In the meantime, it is imperative that the affected areas be marked, fenced and monitored to protect the civilian population. Appropriate awareness raising campaigns about the risks are urgent to protect the civilians and prevent further losses of life. The Commissioner also takes note of the fact that both parties have ratified key international humanitarian instruments, which oblige them to demine after the cessation of hostilities<sup>8</sup>.
82. The Commissioner raised his concerns in this regard with both parties and they both agreed to cooperate, also with relevant international actors, to speed up the clearance, removal and destruction of unexploded ordnance devices. He repeats his call on both parties to honour their humanitarian obligations and commitment and to remove as far as possible the unexploded and abandoned ordnance laid down before withdrawing

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<sup>8</sup> Both Georgia and Russia have ratified the 1980 Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (CCW). Both have also ratified Protocol II on Prohibitions or Restrictions on the Use of Mine, Booby-traps and Other Devices from 1980. Georgia has also ratified the Rome Statute of the International Criminal Court (ICC). The Russian Federation, contrary to Georgia, has ratified Protocol II on Prohibitions or Restrictions on the Use of Mine, Booby-traps and Other Devices as amended on 3 May 1996 and signed in July 2008 Protocol V on Explosive Remnants of War to the CCW. Protocols II and V regulates the duties of the state parties to the conflict to clear the areas they control after the cessation of hostilities and to facilitate the clearance of explosive remnants of war caused by their munitions in areas they do not control. It requires the parties to locate, mark, fence, remove and destroy all unexploded and abandoned ordnance. In areas not controlled by the party to the conflict the Protocol also requires the provision of detailed information on all munitions used and the provision of assistance to clear explosive remnants of war from such territory.

from specific territories. In his talks he also insisted on the need for both parties to declare what type of weapons and ammunition were used, when and where and he noted with satisfaction that both parties agreed to do so.

83. International cooperation and assistance are needed for the urgent clearance and destruction of remnants of war, for the rehabilitation and reconstruction efforts of infrastructure, hospitals, schools, houses as well as the repair of damaged cultural heritage.
84. The Commissioner encouraged the parties to make maximum use of available international demining assistance. The parties must facilitate the demining work by giving access to all actors involved in demining to the affected areas. The parties should also provide -where feasible- all available technical, material or human resources assistance, bilaterally or through an agreed third party, like the International Committee of the Red Cross or UNMAS, so that they can swiftly contribute to the needed demining.
85. The relevant international organisations and other actors should consider providing assistance, at the request of the parties, in locating, marking, removing and destroying all exploded, unexploded and abandoned ordnances. Awareness raising campaigns among the population are key preventing further losses of lives and severe injuries.
86. The Commissioner welcomes the fact that the two parties responded positively to his suggestions and that a demining work now has been started. It is of outmost importance that the situation on the ground quickly moves from emergency relief to recovery in order to allow the displaced, who so wish, to return in safety and in dignity top their homes. This should preferably happen before the winter.

#### ***Right to protection against lawlessness and inter-community violence***

87. The Commissioner received a great number of reports of physical assault, robbery, kidnapping for ransom, looting and torching of houses as well as personal harassment by South Ossentian militia or other armed men both in the Georgian villages in South Ossetia and in the 'buffer zone'.
88. The Commissioner was alarmed over the ramping criminality in the 'buffer zone', as some civilians have remained there or are attempting to go back, if only for short visits. The Commissioner observed for an hour a number civilians passing through the checkpoint in Karaleti on their way to their homes to look after their gardens and property.
89. Under the current situation, the Russian forces have the duty under humanitarian law to maintain law and order in the zone they control. The Commissioner raised his serious concerns about the security of the civilians with all sides. In his conversation, notably with the Russian head of the peace keepers presence in the zone, general Marat Koulakhmetov, and other high level officials, they acknowledged that policing and maintaining law and order were major challenges. According to them, the area had been infiltrated by marauders, criminal gangs and militia, who were committing serious crimes.
90. This information was confirmed also by the OSCE mission, which had proposed to its Permanent Council to include a police component as well as human rights monitors in its mission to Georgia. As a first step the Permanent Council had strengthened the



mission with twenty additional military observers on 19 August 2008. Furthermore, the deployment of an additional eighty military observers was agreed on 1 September 2008<sup>9</sup>.

91. Representatives at the highest level of the Russian Federation have said they would welcome an international police presence to secure the area. On 4 September 2008, the Russian Federation proposed the setting up of an OSCE civil police operation in Georgia, inviting the EU and other member states of the OSCE to contribute to this mission.
92. The Commissioner urges all relevant actors to urgently address the law and order problem that has now occurred in the 'buffer zone'. Clearly, this policing vacuum needs to be resolved urgently, so that those who reportedly have remained there, are safe and that those who wish to go back can do so without fear for their personal safety and property.

### ***Right of detainees and persons in hiding to receive protection***

93. The programme of the Commissioner had to change when he arrived to Tskhinvali and observed that one of the most pressing human rights concerns in relation to the conflict was the return from both sides of persons held in captivity. Apart from prisoners of war there were other detainees kept by official or unofficial authorities for different reasons. Some had been apprehended for their own security but there were also allegations of hostage taking. Moreover, a number of people had gone into hiding, obviously fearing for their lives.
94. The ICRC had negotiated the release of 75 civilians by the de facto South Ossetian authorities, a couple days prior to the Commissioner's arrival. But there were still innocent civilians being held in the local police station. The justification for their detention given by the de facto authorities was their physical protection. They felt they needed to prevent harassment and possibly lynching of these Georgian civilians. Under human rights and humanitarian law, no one should be arbitrarily detained. Furthermore, to detain innocent civilians for the purpose of bargaining amounts to hostage taking and is therefore to be seen as a war crime.
95. On his way to South Ossetia, the Commissioner had been informed that there were a number of prisoners of war who were supposed to be exchanged and some exchanges had already taken place between the two sides. The contacts had been facilitated by the Georgian Ombudsman, who had good contact with both the local Ombudsman in Tskhinvali and the Chairman of the Defence Committee of the Georgian Parliament. However, the process of negotiations had been stalled. The working climate between the parties was at the time of the arrival of the Commissioner full of mistrust.
96. When the Commissioner visited the village of Khetagurovo, on 24 August, the local population handed him a list of five men from the village, which had been taken away by the Georgian forces. As already mentioned above, it turned out that the village had captured two Georgian soldiers, which they intended to use as bargaining chip to get their loved ones back. The Commissioner managed to convince the villagers to hand over the two soldiers to him. He decided to encourage a restart the exchange negotiations with a view of saving lives.

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<sup>9</sup> PC.Decision 861 of 18 August PC.DEL/720/08 and PC.DD/29/08

97. The Commissioner then raised the issue of release and exchanges with the de facto South Ossetian authorities and the Georgian authorities. He managed to convince both parties of them to liberate a number of detained persons. An exchange of a total of 17 detainees on both sides took place late in the evening at the check point of Karateli between the Commissioner and the Georgian parliamentarian Givi Targamadze, in the presence of the Georgian Minister of Justice, Mr. Nika Gvaramia. The Ombudsman of Georgia, Mr. Sozar Subari, and the de facto Ombudsman of South Ossetia, Mr. David Sanakoev, were also present.
98. But further exchanges were necessary. The following day on 25 August, the Georgian authorities unilaterally hand over of three prisoners of war to the South Ossetian. These good-will gestures from both sides were important humanitarian acts and served as building blocks for a renewed mutual confidence between the parties. Once in Tbilisi, the Commissioner contacted the International Committee of the Red Cross (ICRC) for an exchange of information.
99. On 26 August 2008, a follow up exchange was made, where the South Ossetians handed over 43 corpses to the Georgian side and on the 27 August, the Commissioner decided to return to Tskhinvali to try to get all the remaining civilians in detention released. All 85 persons detained in the local police station in Tskhinvali were handed over to the Georgian authorities. 13 prisoners and two bodies were handed over by the Georgian authorities to the South Ossetians.
100. The Commissioner stresses the importance of these humanitarian negotiations continuing. It is possible that there are more persons that are held by private persons as bargaining chips. The Commissioner has received reports that there are civilians still in hiding in the areas of conflict or otherwise stranded and who are in desperate need of being evacuated. Some of them are apparently elderly or disabled. There is a clear need to establish a coordinated system for assembling and acting upon information on missing persons. All such cases must be resolved and respect for human rights must be given highest priority. He also underlines the need for all parties to fully support and cooperate with this established informal mechanism to ensure future humanitarian exchanges.

#### **VIII. International presence and monitoring for the protection of human rights and addressing impunity**

101. The Russian authorities are providing assistance to those who fled to Russia and have made it possible for the majority of them to return. Though the material assistance and needs appear to be well taken care of, it is still essential that for instance United Nations agencies can operate also in South Ossetia and contribute with its expertise in key areas. This would also be a crucial element in preparing for the return of ethnic Georgians who left.
102. Due to the deterioration of the inter-community relations it is also important that there can be an international police presence in both South Ossetia and the 'buffer zone' (as long as it exists). Police officers from outside would give advice and training to local policemen but also guarantee a professional police behaviour in the present crisis situation.
103. It has been suggested that the OSCE military cease-fire monitors would include a clear human rights component. This would be positive. Indeed, all the monitors should have

basic human rights training and the contingent as a whole should include experienced human rights experts.

104. In view of the bitter background and the very tense inter-community relationships, there is a need of further specialised human rights monitoring. One of the challenges for the relevant international and European inter-governmental organisations is to design an effective contribution to such monitoring – in cooperation with the domestic ombudsmen. Among the pressing issues are the protection of IDPs *during* displacement but also their protection *from* displacement, by addressing its root causes. Specialised competence is needed not least to monitor the conditions for voluntary return and in relation to methods of minority protection.
105. For a successful relief and recovery operation of the areas affected by the conflict, it is imperative that all humanitarian actors are given access to these areas so that the assistance can be delivered to the places where the victims are. During the Commissioner's visit only ICRC had been given access to the affected areas in South Ossetia, and to the 'buffer zone'. This must change. More actors are needed to ensure speedy reconstruction and rehabilitation of these places.
106. According to the UN organisations, they still do not have access to South Ossetia from Georgia as well as to areas in the 'buffer zone'. The reasons given relate to security concerns which only underlines the need for the international community to address quickly the issue of maintaining law and order in the zone.
107. The de facto South Ossetian authorities are denying access from Georgia proper, arguing that they can only accept UN emergency assistance if it comes in through the Roki tunnel and North Ossetia. On the other hand, the Georgian authorities do not accept such channeling of international assistance, as they consider that this can be interpreted as an infringement of Georgia's sovereignty and territorial integrity. The Commissioner notes with concern that the actual result of these different positions may well be continued suffering of the already victimized civilians. The Commissioner raised the issue of free and unhindered access for humanitarian actors with all parties concerned and he notes their positive responses in this regard.
108. The Commissioner believes that particular attention should be paid to the promotion and protection of minority rights. Promoting respect for these rights will be particularly important when the displaced persons begin to return. The monitoring should be accompanied by reconciliation and other confidence building measures between the two communities.
109. Crimes have been committed for which those responsible must be held to account. The Commissioner has received a number of reports from displaced persons and other victims from both communities which tell about breaches of international humanitarian law as well as serious violations of human rights. Their testimonies range from attacks on peace keeping soldiers, indiscriminate or disproportionate use of force to extra-judicial, summary or arbitrary executions, hostage taking, kidnappings for ransoms, forced disappearances, forced displacement, forced labour, ill-treatment, rape, robbery, looting, torching of houses and physical assaults. All of these alleged acts need to be effectively and promptly investigated, the perpetrators brought to justice and if found guilty after a fair, independent and impartial trial, sentenced and punished.
110. Proposals have been put forward to establish an international commission of inquiry or using the procedures based on declaration made under Article 90 of the Additional

Protocol I to the Geneva Conventions of 1949. These proposals merit serious consideration and discussion.

111. At the same time, the Commissioner notes that the Military Prosecutor of the Russian Federation has already initiated criminal investigations into alleged war crimes. Also the Prosecutor General of Georgia has been asked to investigate facts around alleged war crimes committed on territory of Georgia. The Prosecutor of the International Criminal Court is considering launching a criminal investigation. The Ombudsmen in Russia and Georgia have received information about abuses and a number of non-governmental organizations have already collected a wealth of material about all above mentioned crimes. The Commissioner also notes that the Georgian Government has declared its intent to submit an inter-state application to the European Court on Human Rights and has already instituted proceedings before the International Court of Justice against the Russian Federation for violations of the Convention on the Elimination of All Forms of Racial Discrimination.
112. The Commissioner believes that all the above legal actions need to be taken into account in any further discussion on how the issue of accountability -on both sides- should best be addressed for the serious abuses committed.

## IX. Conclusions

- The conflict has had a devastating effect on the human rights of the population. Thousands of people are still displaced waiting for security and help to rebuild damaged houses. *This requires that the principle of the right to voluntary return is upheld and fully recognized by all decision-makers.*
- Unfortunately, there is a need to prepare for the grave risk that several thousand, perhaps as many as 30,000, will not be able to return home within the foreseeable future. They must be cared for and assisted to lead a life as normal as possible. *This requires that material resources are allocated and that the assistance is well organized by the national and international agencies and that the displaced persons themselves are invited to participate in the decision-making.*
- One major threat against the return is the fact that large areas are infected by bombs, shells, unexploded ordnances and other dangerous remnants of the warfare. Systematic demining must be undertaken as a matter of highest priority. The population must be fully informed about the dangers and how to avoid them. *This requires that the demining efforts that have started will continue and that international expertise is welcomed to contribute.*
- The policing vacuum in the 'buffer zone' has to be addressed. *This requires agreements between the Russian and Georgian governments and it seems necessary that representatives of the international community contribute to an active and prompt solution, for instance through providing on an interim basis a contingent of police advisors.*
- The efforts to trace persons detained or in hiding must continue and a system must be established to assemble and act upon information about people missing. The contacts established for exchanges should be strengthened. *This requires that the two key negotiators and the ICRC are given all necessary support.*
- The remaining problem about international access in the area must be resolved. Apart from cease-fire monitors and police presence there is a need of a systematic and competent international contribution to human rights monitoring. Efforts must also be planned for a systematic, impartial collection of evidence about violations committed in connection with the hostilities. *This requires urgent contacts between international human rights organisations in order to develop a package of international contribution, which would be effective for the genuine protection of human rights in the area.*



## Russia/Georgia: Investigate Civilian Deaths

High Toll from Attacks on Populated Areas

**AUGUST 12, 2008**

Forces on both sides in the conflict between Georgia and Russia appear to have killed and injured civilians through indiscriminate attacks, respectively, on the towns of Gori and Tskhinvali, Human Rights Watch said today. Human Rights Watch expressed its deep concern over the apparently indiscriminate nature of the attacks that have taken such a toll on civilians.

“Russian, Georgian and South Ossetian forces all have an obligation under international humanitarian law to protect civilians from attack,” said Holly Cartner, Europe and Central Asia director at Human Rights Watch. “The latest information on civilian casualties in Gori, Tskhinvali and surrounding areas calls into question whether the forces are respecting that obligation.”

Keti Javakhishvili, 25, was wounded during an attack on the Georgian town of Gori on August 12, 2008. © 2008 Human Rights Watch

An attack on the main square in the Georgian town of Gori on August 12, 2008, killed and injured dozens of civilians, Human Rights Watch said today. The attack took place in the morning in front of the Gori Municipality Administration building, where several dozen civilians had gathered to collect food distributed by local officials. Victims of the attack described to Human Rights Watch how they saw numerous small explosions within seconds before they fell to the ground.

According to victims, at least eight people died immediately, including a Dutch journalist. The injured were initially taken to the Gori hospital, but were evacuated to Tbilisi, the Georgian capital, due to the deteriorating security situation. On August 12, the Gudushauri National Medical Center of Tbilisi admitted 23 civilians from Gori, many of them injured in the morning’s attack.

Although the Russian military initially denied that it was involved in military operations in Gori, Foreign Minister Sergei Lavrov confirmed on August 13 that Russian forces were active in the area. There were also several aerial bombardments of Gori from August 9 through 12 which could only have been carried out by Russian airplanes.

Keti Javakhishvili, 25, told Human Rights Watch researchers in Tbilisi that she went with her neighbors to get bread and was injured in the attack: “I heard an explosion and dropped to the ground.” Javakhishvili suffered massive trauma to her liver, stomach, and intestines, as well as hemorrhagic shock, said Dr. Merab Kiladze, head of the medical center’s surgery department.

Another victim, Nodar Mchedlishvili, 54, told Human Rights Watch that he went to the municipality building to get food to feed eight people displaced from South Ossetian villages. “In a couple of seconds from everywhere I heard what sounded like massive gunfire. We fell on the ground and some people never got up.” Mchedlishvili sustained shrapnel wounds to his left leg and knee. He was driven to Gori hospital in a car with six other victims as part of a convoy of the injured before being transferred to Tbilisi. Giorgi Malkhaziani, 59, whose right leg was shredded as a result of the attack, corroborated Mchedlishvili’s accounts of events.

“The circumstances suggest that Russian forces either carried out the attack on Gori or at least should know of an attack by South Ossetian forces,” said Cartner. “Russia clearly has the duty to investigate this incident as a potential war crime and hold those responsible to account.”

It is unclear whether there was a legitimate military target in the area. The Georgian military were reported to

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have withdrawn from Gori the previous night. Victims interviewed by Human Rights Watch indicated there was no military presence in the area. The multi-story municipality building is clearly visible, and as a civilian object is protected from targeting.

Nodar Mchedlishvili, 54, was wounded during an attack that took place in front of the Gori Municipality Administration Building the morning of August 12, 2008. He and other civilians had gathered there to receive food and other humanitarian assistance. © 2008 Human Rights Watch Attacks in Tskhinvali

When Human Rights Watch entered Tskhinvali on August 13, the city was largely deserted. Human Rights Watch researchers saw numerous apartment buildings and houses damaged by shelling. Some of them had been hit by rockets most likely fired from Grad launchers, weapons that should not be used in areas populated by civilians, as they cannot be directed at only military targets and are therefore inherently indiscriminate. Also, Human Rights Watch saw several buildings that bore traces of heavy ammunition as if fired from tanks at close range. There was some evidence of firing being directed into basements, locations where civilians frequently choose as a place of shelter.

Since Georgian and Russian forces use identical Soviet-era weapons systems including main battle tanks, Grad multiple-launch rockets, BMP infantry fighting vehicles and tube artillery, Human Rights Watch cannot definitely attribute specific battle damage to a particular belligerent, but witness accounts and the timing of the damage would point to Georgian fire accounting for much of the damage described below.

Human Rights Watch researchers interviewed about 30 individuals, including civilians who had remained in the city during the entire period of the fighting, a few civilians who had just returned to check on the state of their homes, and several members of South Ossetian forces.

One man identified only as Giorgi took Human Rights Watch researchers to his apartment building at 50 Luzhkov Street, which he explained suffered severe damage during fighting that took place between Georgian and South Ossetian forces from August 7 to 10. He told them:

“They had no pity for civilians. When the fighting started, everyone who remained in the building rushed to the basement. We stayed there for the next two days, unable to step outside because the shelling was so heavy. On August 9, a BMP [infantry fighting vehicle] fired right into the basement, leaving a gaping hole in the wall. The noise was deafening and debris was flying all over the place. My neighbor’s elderly father-in-law was so scared that he started running away, slipped and broke his legs. No one was killed because everyone was in the adjacent room.”

Human Rights Watch saw the hole in the wall, and learned that those in the basement survived only because they were in an adjacent room.

Giorgi also showed Human Rights Watch a completely destroyed building nearby and explained that when the building was hit by a Grad rocket, six of the tenants, four women and two men, (all ethnic Azeris) were thrown from the window by the blast wave and fell to the ground. They suffered severe concussions and multiple bruises, but managed to crawl into the basement and hide there. They were hiding in the basement until August 10, with the neighbors taking care of them.

#### Casualty numbers in Tskhinvali

A doctor at Tskhinvali Regional Hospital who was on duty from the afternoon of August 7 told Human Rights Watch that between August 6 to 12 the hospital treated 273 wounded, both military and civilians. She said her hospital was the only clinic treating the wounded in Tskhinvali. The doctor said there were more military personnel than civilians among the wounded and added that all of the wounded were later transferred to the Russian Ministry of Emergencies mobile hospitals in South and North Ossetia. As of August 13, there were no wounded left in the Tskhinvali hospital.

The doctor also said that 44 bodies had been brought to the hospital since the fighting began, of both military and civilians. The figure reflects only those killed in the city of Tskhinvali. But the doctor was adamant that the majority of people killed in the city had been brought to the hospital before being buried, because the city morgue was not functioning due to the lack of electricity in the city.

From August 8 to 11, the doctor said, staff had to move all the patients into the hospital basement because of the constant shelling. The doctor said the hospital was under fire for 18 hours. Human Rights Watch documented the damage caused to the hospital building by a rocket believed to have been fired from a Grad multiple rocket launcher which hit the hospital, severely damaging treatment rooms on the second and third floors.

The doctor told Human Rights Watch that she could not leave the hospital because of the heavy shelling. She

also said that two sisters, hospital employees, were killed on August 8 or 9, as they were hiding in the basement of their house.

#### Selected accounts of the fighting

Two women living on Luzhkov Street spoke to Human Rights Watch about their ordeal of spending more than two days in the basement of their apartment building, also damaged by shelling. One of them, a teacher at the local kindergarten, said: “They were shooting from Grad rocket launchers, paying no attention to civilians living in these houses. We went deaf from the shelling. They simply wanted to wipe us off the face of the earth.”

The woman showed Human Rights Watch researchers the kindergarten building hit by the Grad rockets, as well as fragments of the rocket itself. The children from the school had been evacuated earlier, and two members of the South Ossetian forces told Human Rights Watch that young volunteer militia had been hiding in the building.

On the neighboring street, witnesses told Human Rights Watch that a woman, who was eight months pregnant, peeped out of the basement on the second day of the fighting, was hit by a stray bullet, and died from her wounds.

Pavel, a man living at 20 Isak Kharevov Street, showed Human Rights Watch his building, which had been completely destroyed by the shelling. He said he spent three days in the basement, together with his wife. He said all the residents of the building were hiding in the basement without food or drinking water. The men took turns trying to fetch water under heavy artillery fire. Pavel told Human Rights Watch that when he went to get water, a shell hit the ground next to him.

#### Burning and looting of Georgian villages

On August 13, Russian forces seemed to be taking measures to prevent the looting of Georgian villages; the road south from the town of Java to Tskhinvali was closed to members of South Ossetian paramilitary groups. Russian officers at the checkpoint told Human Rights Watch that the road closure was due to the massive looting taking place in Georgian villages along the road.

However, moving back from Tskhinvali to Java on the evening of August 13, Human Rights Watch researchers saw, for the second day running, houses that were ablaze in several Georgian villages. They had clearly just been torched. One counterintelligence officer of the South Ossetian forces claimed to Human Rights Watch that: “We burned these houses. We want to make sure that they [the Georgians] can’t come back, because if they do come back, this will be a Georgian enclave again and this should not happen.”

The officer went on to describe events during the fighting, including the execution of a Georgian armed man: “The day before yesterday [August 11, 2008], the Georgians killed two of my soldiers in the village of Tamarasheni. We had been conducting a sweep operation there. We detained three of them. Two of them didn’t do anything to us so we just let them go – we couldn’t take them anywhere as I had to take care of my own men first. The third one seemed to be high on something – a normal person would have surrendered, and this one was shooting at us instead. We questioned him and then executed him.”

He expressed concern about the ongoing pillaging: “There are looters everywhere in these villages. ... The looters are now moving to Gori (I went there this morning). The fighting there is over, and now the looters are looting there to profit from this war. Someone has to do something about it.”

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## Georgia: International Groups Should Send Missions

Investigate Violations and Protect Civilians

AUGUST 18, 2008

(Tbilisi) – Mounting evidence that Russian and Georgian military used armed force unlawfully during the South Ossetian conflict highlights the need for international fact-finding missions in Georgia, Human Rights Watch said today. Ongoing militia attacks and a growing humanitarian crisis also indicate the urgent need for the deployment of a mission to enhance civilian protection.

At the start of the military conflict on August 7, 2008, Georgian military used indiscriminate and disproportionate force resulting in civilian deaths in South Ossetia. The Russian military has since used indiscriminate force in attacks in South Ossetia and in the Gori district, and has apparently targeted convoys of civilians attempting to flee the conflict zones. Ongoing looting, arson attacks, and abductions by militia are terrorizing the civilian population, forcing them to flee their homes and preventing displaced people from returning home.

“This conflict has been a disaster for civilians,” said Rachel Denber, Europe and Central Asia deputy director at Human Rights Watch. “An international security mission should be deployed to help protect civilians and create a safe environment for the displaced to return home. And international organizations should also send fact-finding missions to establish the facts, report on human rights, and urge the authorities to account for any crimes.”

Human Rights Watch called on the European Union, with the agreement of the parties, to deploy a robust European Security and Defense Policy (ESDP) mission consisting of police and security forces to ensure protection of civilians and the return of displaced persons to their homes.

Human Rights Watch noted that there are a number of options open to the international community in relation to fact-finding missions. As a first step, the chairman-in-office of the Organization for Security and Cooperation in Europe (OSCE) could send a special envoy to Georgia, including to South Ossetia, supported by a team of experts in international humanitarian law, to look at violations.

Human Rights Watch also called on the United Nations to send a team to assess options for a fact-finding mission, and called for consideration to be given to using the International Humanitarian Fact Finding Commission established under Article 90 of Protocol I of the Geneva Conventions, to which both Georgia and Russia are party. Russia has already accepted the competence of the commission. This would be the first time that the commission would carry out an investigation in a conflict, and in line with the treaty provisions, it would have a mandate to investigate serious violations of International Humanitarian Law.

Attacks by Russian forces

In interviews with Georgians who fled South Ossetia and the Gori district following Russian forces’ assault on

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the area, Human Rights Watch has documented the Russian military's use of indiscriminate force and its seemingly targeted attacks on civilians, including on civilian convoys. The deliberate use of force against civilians or civilian objects is a war crime. Human Rights Watch has also confirmed the Russian military's use of cluster bombs in two towns in Georgia (<http://www.hrw.org/english/docs/2008/08/14/georgi19625.htm>).

#### Attacks in South Ossetia

Slava Meranashvili, 32, from Kekhvi, an ethnic Georgian village in South Ossetia, north of the South Ossetian capital, Tskhinvali, told Human Rights Watch that his village was bombed by Russian jets several times. He told Human Rights Watch, "On August 9 or 10, massive bombing started and the village administration building and a hospital building were destroyed. Bombing took place day and night. It looked like they were targeting big buildings that could be housing the Georgian military."

Meranashvili's house was next to a school that was bombed, but he said that no Georgian forces were housed there or were present near his house. He also told Human Rights Watch: "During the bombing on August 9, my uncle's neighbor was killed. My uncle buried him in his backyard."

Meranashvili left Kekhvi on August 12, and described his flight: "We had to walk through the woods to Gori district villages and then our military helped us to evacuate. When we were walking through the woods, the bombing continued. I had to lie in swamps and crawl for hours. I was afraid to get up."

Human Rights Watch interviewed six civilians fleeing from different villages in South Ossetia in convoys of civilian cars on August 8. The convoys came under aerial bombardment, apparently by Russian military aircraft, near the village of Eredvi, along a road that bypasses Tskhinvali.

Witnesses traveling in one convoy of several dozen cars told Human Rights Watch that around 4 p.m., five Russian aircraft flew over the convoy, then returned and opened fire. Temo Kasradze from the village of Kemerti, who was fleeing with his grandson, described the attack: "There were five people in our car. Suddenly [there was an] explosion. Perhaps four or five cars were hit. ... I saw that people were injured and killed. There was blood." Three witnesses described seeing two sisters traveling in a white Niva car killed in the attack. According to the witnesses, there were no military objects, military personnel or military vehicles on the road.

At around 7 p.m. on August 8, Tengiz Magaldadze, 41, also from Kemerti, was driving the same route in a minivan with 20 other people. Just after they had turned onto the main road in Eredvi, Magaldadze saw three explosions about 20-25 meters in front of the vehicle. Magaldadze did not remember hearing any aircraft, but, because there were three explosions shortly after each other, he concluded they had been fired from an airplane.

Also in the evening of August 8, Emzar Babutsidze traveled in a pickup truck with several other civilians on the bypass road in a convoy of three civilian cars. Less than two kilometers before a checkpoint manned by Russian forces, the pickup truck was hit by a shell, which killed the driver and the only woman in the car. Babutsidze believes the shell was fired from a BMP-2 infantry fighting vehicle. The passengers put the remains of the driver and the woman in the trunk of one car and took them to Gori hospital before driving on to Tbilisi.

#### Attacks in Gori district

As the Russian military advanced into the district and city of Gori, they launched attacks that killed civilians in their homes and as they were preparing to flee.

Vasiko Tevdorashvili, the administrator of Mereti, a village in Gori district, told Human Rights Watch that Russian aerial bombing of Mereti started on the morning of August 9. One woman, asleep in her home, died in the initial attack. As villagers started to assemble in one of the village neighborhoods in preparation for leaving, Russian aircraft again attacked, this time dropping five bombs in the neighborhood, instantly killing five people. Two later died of wounds sustained in the attack. Another witness stated that at least 10 civilians were wounded in the attack. One bomb completely destroyed two houses and seriously damaged several others.

Tevdorashvili described the aftermath: "There were many wounded. I had to decide who had better chances of survival and stuff them into the ambulance. We buried the dead in the yards and fled the village." Tevdorashvili said there was no Georgian military base in the village and no Georgian military forces present at the time of the attack.

On August 11, Nunu Chlaidze, a schoolteacher, fled with her husband from Pkhvenesi village after Russian forces attacked military targets in and around the village earlier that day, causing collateral damage to civilian homes. She fled with her husband and neighbors, but turned back after seeing television news reports that civilians in the Gori district were not being attacked. But as they approached a Russian military roadblock near the village of Sakasheti, their car came under fire. She believes her husband was shot and lost control of the car,

which then hit a Russian tank. Chlaidze was shot twice in the back, and Russian soldiers took her to a field hospital where she was treated. She ran away from the hospital. She has no information about the fate of her husband.

#### Attacks by Georgian forces in South Ossetia

Human Rights Watch continues to document Georgian forces' use of indiscriminate force during their assault on Tskhinvali and neighboring villages on August 7-8, causing numerous civilian casualties and extensive destruction.

"Any comprehensive investigation takes time, but we continue to gather information that points to indiscriminate attacks by Georgia's forces," Denber said.

Human Rights Watch interviews with more than 100 people in Tskhinvali and in the villages of Nizhni Gudjaver and Khetagurovo yielded a clearer picture of Georgian forces' indiscriminate use of Grad multiple rocket launchers and tank fire. In Tskhinvali, Human Rights Watch saw numerous severely damaged civilian objects, including a hospital, apartment buildings, houses, schools, kindergartens, shops, administrative buildings, and the university (<http://www.hrw.org/english/docs/2008/08/12/georgi19594.htm>).

Georgian forces started shelling close to midnight on August 7, and continued uninterrupted through the night. The hardest hit areas of Tskhinvali were the city's south, southeast, and central parts. When the first shells hit, many residents, including women, children and the elderly, rushed to their basements for shelter. They spent two days in their basements, emerging only on August 10, when the Russian military took full control of the city. Some were so frightened that they stayed in their basements until August 13.

The shelling of Tskhinvali caused civilian casualties. For example, a Grad rocket hit the home of Anisim Jagaev, 74, on Kulaeva Street. His daughter told Human Rights Watch: "During the shelling, a Grad rocket hit the house, setting the roof on fire. [My father] went outside to try to put out the flames, and at that moment another rocket hit. He was wounded in his thigh by a piece [of shrapnel]. Our mother dragged him to the basement and spent several hours trying to stop the bleeding – but she had nothing to bandage the wound with. He slowly bled to death in her arms."

According to Tskhinvali residents, when the Georgian ground offensive started on the morning of August 8, Ossetian militias in some neighborhoods took up defensive positions inside civilian apartment buildings, which drew fire from Georgian forces. The militias were armed with automatic weapons.

For example, local residents said that at around 3:30 p.m. on August 8, a Georgian tank opened fire at an apartment building on Tselinnikov Street, in the western part of Tskhinvali, after a group of Ossetian militias started withdrawing through the neighborhood. Six tank shells hit the building, destroying five apartments. Building residents told Human Rights Watch: "We all rushed to the basement, but an elderly man, some 80 years old, who lived on the fourth floor, didn't manage to make it to the basement in time. His apartment was hit by a shell and caught fire. When the attack was over, we went upstairs and saw that the old man burned to ashes. We ... buried [his] remains in the yard."

Neighborhood residents told Human Rights Watch that the attack did not result in any casualties among the militias, with whom they were all acquainted.

Ossetian militias were a legitimate military target. However, international humanitarian law imposes a duty on all parties to avoid or minimize harm to civilians and damage to civilian objects. In particular, where feasible, a belligerent party should not endanger civilians by having military targets, such as combatants, present in or near densely populated areas.

The Georgian military, however, were also obligated to take into account the risk to civilians of their attack, and not to conduct the attack if it was apparent that the civilian casualties would outweigh any likely military advantage they would gain.

Also on August 8, according to villagers, at least four civilians died in Khetagurovo, a village of about 750 residents southwest of Tskhinvali, as a result of attacks by Georgian forces. Human Rights Watch researchers saw several houses in the village that were hit by multiple Grad rockets and shells from mortars. Villagers told Human Rights Watch that an elderly woman died in a fire caused by a Grad rocket that hit her house.

After the shelling, Georgian infantry entered the village, spraying the gates and fences of homes with bullets, demanding that the militias surrender. According to witnesses, one of the stray bullets killed an elderly woman, Anastasia Jiueva, as she went to feed her chickens.

Villagers claimed that at that point no militias were in the village, as they had left before the shelling and were

hiding in the woods.

At least some Georgian infantry were not aware that civilians remained in the village. One elderly man said that when infantrymen entered his yard, they were shocked to find him and his wife there. According to him, the serviceman said: "Have you been here the whole time, during the shelling and everything? We thought the civilians had all fled." None of the 15 villagers interviewed by Human Rights Watch complained about cruel or degrading treatment by Georgian servicemen, who searched the houses looking for remaining militias and arms.

Villagers remained concerned that there may be more casualties that they are not yet aware of. Madina, 30, told Human Rights Watch: "We are not sure who managed to flee and who died. The village is virtually deserted now. It will take time to find out the exact extent of the losses."

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## Georgia: EU Mission Needs to Protect Civilians

In Security Vacuum, Frequent Attacks and Pervasive Fear

SEPTEMBER 15, 2008

The European Union observer mission scheduled to move into areas near South Ossetia must be given both a mandate and adequate resources to protect civilians, Human Rights Watch said today. Human Rights Watch researchers in Georgia in recent days have documented numerous attacks by Ossetians against civilians in villages in this area, which is effectively under Russian control.

“The so-called ‘security zone’ is anything but safe – it is a no-man’s land, and people there desperately need protection,” said Giorgi Gogia, Human Rights Watch’s researcher on Georgia. “Monitoring is welcome, but what is urgently needed is a robust ESDP mission authorized to do policing to protect people from militia and other attacks and allow the displaced to return safely to their homes.”

The Russian military has not been allowing Georgian police into many of the villages in Georgia’s Gori district, which borders South Ossetia. Nor has the Russian military been policing the villages itself.

Under an agreement reached September 8, 2008, with the Russian and Georgian governments, the EU will send 200 civilian experts and police observers under the European Security and Defense Policy (ESDP) to Georgia. The observers, who will be unarmed, will have a mandate to monitor but not to protect civilians in the Gori area.

Three weeks after Russian forces withdrew from most parts of Gori district, tens of thousands of Georgians remain displaced, both because security is deteriorating and because many homes have been destroyed by bombing or [deliberately burned](#). The security situation remains particularly unstable in areas close to the administrative border with South Ossetia. Displaced Gori district residents who spoke to Human Rights Watch uniformly said they feel unable to return to their homes to stay because they fear attacks by Ossetian militias and others seeking to exploit the utter lack of law enforcement in the area.

“The EU says return of the displaced is a priority, but it hasn’t acknowledged the lawless situation and ongoing human rights abuses,” said Gogia. “Many who have fled are afraid to return, and those who do, face a real risk of violence. ESDP missions in other parts of the world have had policing and protection responsibilities, and there is no good reason why they can’t have them here.”

Human Rights Watch researchers found that most people remaining in the villages of Gori district are elderly men and women who hope to protect their homes and property or who physically cannot leave. Some younger people from these villages venture from displaced person shelters in the town of Gori to their home villages for a few daylight hours. They look after their houses and harvest their crops, then return to the shelters. Villagers spending the night in villages either gather in one place to seek safety in numbers or hide in fields or woods near their homes.

“Their fear of violence isn’t abstract,” said Gogia. “Attacks on civilians continue, and people have nowhere to turn for protection.”

Human Rights Watch documented numerous attacks and threats against civilians by Ossetian militias and armed criminals in the last 10 days. For example, “Dato”, a 22-year-old villager from Abanoskoda, in the Kareli district on the administrative border with South Ossetia, described the killing of his 75-year-old grandmother on September 6. He told Human Rights Watch that on September 5 he was in the village to check on her and help with the harvest. “My father and I were harvesting crops in my grandmother’s field,” he said. “As I approached the house, two Ossetians in camouflage, armed with machine guns, stopped me and asked me who I was. One of them cocked his gun and demanded that I give him my cell phone, and I did so.”

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*The so-called ‘security zone’ is anything but safe – it is a no-man’s land, and people there desperately need protection.*

Giorgi Gogia, Human Rights Watch’s researcher on Georgia

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“The next evening, after going into the village, I returned to my grandmother’s house and found that my father was being held by four armed men in masks, wearing camouflage uniforms,” said “Dato. “They tried to take me and my father away. My grandmother was protesting and pulling on my father to keep him from being taken. One of them grabbed her to pull her away, and we all began to struggle. The assailants shot me twice in the right leg. They shot my father in the back, and he immediately fell down. I don’t know how my grandmother was shot, but when I was able to look at her I saw that she was dead.”

“Dato” and his father survived. “Dato” remains in the hospital with a knee fracture. His father was treated for a wound to the abdomen.

On September 6, a 40-year-old man, “Lado,” was driving in another Gori district village, Kvemo Artsevi, when he was stopped by two men in black ski masks and camouflage uniforms armed with machine guns and standing near a car along the side of the road. “Lado” told Human Rights Watch: “They spoke to me in broken Georgian with an Ossetian accent. One of them asked for my documents, took them, and then asked me to come with them to verify my identity. The other one started swearing at me. I was scared and so I sped away. They followed me in their car for about 2 kilometers and shot at me. The right rear window of the car was shot out. My wife and I left the village that day. I won’t go back until there are police to protect us. Those who are there made us leave.”

Human Rights Watch also found new evidence of the torching of homes in South Ossetia. Multiple witnesses who recently fled Disevi, a village on the South Ossetian border, told Human Rights Watch that, as of September 13, the vast majority of houses in the village had been burned. Much of the village had been burned when Ossetian militias entered the village on August 11, but the remaining houses have been steadily targeted in recent days. One witness who arrived in Gori on September 15 stated that she saw 15 or 16 houses being burned by militias in the period between September 12 and September 15. This witness told Human Rights Watch that although she had stayed in her house throughout the conflict and through the looting and burning by Ossetian militias immediately following the active fighting, the recent systematic burning had caused her to give up hope that her home would be spared.

Disevi residents and residents of other villages also described a series of thefts and said they have heard frequent shooting in the past 10 days, they said they believe that the recent attacks and criminal activity have been carried out not only by Ossetian militia members, but also by civilian residents from neighboring villages taking advantage of the security vacuum.

“Over the past weeks the EU has focused on the status of South Ossetia and the withdrawal of Russian forces from Georgia proper,” said Gogia. “But it’s high time for the EU to pay equal attention to the rights and safety of the people in these areas. Ensuring that the EU’s ESDP mission can actually protect civilians and itself in the so-called buffer-zones would be a good start.”

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## Russia/Georgia: Investigate Abuse of Detainees [1]

Allegations of Execution, Torture in South Ossetia

September 21, 2008

Russia should immediately investigate allegations of extrajudicial execution, torture, and other abuse of Georgian military and civilian detainees by Ossetian forces during the recent conflict in Georgia, Human Rights Watch said today. Georgia should investigate alleged ill-treatment of Ossetian detainees during their detention and transfer to Tbilisi and improve conditions of detention, Human Rights Watch said.

"The torture and ill-treatment of Georgian detainees is abhorrent and can't be justified, even during armed conflict," said Rachel Denber, Europe and Central Asia director at Human Rights Watch. "Russia had effective control in South Ossetia while these abuses took place and it has the duty to hold the perpetrators to account for these horrific crimes."

In interviews with former Georgian military detainees, Human Rights Watch has documented at least one extrajudicial execution of a Georgian soldier in detention, as well as severe torture of at least four Georgian soldiers by Ossetian militia and other Ossetian forces.

Human Rights Watch also found that Russian and Ossetian forces unlawfully detained at least 160 civilians, mainly elderly, in South Ossetia and Gori district; approximately 40 were women. At least one man was executed while in Ossetian custody. Most civilians were held in the basement of the Ossetian Ministry of Interior building in Tskhinvali for approximately two weeks in conditions that amounted to degrading treatment. Some were subjected to beatings and were forced to work cleaning the streets of Tskhinvali of decomposing bodies of Georgian soldiers and building debris. At least four Georgian civilians were held by Russian military forces in a dirt pit and beaten at what appeared to be a Russian field base before being handed over to the Ossetian Ministry of Internal Affairs. Ossetian forces had no legal authority to detain military service personnel or civilians.

The Georgian military detained Ossetians during the active fighting in South Ossetia. The Georgian ministry of defense claims that it detained only militia fighters or others posing security risks. Human Rights Watch spoke to two of the detainees, one traffic policeman and another male who claimed that he had not taken any part in hostilities. Both men reported that they were ill-treated as they were being transferred from South Ossetia to Tbilisi and complained of poor food during detention.

"Georgia has an obligation to investigate allegations that Ossetian detainees were beaten during their transfer to custody," Denber said. "Poor detention conditions in Georgia are a long-standing problem that the government has taken insufficient steps to address."

Of 13 Georgian military servicemen known to have been detained by Ossetian and Russian forces, Human Rights Watch conducted individual, in-depth interviews with four. Human Rights Watch also interviewed more than 20 civilians



detained by Ossetian and Russian forces as well as two Ossetians and two Russian soldiers detained by the Georgian military.

### ***Execution and torture of Georgian military servicemen***

The Georgian military servicemen interviewed by Human Rights Watch were detained by Ossetian militias on August 8, 2008, during the active fighting in Tskhinvali. They were held in informal places of detention, including apartment buildings and schools, for several days, and were then transferred to Ossetian forces, who detained the soldiers for six days. Russian forces were aware of the detentions.

The four Georgian soldiers interviewed by Human Rights Watch, together with nine other Georgian soldiers and two people the Georgian authorities claim were civilians, were exchanged by the Russian authorities for five Russian prisoners of war on August 21. Because the Georgian soldiers were detained in Tskhinvali in South Ossetia, an area over which Russia exercised effective control since August 9, they should be treated as having fallen into Russia's power. Russia was therefore obligated to afford them prisoner-of-war (POW) status and to treat them in conformity with the protections of the Third Geneva Convention, which include absolute prohibitions on ill-treatment and require POWs to be treated humanely and kept in good health.

Georgian soldiers reported that they had been subjected to severe torture and ill-treatment throughout their detention by Ossetian militia and Ossetian forces. The Ossetian militia and other forces frequently beat the soldiers, not only by punching and kicking them, but also by using implements such as hammers, butts of machine guns, and metal rods. They also burned their skin with lighters, starved them and threatened them with execution. The men were held in degrading conditions, given very little water and little to no food after the initial days of their detention. The torture and ill-treatment caused severe head trauma, broken bones, burns, severe bruising, and serious dehydration and loss of weight among the prisoners. After several days in detention by Ossetian forces, one Georgian soldier who had been wounded during active fighting in Tskhinvali was taken into custody by Russian federal forces proper and treated in hospitals in South Ossetia and Russia.

The Georgian soldiers also reported that one of the soldiers detained with them was executed. Shortly after the soldiers were detained in a school, one soldier was taken from the group into a small room and shot in the back of the head with automatic weapon fire. Other soldiers were made to carry the body outside and later bury it. The man was apparently singled out because he was a tank driver. Georgian soldiers also stated that another Georgian military serviceman detained among them, who was ethnic Ossetian, was taken away during their detention. They never saw this soldier again. One Georgian soldier reported that he had been told the man was killed "as a traitor."

For information on the extrajudicial execution by Ossetian forces of an armed Georgian man in a separate incident, [click here](#) [2].

### ***Execution, arbitrary detention, and ill-treatment of Georgian civilians***

As Russian forces began to occupy South Ossetia on August 8-9, South Ossetian forces followed them into ethnic Georgian villages. Russian and Ossetian forces detained many of the remaining residents, most of whom were elderly and had stayed behind to protect their homes and property; younger family members had fled in the initial days of fighting. On subsequent days, Ossetian forces also detained people trying to flee looting and burning by Ossetian forces in the Gori

district. Human Rights Watch has also documented how Ossetian forces looted and burned houses [3] in Georgian villages. There is no evidence that the civilians detained by Russian and Ossetian forces posed any security threat that would necessitate their detention.

During the detention of approximately 10 men, who were taken from cars while attempting to flee from villages in the Gori district, one detainee was executed by Ossetian forces. The group of detainees had been made to lie face down in the back of a minivan, were kicked and hit with gun butts, and told not to raise their heads, despite the beatings. One detainee told Human Rights Watch that the young man lying next to him, who was approximately 25 years old, raised his head several times and the Ossetian captors eventually shot him in the head three times. They threw his body out of the van and threatened the other detainees, "We will kill you all eventually." These men were subsequently taken to the Ossetian Ministry of Interior building in Tskhinvali.

At least 160 Georgian civilians, including many elderly and approximately 40 women, were held together in the basement of the Ossetian Ministry of Interior building in Tskhinvali. Detainees described appalling conditions of detention. They stated that the dark, hot, poorly ventilated basement had five detention cells designed for short-term detentions. The cells quickly became overcrowded, and detainees were forced to sleep in the hallway or in the small, fenced-in, outdoor exercise yard accessible from the basement. There were only a handful of beds, and most detainees slept sitting or lying on the floor.

There was one toilet for all detainees and it frequently did not have water. Detainees described being given water that was dirty as well as insufficient food. During the initial days of detention, guards would throw four to five loaves of bread into the cells, saying "Eat, pigs!" Detainees stated that following a visit by the International Committee of the Red Cross (ICRC), in mid-August, they were given slightly more and better food, including buckwheat cereal, more servings of bread, and tea. Most detainees reported losing significant weight during the detention. Material conditions in Tskhinvali at the time of these detentions were dire; the city had no electricity, very little food, and very little water.

Several men reported being beaten at the moment of detention, during transfer, and upon their arrival at the detention facility. Several men were also forced to work, which included recovering decomposing bodies from the streets of Tskhinvali, digging graves, and burying bodies, as well as cleaning the streets from building debris accumulated as a result of fighting. They did not receive any compensation for this work. Under international humanitarian law, civilians may be required to work if it is necessary, for example, to maintain public utilities or to meet humanitarian needs, but they should be appropriately compensated for their work. Unpaid or abusive forced labor, or work that amounts to partaking in military operations, is strictly prohibited.

One group of 61 detainees, including most of the elderly and all of the women, were released on August 21, and were officially exchanged for eight detainees whom the Georgian military describes as militia fighters. Other civilians were released on subsequent days, including a large group of 81 civilians on August 27, who, according to the Georgian Ministry of Defense, were exchanged for four people detained during fighting and described as militants, as well as nine Ossetians previously convicted for crimes and serving sentences in Georgian prisons.

#### ***Detention and ill-treatment of Ossetians by Georgian military***

Human Rights Watch interviewed two Ossetians detained by the Georgian military in Khetagurovo, a village in South Ossetia, on August 9. Both detainees reported being beaten by Georgian soldiers at the moment of their detention. One

detainee stated that his jaw was dislocated as a result of the beatings. The other detainee told Human Rights Watch that Georgian soldiers punched and kicked him during his transfer by car to Tbilisi. Both detainees complained about poor and inadequate food during their detention in the Vaziani military base in Tbilisi. Neither detainee complained of ill-treatment while in detention. Human Rights Watch has documented poor conditions in Georgian prisons and places of detention and has called on the government to ensure conditions meet international standards [4].

Human Rights Watch interviewed two Russian prisoners of war who were being treated for injuries in a Tbilisi hospital. They did not complain of any ill-treatment by Georgian military.

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## Georgia: Satellite Images Show Destruction, Ethnic Attacks

Russia Should Investigate, Prosecute Crimes

AUGUST 27, 2008

Recent satellite images released by the UN program UNOSAT confirm the widespread torching of ethnic Georgian villages inside South Ossetia, Human Rights Watch said today. Detailed analysis of the damage depicted in five ethnic Georgian villages shows the destruction of these villages around the South Ossetian capital, Tskhinvali, was caused by intentional burning and not armed combat.

“Human Rights Watch researchers personally witnessed Ossetian militias looting and burning down ethnic Georgian villages during their research in the area,” said Rachel Denber, deputy director of the Europe and Central Asia division of Human Rights Watch. “These satellite images indicate just how widespread the torching of these villages has been in the last two weeks.”

The new satellite images, taken by a commercial satellite on August 19, were analyzed by experts of the Geneva-based UNOSAT program, which is part of the UN Institute for Training and Research and produces satellite-derived mapping in support of UN agencies and the international humanitarian community. UNOSAT experts identified visible structures on the images that were likely to have been either destroyed or severely damaged. The expert analysis indicates clear patterns of destruction that are consistent with the evidence gathered by Human Rights Watch researchers working in the region.

Click on image to see destruction of houses

Among the images publicly available from the UNOSAT website (<http://unosat.web.cern.ch/unosat/>) is a map marking satellite-detected active fire locations in the ethnic Georgian villages around Tskhinvali. The map shows active fires in the ethnic Georgian villages on August 10, 12, 13, 17, 19 and 22, well after active hostilities ended in the area on August 10. On these dates the lack of cloud cover allowed the satellites to view those locations.

- Fires by date (high resolution, 3.3MB)
- Fires by date (low resolution, 1.6MB)

UNOSAT has also released a set of six high-resolution satellite images of the enclave of ethnic Georgian villages stretching nine kilometers north from Tskhinvali, showing that the majority of them have been destroyed.

- Destroyed ethnic Georgian villages (high resolution, 26.7MB)
- Destroyed ethnic Georgian villages (low resolution, 8.5MB)

The images strongly indicate that the majority of the destruction in five of the villages – Tamarasheni, Kekhvi, Kvemo Achabeti (Nizhnie Achaveti in Russian), Zemo Achabeti (Verkhnie Achaveti in Russian), and Kurta – was caused by intentional burning. The high-resolution images of these villages show no impact craters from incoming shelling or rocket fire, or aerial bombardment. The exterior and interior masonry walls of most of the destroyed homes are still standing, but the wood-framed roofs are collapsed, indicating that the buildings were

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*All of this adds up to compelling evidence of war crimes and grave human rights abuses. This should persuade the Russian government it needs to prosecute those responsible for these crimes.*

Rachel Denber, deputy director of the Europe and Central Asia division of Human Rights Watch

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burned. Only along the main road through Tamarasheni are a number of homes visible with collapsed exterior walls, which may have been caused by tank fire. Ethnic Georgian witnesses from Tamarasheni told Human Rights Watch that they had witnessed Russian tanks systematically firing into the homes on August 10.

- Detailed satellite images of destroyed ethnic Georgian villages (10.2MB)

On August 12, Human Rights Watch researchers witnessed massive looting by Ossetian militias in Tamarasheni, as well as in the neighboring ethnic Georgian villages. Human Rights Watch researchers saw and photographed the still-smoldering and the recently torched houses in Tamarasheni. Witnesses from local villagers in Tamarasheni, Kvemo Achabeti, and Kekhvi told Human Rights Watch that Ossetian militias were systematically [looting and burning](#) ethnic Georgian homes. In the village of Kekhvi, many homes had been set alight by Ossetian militias just before the arrival of Human Rights Watch researchers, who photographed the burning homes.

- Human Rights Watch photo essay, "Burning and Looting of Ethnic Georgian Villages in South Ossetia"

Human Rights Watch researchers spoke with several members of the Ossetian militias who openly admitted that the houses were being burned by their associates, explaining that the objective was to ensure that ethnic Georgians would not have the houses to return to.

"All of this adds up to compelling evidence of war crimes and grave human rights abuses," said Denber. "This should persuade the Russian government it needs to prosecute those responsible for these crimes."

The damage shown in the ethnic Georgian villages is massive and concentrated. In Tamarasheni, UNOSAT's experts counted a total of 177 buildings destroyed or severely damaged, accounting for almost all of the buildings in the town. In Kvemo Achabeti, there are 87 destroyed and 28 severely damaged buildings (115 total); in Zemo Achabeti, 56 destroyed and 21 severely damaged buildings (77 total); in Kurta, 123 destroyed and 21 severely damaged buildings (144 total); in Kekhvi, 109 destroyed and 44 severely damaged buildings (153 total); in Kemerti, 58 destroyed and 20 severely damaged buildings (78 total); and in Dzartsemi, 29 destroyed and 10 severely damaged buildings (39 total).

Selected Accounts from Ethnic Georgian Residents

"[The Ossetians] had cars outside and first looted everything they liked. Then they brought hay, put it in the house and ignited it. The house was burned in front of my eyes."

– Zhuzhuna Chulukhidze, 76, resident of Zemo Achabeti

"I was beaten and my house was looted by Ossetian militias three times during a single day. After they took everything and there was nothing more to loot, they brought petrol, poured it everywhere in the rooms and outside the house, and then put it on fire. They made me watch as my house was fully burned."

– Ila Chulukhadze, 84, resident of Kvemo Achabeti

"They [Ossetians] came several times to my house and took everything they liked. Once there was nothing else to take, they poured petrol and put it on fire. I watched how they burned my house as well as my neighbors' houses."

– Rezo Babutsidze, 80, resident of Kvemo Achabeti

"Ossetians first took out everything they could from my house. Then they brought hay, put it in the house and put it on fire. They did not allow us to take even our documents. I saw how my house was completely burnt."

– Tamar Khutsinashvili, 69, resident of Tamarasheni

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## Special Press Release of Human Rights Centre “Memorial” and Demos Centre

### Humanitarian consequences of the armed conflict in the South Caucasus.

#### The “buffer zone” after the withdrawal of the Russian troops.

Over the period from October 12 till October 23, 2008 representatives of the HRC “Memorial” and the Demos Centre were on a fact-finding mission in Georgia. The goal of the mission was examination and analysis of the humanitarian consequences of the August armed hostilities. The focus of our attention was on the current situation in the former “buffer zone” immediately after the withdrawal of the Russian troops.

In the course of their fact-finding mission representatives of the human rights organizations visited the cities of Tbilisi and Gori, 17 villages of the Gori district (Karalet’i, Tqviavi, Ergnet’i, Qits’nisi, Karbi, Meret’i, Koshki, Arbo, Ditsi, Tirdznisi, Megvrekisi, P’khvenisi, Variani, Shindisi, Qvemo Niqozi, Zemo Niqozi, Zemo Khvit’i), two villages situated in the Kareli district (Goget’I, P’tsa) as well as the Akhlagori (Leningori) district currently under the control of the South Ossetian authorities. The members of the mission especially focused on the issue of current security for the civilian population of the most afflicted regions.

The residents of the settlements on the territories of the former "buffer zone", which were exposed to shelling and bombing as well as plundering and arson attacks on private households, were interrogated. Detailed interviews were obtained from former hostages. In Tbilisi and at the temporary shelter facilities we interrogated persons who were forced to flee places of their permanent residence, this category included residents of the Georgian enclave villages in South Ossetia

The members of the mission met with the heads of administration of settlements and districts, representatives of the clergy, and in Tbilisi we met with the governmental officials and representatives of Georgian NGOs. We also had a brief interview with the military commander of the Russian troops deployed in South Ossetia.

This fact-finding mission followed a number of trips to the South Ossetian region made by representatives of the Demos Centre (in July and August 2008) and of the HRC "Memorial" (in September 2008). The results of the work conducted by the HRC "Memorial" in the area of the military conflict were presented at a press conference held at the InterFax press centre on September 11, 2008, the summary of the key conclusions was laid out in the press release (<http://www.memo.ru/hr/hotpoints/osetia/1109082.htm>). Moreover, in 1991, during the first outbreak of the armed conflict, a group of observers from the HRC "Memorial" worked in South Ossetia and the adjacent region and the results of the work can be found in the corresponding report on the Memorial website (<http://www.memo.ru/hr/hotpoints/osetia/old90.htm>).

On the basis of the work done by the mission in October 2008 and taking into account the results of the previous trips to the zone of the conflict, the HRC Memorial and the Demos Centre consider it appropriate to make the conclusions presented below.

Nevertheless, we are not aiming here at examining such general issues as the correlation of the principles of territorial integrity and the right of nations to self-determination. Our goal here is solely to present the facts, observations, individual examples and figures which by no means claim to be conclusive or exhaustive.

1. The armed hostilities which broke out in the South Caucasus in August 2008, were preceded by several weeks of rapid development of the conflict. Frequent exchanges of artillery fire between the Georgian and the Ossetian sides drastically intensified in early August and continued to intensify over the subsequent days – this was confirmed by both the local civilian population and by the Georgian military. Starting from August 6 the “Georgian enclave” villages of South Ossetia were subjected to artillery shelling. The fire was opened from the direction of Georgia. In the course of our fact-finding mission to South Ossetia in August 2008 we had also learnt that starting from August 6 the hospital of Tskhinvali began to admit numerous victims injured with shell fragment, mine and gunshot wounds.

As far as we are concerned, the Georgian side started active preparation to the armed operation several days before its launch. On August 7, following yet another failed attempt to conduct negotiations in Tskhinvali, the Georgian side launched the armed operation. The Russian side had also rehearsed, in the course of the preceding months, an armed operation on the territory of South Ossetia as well as projection of its military forces over the Caucasus mountain range.

According to eye witnesses, in the afternoon of August 7, Georgian military convoys were seen moving from the direction of Gori in the direction of Tskhinvali. On the night from August 7 to August 8 the Georgian side exposed the city of Tskhinvali and several Ossetian villages to artillery fire from multiple launch rocket systems which resulted in deaths among the civilian population and in major destructions. The Georgian troops advanced towards Tskhinvali passing, among other points, the dispositions of the Russian peace-keeping forces. The dispositions of the Georgian

peace-keepers also came under direct fire that night.

Since early morning of August 8 the Georgian armed forces had undertaken several attempts of taking Tskhinvali by storm, but each time they were forced to retreat. The Georgian troops were entering South Ossetia along different directions. In the afternoon of August 8 units of the 58<sup>th</sup> army of the Russian armed forces entered South Ossetia from the north, through the Roki tunnel. The Georgian troops started to withdraw from South Ossetia in the evening of August 9 while on August 12 they had already withdrawn from the Gori district – the residents of the village testify of their mass and hurried retreat. On the same day the Russian troops occupied the city of Gori not encountering any resistance.

A few days later the Russian military forces set up checkpoints on the key thoroughfares leading to Tskhinvali and in the direction of Gori, as well as on the Trans-Georgian highway in the Gori and Kareli districts.

The so-called “buffer zone” under the control of the Russian Armed Forces was formed as a result. The Russian military forces remained on the territory of the buffer zone until October 8-9, when all the checkpoints were removed and all the military units were withdrawn.

2. Interrogations of persons, who were forced to flee from Georgian villages situated in the territory of South Ossetia, held in Tbilisi at the temporary shelter facilities allow us to reconstruct the chain of events that took place there on August 7-10, 2008.

Earlier the HRC Memorial claimed, based on the information obtained from the few local residents remaining in these villages in early September (press release of September 11, <http://www.memo.ru/hr/hotpoints/osetia/1109082.htm>): *“the Georgian population has practically entirely fled the “enclave” villages on the eve of the entry of the Georgian troops into South Ossetia, obeying the emphatic recommendations of the local pro-Georgian administration who had promised them a speedy return”*. .

However, the refugees from the villages of Eredvi, Kekhvi, T’amarasheni, K’urt’a interrogated in Tbilisi claimed that no warnings about the urgency to leave their villages ever reached them. Nevertheless, by August 8 many of the inhabitants had left those villages fearing for their lives under the ever intensifying shelling, yet some people remained. This resulted in deaths and wounding of civilians during the large-scale armed hostilities. Those who remained in their villages were exposed to bombardments and artillery strikes just as much as those who attempted to flee. For example, in the village of K’urt’a, up to ten people were killed when a bomb or a shell exploded in the church yard, - the members of the mission interviewed two women who were wounded in that event.

On August 9-10, when the Russian troops and the South Ossetian armed groups entered these villages, they found there a number of people who for some reason or another could not or did not wish to leave, this category primarily included the elderly and mixed families.

The armed invaders practically immediately proceeded to plundering and setting houses on fire. By the end of August the villages of Kekhvi, K’urt’a, Achabet’i, T’amarasheni, Eredvi, Vanat’I, Avnevi, Nuli were practically destroyed.

3. As early as on August 8, with the launching of large-scale armed hostilities, the settlements situated in the Gori district adjacent to South Ossetia (some of them were subsequently included into the so-called “buffer zone”) were exposed to air bombardments, artillery and missile strikes which resulted in destruction of houses and casualties among civilian population.

Artillery shelling and bombardments continued well until August 12 - the date of the official termination of “the peace-enforcement operation”.

The best-known bombardments and shelling of the city of Gori took place on August 9 and 12. The casualties toll resulting from the strikes on the central square and the civilian sector located not far from the Georgian military base totalled 39 civilian persons.

The villages of the Gori district were also exposed to fire. For example, in the village of Tqviavi a missile strike of August 11 destroyed an entire residential quarter - 13 houses - and four neighbouring houses were seriously damaged.

On August 8, in the village of Karbi the missile strikes (presumably, the volley-fire rocket system ‘Smerch’) destroyed at least 6 houses, 8 civilians were killed, those were mainly elderly, among them 2 women.

It is obvious that the bombings of these villages before August 12 were performed by the Russian troops. The fact that it was along these roads that the Georgian troops were advancing towards South Ossetia on August 7 and retreating from South Ossetia on August 12, by no means serves as a excuse for exposing residential houses to indiscriminate fire, the responsibility for which lies with the commanders of the Russian troops. The situation in the villages of Zemo Khvit’i, Zemo Niqozi and Qvemo Niqozi which are adjacent to the South Ossetian territory was different. These villages or their outskirts were occupied, starting from August 7, by the Georgian troops who attempted to offer



resistance to the Russian troops entering into the Gori district (this was the only instance of the Georgian troops offering armed resistance to the Russian troops in the territory of “the buffer zone”). Here we have also registered deaths among the civilian population and houses destroyed as a result of artillery shelling. Thus, the death toll in Zemo Khvit'i was 8 civilians, all of them - elderly people, among them - 2 women. However, presently it appears impossible to determine either whose fire had destroyed the houses and killed civilians, nor whether exposure to indiscriminate fire had taken place. For example, the members of the mission have learnt that the school in the village of Qvemo Niqozi, which was destroyed by the Russian artillery shelling, served as a disposition of units of the Georgian military.

4. Having crushed the resistance of the Georgian troops in the village of Niqozi, Russian military units entered the Gori district on August 12 and advanced towards the city of Gori meeting practically no resistance in the villages through which they were passing.

The residents of these villages had not received a proper warning from the Georgian authorities as to the danger they may be facing in connection with possible artillery shelling and bombardments as well as invasion of the Russian troops and Ossetian armed militant groups. The absence of such warnings was confirmed both by ordinary civilians and by officers of village administration. This was also admitted by the authorities in Tbilisi.

Many inhabitants of the local villages – primarily, women and children, - left the area for the neighbouring regions in the first days of the conflict fearing for their safety during the shelling and bombardments. However, a considerable number of local people remained in their homes, hiding in the cellars. It was only on August 12, upon seeing the fleeing Georgian troops, that the majority of the population also fled the region. In doing so, people would abandon all valuables in their homes as well as leave their cattle behind.

The fleeing population was followed by the Russian troops advancing towards Gori who at times even overtook the refugee groups. They were advancing practically without stopping in villages apart from setting up several checkpoints. The Georgian army offered no resistance along this stretch and so the advancing troops hardly ever opened fire and did not hinder the exodus of civilians

Few people remained in their homes, this category mainly included the elderly without immediate family.

The Russian troops entering the Gori district were followed by the South Ossetian armed groups. The spree of looting, arsons of houses and violent assaults against the civilian population broke out.

5. Upon entering the village of Ergnet'i armed militants belonging to South Ossetian militant groups started setting fire to houses which had not yet been plundered and the entire village was turned into one huge site of destruction. Out of the 150 houses in the village about 90% were virtually burned down. The walls of the burnt houses bear no traces of either bullets or shell fragments. No shell craters have been found either. All the traces left testify of the fact that the houses were deliberately burnt down and not destroyed during battles, shelling or bombardments.

In many villages (Zemo and Qvemo-Niqozi, Karalet'i, Qitsnisi, Tqviavi, Karbi, Koshki, Tirdznisi, Zemo Khvit'i and others) the percentage of houses burnt is lower. Thus, in Tirdznisi, out of 650 houses 15 were burnt down; in Tqviavi, out of 850 houses 37 were burnt down. Nevertheless, practically all houses have been ransacked. Among the plunderers were both members of the South Ossetian militant groups and apparent civilians coming after the former. Plunderers would normally approach in cars and lorries, take out everything that appealed to them, from refrigerators to kitchen utensils, steal cattle, gather the harvest from the gardens.

If the owners who remained in some of the houses attempted to resist the actions of the plunders or simply refused to obey their orders – for example, give away the hidden money, - they were not infrequently murdered. Thus, in Tqviavi the looters had killed 10 men, 5 of whom were elderly men. In Tirdznisi three locals were killed, all of them were elderly people and among them was one mute woman. In Ergnet'i 5 locals were killed, in Karalet'i – 2, in Meghvrekisi a 70-year-old woman was hacked with an axe. These are just a few examples of a significant number of similar crimes.

The highest swing of violence was registered in the first days after the entry of the Russian troops and the South Ossetian groups into the villages of the Gori district which was soon afterwards declared the “buffer zone”, - August 12, 13 and 14. However, plundering, arsons and murders continued to occur in the following days as well, though their scale was much narrower.

Thus, according to eyewitnesses, on August 24, cars proceeding from the direction of Ergnet'i and carrying plundered goods would enter Tskhinvali passing through Russian and Ossetian checkpoints without any apparent difficulties.

Another example of this would be the school in the small village of Koshki which was ransacked and set

ablaze. After that, the local houses were subject to constant plundering all through August and September. Six houses on the outskirts of the village were burnt down. The arsons continue to take place well into late September.

6. The territory of the Kareli district which is situated to the West of the Gori district and also has a common border with South Ossetia has seen no battles, no artillery shelling, no bombardments. The South Ossetian armed groups have never entered these parts. The Russian troops have not entered the majority of settlements here. However, the district was included into the so-called "buffer zone". Checkpoints were set up in the district centre of Kareli and the village of Agara. Detachments of the Russian troops were stationed here.

However, on August 13 and 14 and later on the subsequent days several villages of the Kareli district were entered without any hindrance by groups of armed plunderers penetrating from the territory of South Ossetia. For example, in the small village of Goget'i (40 houses) 6 houses were burnt down by looters, about 15 were ransacked. The looters had also forcibly taken one local family away with them as hostages, including women, as hostages. The majority of the hostages were used by them as a guarantee of their unhindered return into South Ossetia and were released afterwards. However, the release of one of them was preceded by a demand for ransom from his relatives.

Apparently, the same group is responsible for having stolen about 100 head of cattle from a much larger village of P'tsa having taken the two shepherds into the bargain. And again a ransom was demanded for the return of the stolen cattle and people. The appeal for help addressed by the local people to the Russian military stationed in the village of Agara, did not lead to any practical action. The villagers had no other choice but to start collecting money and eventually pay the ransom, and only then the shepherds and 50 head of cattle were returned.

7. Both sides had taken prisoners of war and hostages in the course of the armed conflict. The Georgian troops had forcibly led away over 30 Ossetians – both military and civilians. Among those taken were several elderly persons who, in all evidence, could not have been taken for militants. With the exception of several wounded persons, the rest were kept in Georgian prisons and at the Georgian military bases up to the moment of swapping the detained.

The Ossetian side had taken several dozens of Georgian military and over 150 civilians. Ethnic Georgians were taken hostages both in the so-called "enclave" villages in the territory of South Ossetia and in the villages of the Gori district. The majority of hostages were kept in the temporary detention prison of Tskhinvali. Later they gave accounts of having been used as slave labour force for cleaning the city, this duty including the task of picking up the bodies of killed Georgian soldiers and burying them. Some reported of having been subjected to cruel treatment including beatings. Among the hostages was a number of women, underage young people and elderly. They were exchanged at the end of August for Ossetian hostages and several Ossetians who had earlier been sentenced by Georgian courts and were serving their sentence in Georgian prisons.

According to the testimonies of some of the hostages, at the time of their detention in the temporary detention prison, among those on duty there were the Russian military as well.

However, a certain share of hostages were kept as "private hostages" in South Ossetia. We have registered cases of hostage-taking with the purpose of obtaining a ransom.

Currently, the negotiations on exchange between the warring sides of several Ossetian hostages and several bodies of Georgian soldiers remaining in Tskhinvali.

It goes without saying that there can be no excuse for forcible detention of civilians and the practice of hostage-taking.

8. It is hard to deny that the responsibility for the numerous crimes committed in the settlements situated in the territory of the so-called "buffer zone" officially under the control of the Russian troops and for the actions of the South Ossetian armed groups on the whole fully lies not only with the specific criminals and bandits as well as the South Ossetian authorities, but primarily with the Russian armed forces command and the leaders of the Russian Federation.

The Russian military who had entered the Georgian villages in the territory of South Ossetian and the Gori and Kareli district had failed to ensure the safety of the civilian population on the territory occupied and controlled by them. In the Georgian villages of South Ossetia armed militants were destroying houses, plundering and taking hostages from among the remaining civilians in front of the Russian soldiers. However, the Russian army had virtually no control over the situation in the first days after entering the Gori region. In case of the villages of "the buffer zone" the plunderers would often pass Russian checkpoints absolutely unhindered even though driving stolen cars carrying plundered goods and hostages.

Despite that, the members of the mission have registered practically no complaints concerning lootings and  
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arsons of houses or violence against the civilian population on the part of the Russian military. There were cases when the Russian military in fact defended the local people from the bandits stopping the looters, one such example was the village of Ditsi. In the village of Megvrekisi, after the looters hacked a local woman, the Russian military started patrolling the streets. In the villages situated along the Tskhinvali-Niqozi-Variani area the Russian military had managed to Tskhinvali-Ergnet'i-Karalet'i area.

On August 15, a meeting between the Catholicos Patriarch of All Georgia Ilia II and the Metropolitan of Tskhinvali and Nikozi Archbishop Isaiah and representatives of the Russian Ministry of Defence, among whom was the Major General Vyacheslav Borisov, took place in the village of Zemo-Niqozi. The range of issues discussed at that meeting included the primary necessity to ensure the safety of the local population as well as protection of the civilian property from looters. Representatives of the Russian Federation had promised that the Russian troops would apply the strictest of measures to looters and plunderers. On the following day Archbishop Isaiah again met with the Russian military. The same matters were again discussed. The Russian military command again promised harsh measures against looters and bandits. But when on the same day the looters began to steal cattle from the village of Zemo Niqozi, it took the Reverend more than little effort to persuade the Russian military who were on duty in that village to undertake some measures to stop the plunderers.

Subsequently, (as mentioned above) the military forces have on a number of occasions intervened in order to stop the pillage and even detained the plunderers, - however, those belated measures were of a limited scale and far from widespread. As far as we have been informed, the plunderers and looters detained were handed by the Russian military to the South Ossetian authorities. There is information about some of them having been placed into the temporary detention prison of Tskhinvali. However, we know nothing of their subsequent fate.

We know of a case where the Russian military are directly accused of stealing the equipment from one of the canning plant on the territory of which they were deployed. It is also known that at the checkpoint near the village of Variani the Russian military had on August 12 twice opened fire at passing cars carrying civilians which resulted in the death of three persons.

Such mass violations and crimes occurring over a period of several months would have hardly been possible without connivance, if not complicity, of the South Ossetian national authorities.

9. In the course of the joint mission of representatives of the HRC "Memorial" and the Demos centre, 46 deaths of civilians in the villages of the "buffer zone" had been registered (apart from the cases of civilian deaths as a result of bombing attacks on Gori). The Georgian authorities have published an official civilian death toll for the entire course of the armed conflict containing 228 names. This list is to date not exhaustive. When comparing the two lists, it turned out that, with the exception of two persons, all the cases detected by us were mentioned in the official toll. Based on this as well as on the general scale of the events, it appears that the overall casualties among civilian population claimed by the official toll are close to the real numbers.

10. Following the withdrawal of the Russia troops from the territory of the "buffer zone" on October 8-9, 2008, the security monitoring functions in the region were transferred to Georgian police forces and the EU military observers. This was the start of more active return of the refugees from "the buffer zone" who fled during the armed hostilities. By the end of October the majority of the local residents had returned to the villages located in the vicinity of Gori. However, the closer the village lies to the border with the territory under the control of the Ossetian side, the lower is the percentage of its residents currently willing to return.

Many are afraid of returning to their homes because the territory has not been cleared of mines – unexploded shells and mines remaining after the large-scale armed hostilities are still found here and there. According to the locals, the Russian military had undertaken some attempts in mine clearance.

People are afraid of returning to their villages with their children – only a few villages opened their schools at the beginning of the new school year.

The worst situation is observed in the so-called "border" villages which sustained the greatest damage first during the armed hostilities and, later, during the pillage and arsons. These villages remain within the high danger area: systematic plundering, hostage-taking, arsons of houses and intimidation of the civilian population by the bandits penetrating from the territory of South Ossetia continue to take place here. The actions taken by the Georgian police forces are apparently insufficient for protection of the civilian population, while the EU military observers are helpless because they are not armed.

Thus, on October 17, in the village of Koshki which is controlled by the Georgian forces, the members of the mission saw cars with Ossetian number plates (15 – the regional code of Ossetia) near the plundered, semi-destroyed Georgian houses and goods were being taken out of the partially burnt down school. According to eyewitnesses: the

locals and journalists, - on October 16 in the village of Disevi adjacent to the village of Koshki and controlled by the Ossetian forces, several houses abandoned by their owners – ethnic Georgians, were burnt down and their Georgian owners who had come into their gardens to gather harvest were thrown out with threats and abuse. For all that, neither the Georgian police, nor the joint Russian-Ossetian checkpoints through which one could not possibly pass unnoticed, make any attempt of intervening. We believe that the joint Russian-Ossetian checkpoints deliberately ignore instances of trespassing the de-facto border with South Ossetia because, upon our attempt to penetrate into the village of Disevi, we were detained at one of such checkpoints. We were flatly denied the access to the village despite the fact that we are Russian citizens and told that the territory of South Ossetia is only accessible from the side of Vladikavkaz, while crossing the border has only been allowed for international organizations, such as the International Committee of the Red Cross.

The situation in the villages of Niqozi and Zemo Khvit'i also remained complicated, as of mid-October frequent fire exchanges continued to take place both by nights and in the daytime. On October 15 a large herd of cattle was stolen from the village of Zemo Khvit'i, the shepherds were abducted as was the owner of the herd together with his car. The people were first taken to Tskhinvali and later set free, while the car and the cattle were demanded a ransom for.

The military commandant of South Ossetia, Col. Anatoly Vasilyevich Tarasov, who held a briefing on the outskirts of Tskhinvali, announced that he is currently taking all measures possible in order to combat the practices of plundering, hostage-taking and ethnic cleansing attempts in the villages. He said that he deals with such cases that come to his knowledge together with South Ossetian police officers, who are undergoing special training under the auspices of officers of the Russian Ministry of Interior who are especially sent to the Republic for this purpose.

11. The problem of control and ensuring safety in the so-called "border" villages is especially pressing. According to information received from the Ossetian side, 11 persons from South Ossetia have been detained – allegedly by Georgian police – after the Russian withdrawal from "the buffer zone". Neither the Ossetian authorities, nor the families of the arrested persons know where these people are currently held or whether any charges are brought against them. The Georgian authorities have not disclosed any information as to the whereabouts of the detained persons. Among those arrested are three minors, one of whom is suffering from asthma. We have reasons to believe that most of them have been arrested for looting. Despite the need to crack down on plunderers, all actions taken have to be in keeping with the law: the relatives of those arrested must be informed of the place of detention and of the charges brought against them.

The practice of "disappearance" of people may even lead to further aggravation of the conflict.

12. On 21 October, the representatives of the Human Rights Centre "Memorial" and the Centre "Demos" visited the Akhlagori (Leningori) district.

The inhabitants of the Akhlagori district are predominantly ethnic Georgians, approximately 80% of them. Most of the remaining 20 % are ethnic Ossetians. Therefore, many families in this area are ethnically mixed.

During the 1920s, this territory was merged with the Autonomous Region of South Ossetia and was given the name of Leningori district. After the fall of the USSR and Georgia gaining independence, the area became part of the Mtskhet'i district of Georgia and was called the Akhlagori district.

The inhabitants of the Akhlagori district had no economic or infrastructural links with South Ossetia; separatist ideas could not find much support and there have never been any armed hostilities in this area.

The only road out of Akhlagori went through Mtskhet'i to Tbilisi.

In 2007, however, Mikhail Saakashvili, President of Georgia, pursuant to his policy of creation of a pro-Tbilisi administration of South Ossetia (as an alternative to the separatist administration in Tskhinvali), issued a degree placing the Akhlagori area under the jurisdiction of the "Provisional Administrative Entity of South Ossetia", recognized by Georgia and headed by Dmitry Sanakoev.

In mid-August 2008, Russian and South Ossetian troops moved into the Akhlagori area, which was subsequently declared an integral part of the Republic of South Ossetia.

However, as it became clear during talks with local residents, the latter consider this area to be under military occupation. They are afraid of the enemy forces located in the area and the checkpoints set up on the road leading to the South; they are afraid that this road could suddenly be cut off for them following a decision of the new authorities.

In spring 2008, even prior to the outbreak of hostilities, construction works had begun on the road leading from Tskhinvali through the mountain range. The construction of the road is practically completed. However, the road from the Akhagori area to Tskhinvali is extremely difficult and dangerous. Last September the car carrying the representatives of HRC "Memorial" and "Human Rights Watch" turned over, when attempting to travel along this road. Moreover in October, according to the local residents, two KAMAZ lorries had turned over on this road.

The inhabitants fear that they may be forced to take Russian nationality, because they are being urged by representatives of South Ossetia to think about this option. The process of registration of all young men has been launched and the population links this to the possible draft into the South Ossetian army.

As a result, more than two thousand people have already fled their homes and the Akhagori area as such. Many parents are sending their children away. The schools are nearly empty; in some villages they have been closed down altogether.

During a meeting with the members of the mission, the military commander of the Russian troops in South Ossetia, Colonel A. V. Tarasov, confirmed that there is in fact the desire among the South Ossetian troops to expel ethnic Georgians from the region. He is very concerned about it and is doing his best to normalize the situation. According to Colonel Tarasov, he made it much easier for the inhabitants of the Akhagori area to travel on the road leading to Tbilisi and removed a number of checkpoints in this area. We are able to confirm this statement, having traveled from Tbilisi to the Akhagori area and back.

The accounts of the inhabitants of the area about cases of looting by the Russian military are very disturbing. As they claimed, soldiers go into empty houses, take food and other things away with them, and sometimes even settle down in these houses. Thus, according to them, the village of Kanchavet'i, which was abandoned by almost all of its inhabitants, is now occupied by the Russian military.

Representatives of the Human Rights Centre "Memorial" and the Center "Demos" were not able to verify these complaints; we cannot confirm or deny testimonies of similar illegal acts committed by the Russian troops. However, the existence of such complaints is characteristic of the tense situation in this area.

13. According to the information provided by the Georgian authorities, as of August 20, 127,497 were officially recognized as persons who had to flee their homes, this figure covers the people who fled from the Georgian villages in South Ossetia, from "the buffer zone", the cities of Gori, Kareli and Kaspil. 17,000 from among this number came from the currently destroyed "enclave" villages in South Ossetia. Currently the overall number of refugees from the region under the control of the Ossetian authorities has increased by over 2,000 persons on account of the residents of the Akhagori (Leningori) district who started leaving their homes at the end of August. Several thousand people have also come from Abkhazia - from the Gali district and the Upper Kodori.

Following the withdrawal of the Russian troops from the territory of "the buffer zone", the local residents began to massively return to their villages. If, at the beginning of October, over 60,000 refugees had not returned to their homes, after October 20, the number of such refugees was about 35,000. On October 15 the last remaining refugee tent camp located in Gori, Georgia, was closed down. The temporary accommodation facilities continue to operate in Tbilisi, Gori and in a few other towns.

Two categories from among the refugees proved to be in a particularly difficult situation.

Those who have fled their homes in South Ossetia cannot currently return – their villages are practically destroyed and the republican authorities openly oppose their return in their public declarations. Several colonies of compact settlement are now being set up for these migrants and each family will be allocated a small furnished house and provided with the basic food items. However, it remains unclear whether these colonies will be opened before the approach of winter.

The refugees of the second category are the people from "the buffer zone" whose houses were damaged as a result of arsons and artillery shelling and who for the moment have nowhere to return to, i.e. people from the villages situated near the border whose safety cannot for the moment be guaranteed by anybody. It remains unclear what kind of compensation these people may expect and when and how the destroyed houses are going to be restored.

\* \* \* \* \*

**Based on the materials collected by the representatives of HRC Memorial and the Demos-center in the course of their work in the armed conflict zone in August-October 2008, we can draw the conclusion that all the sides to this armed conflict had committed grave violations of the humanitarian law. We have every reason to believe that war crimes, as defined by international conventions, had taken place.**

**The HRC "Memorial" and the Demos centre intend to present a more detailed account and the conclusions concerning the specific scope of responsibility of each of the sides to the conflict later in a special report.**



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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT**

**Concluding observations of the Human Rights Committee**

**RUSSIAN FEDERATION**

1. The Committee considered the sixth periodic report of the Russian Federation (CCPR/C/RUS/6) at its 2663rd, 2664th and 2665th meetings (CCPR/C/SR.2663-2665), held on 15 and 16 October 2009, and adopted the following concluding observations at its 2681th meeting (CCPR/C/SR.2681), held on 28 October 2009.

**A. Introduction**

2. The Committee welcomes the sixth periodic report of the Russian Federation, and the inclusion in the report of information on a number of measures taken to address the concerns expressed in the Committee's previous concluding observations (CCPR/CO/79/RUS). It also welcomes the dialogue with the delegation, the detailed written replies (CCPR/C/RUS/Q/6/Add.1) submitted in response to the Committee's list of issues, and the additional information and clarifications provided orally.

## **B. Positive aspects**

3. The Committee welcomes the various constitutional amendments, as well as legislative, administrative and practical measures taken to improve the promotion and protection of human rights in the State party since the examination of the fifth periodic report, in particular:

(a) The judicial reform in the context of the 2007-2011 Federal Special-Purpose Programme for the Development of the Judicial System in the Russian Federation, the establishment of the National Working Group on Judicial Reform and the adoption in 2009 of the Law “On the securing of access to information on the activities of the courts of the Russian Federation”;

(b) The adoption in 2008 of the National Plan on Countering Corruption and the enactment of the Federal Law on Counteraction of Corruption;

(c) The upgrade of the accreditation status of the Federal Commissioner for Human Rights (“Ombudsman”) following its review by the International Coordinating Committee of National Institutions (ICC) in January 2009;

(d) The establishment of the Office of the Ombudsman for Children, in September 2009 and the ratification, in 2008, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;

(e) The adoption and entry into force of two administrative regulations relating to the granting of political asylum and refugee status in the Russian Federation.

## **C. Principal subjects of concern and recommendations**

4. The Committee notes with concern that many of its recommendations adopted following the consideration of the State party’s fifth periodic report (CCPR/CO/79/RUS) have not yet been implemented, and regrets that most subjects of concern remain. (art. 2)

**The State party should re-examine, and take all necessary measures to give full effect to the recommendations adopted by the Committee in its previous concluding observations.**

5. While acknowledging the information provided by the State party, the Committee expresses once again its concern at the State party’s restrictive interpretation of, and continuing failure to implement the Views adopted by the Committee under the Optional Protocol to the Covenant. The Committee further recalls that, by acceding to the Optional Protocol, the State party has recognized its competence to receive and examine complaints from individuals under the its jurisdiction, and that failure to give effect to its Views would call into question the State party’s commitment to the Optional Protocol. (art. 2)

**The Committee urges the State party once again to review its position in relation to Views adopted by the Committee under the Optional Protocol to the Covenant and to implement all of those Views.**

6. The Committee regrets the lack of information on instances where the Federal Commissioner for Human Rights and the regional ombudsmen initiated the drafting of legislation, or referred individual cases to courts. The Committee is also concerned that recommendations made by the the Federal Commissioner for Human Rights are not always duly implemented. (art. 2)

**The State party should strengthen the legislative mandate of the Federal Commissioner for Human Rights and the regional ombudsmen and provide them with additional resources, so that they may be in a position to fulfil their mandate efficiently. The State party should provide the Committee with detailed information on the number and the outcome of complaints received and determined by the Federal Commissioner for Human Rights and the regional ombudsmen, as well as on the recommendations and the concrete action taken by the authorities in each case. Such detailed information should be made publicly available through accessible means, such as the annual report of the Federal Commissioner for Human Rights.**

7. While taking note of the State party's assurance that counter-terrorism measures are in compliance with the Covenant, the Committee is nevertheless concerned about several aspects of the 2006 Federal Law "on counteracting terrorism", which imposes a wide range of restrictions on Covenant rights that, in the Committee's view, are comparable to those permitted only under a state of emergency under the State party's Constitution and the State of Emergency law, and in particular: (a) the lack of precision in the particularly broad definitions of terrorism and terrorist activity; (b) the counter-terrorism regime established by the 2006 Law is not subject to any requirement of justification on grounds of necessity or proportionality, or to procedural safeguards or judicial or parliamentary oversight; and (c) that the Law does not place limits on the derogations that may be made from the provisions of the Covenant and does not take into account the obligations imposed by article 4 of the Covenant. The Committee also regrets that the Law lacks a provision explicitly outlining the obligation of the authorities to respect and protect human rights in the context of a counter-terrorist operation. (art. 2)

**The State party should review the relevant provisions of the 2006 Federal Law "On counteracting terrorism" to bring it into line with the requirements of article 4 of the Covenant, taking into account pertinent considerations set out in the Committee's general comment No. 29 (2001) on derogations during a state of emergency and general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant. In particular, the State party should:**

**(a) Adopt a narrower definition of crimes of terrorism limited to offences that can justifiably be equated with terrorism and its serious consequences, and ensure that the procedural guarantees established in the Covenant are fulfilled;**

**(b) Consider establishing an independent mechanism to review and report on laws related to terrorism;**



**(c) Provide information on measures taken in this regard, including information on which Covenant rights can be suspended during a counter-terrorist operation and under what conditions.**

8. The Committee expresses concern about the large number of convictions for terrorism-related charges, which may have been handed down by courts in Chechnya on the basis of confessions obtained through unlawful detention and torture. (arts. 6, 7, and 14)

**The State party should consider carrying out a systematic review of all terrorism-related sentences pronounced by courts in Chechnya to determine whether the trials concerned were conducted in full respect for the standards set forth in article 14 of the Covenant and ensure that no statement or confession made under torture has been used as evidence.**

9. The Committee is concerned about the large number of stateless and undocumented persons in the State party, in particular former Soviet citizens who were unable to acquire citizenship or nationality subsequent to the break-up of the USSR, and to regularize their status in the Russian Federation or in any other State with which they have a significant connection, and consequently remain stateless or with undetermined nationality. The Committee also notes that members of certain ethnic groups from varying regions, in particular individuals from Central Asia and the Caucasus, face problems acquiring citizenship due to complex legislation governing naturalization and obstacles posed by strict residence registration requirements. (arts. 2, 3, 20 and 26)

**The State party should take all necessary measures to regularize the status of stateless persons on its territory by granting them a right to permanent residence and the possibility of acquiring Russian citizenship. Furthermore, the State party should consider acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness and undertake the legislative and administrative reform necessary to bring its laws and procedures in line with these standards.**

10. While noting the information provided by the State party on preventive measures taken to address violence against women, in particular domestic violence, the Committee remains concerned about the continued prevalence of domestic violence in the State party and the lack of shelters available to women. The Committee regrets that it did not receive sufficient information relating to the prosecution of authors of domestic violence, and also notes that the State party has not adopted any special legislation with regard to domestic violence within the legal system. The Committee is also concerned about allegations of honour killings in Chechnya of eight women whose bodies were discovered in November 2008. (arts. 3, 6, 7 and 26)

**The Committee urges the State party to strengthen its efforts to combat violence against women, including by adopting specific criminal legislation in this regard. The State party should promptly investigate complaints related to domestic violence and other acts of violence against women, including honour killings, and ensure that those responsible are prosecuted and adequately punished. Sufficient funding should be**

**allocated for victim assistance programmes, including those run by non-governmental organizations, and additional shelters should be made available across the country. The State party should also ensure mandatory training for the police to sensitize them with regard to all forms of violence against women.**

11. The Committee expresses its concern at reports of an increasing number of hate crimes and racially motivated attacks against ethnic and religious minorities, as well as persistent manifestations of racism and xenophobia in the State party, including reports of racial profiling and harassment by law enforcement personnel targeting foreigners and members of minority groups. The Committee is also concerned about the failure on the part of the police and judicial authorities to investigate prosecute and punish hate crimes and racially motivated attacks against ethnic and religious minorities, often qualified merely as “hooliganism”, with charges and sentences that are not commensurate with the gravity of the acts. (arts. 6,7, 20 and 26)

**The State party should make a sustained effort to improve the application of laws punishing racially motivated crimes and ensure adequate investigation and prosecution of all cases of racial violence and incitement to racially motivated violence. Adequate reparation, including compensation, should be provided to the victims of hate crimes. The State party is also encouraged to pursue public education campaigns to sensitize the population to the criminal nature of such acts, and to promote a culture of tolerance. Furthermore, the State party should intensify its sensitization efforts among law enforcement officials, and ensure that mechanisms to receive complaints of racially motivated police misconduct are readily available and accessible.**

12. The Committee notes with concern that the death penalty has yet to be abolished de jure in the State party despite the welcome moratorium on the execution of death sentences in force since 1996, which the State party describes as solid. The Committee is also concerned that the current moratorium will expire in January 2010. (art. 6)

**The State party should take the necessary measures to abolish the death penalty de jure at the earliest possible moment, and consider acceding to the Second Optional Protocol to the Covenant.**

13. Notwithstanding the position of the State party that no crimes were committed by Russian military forces or other military groups against the civilian population on the territory of South Ossetia (para. 264, CCPR/C/RUS/Q/6/Add.1), and that the State party does not take responsibility for possible crimes by armed groups (para. 266), the Committee remains concerned about allegations of large-scale, indiscriminate abuses and killings of civilians in South Ossetia during the military operations by Russian forces in August 2008. The Committee recalls that the territory of South Ossetia was under the de facto control of an organized military operation of the State party, which therefore bears responsibility for the actions of such armed groups. The Committee notes with concern that, to date, the Russian authorities have not carried out any independent and exhaustive appraisal of serious violations of human rights by members of Russian forces and armed groups in South Ossetia and that the victims have received no reparations. (arts. 6, 7, 9, 13 and 14)

**The State party should conduct a thorough and independent investigation into all allegations of involvement of members of Russian forces and other armed groups under their control in violations of human rights in South Ossetia. The State party should ensure that victims of serious violations of human rights and international humanitarian law are provided with an effective remedy, including the right to compensation and reparations.**

14. The Committee is concerned about ongoing reports of torture and ill-treatment, enforced disappearance, arbitrary arrest, extrajudicial killing and secret detention in Chechnya and other parts of the North Caucasus committed by the military, security services and other State agents, and that the authors of such violations appear to enjoy widespread impunity due to a systematic lack of effective investigation and prosecution. The Committee is particularly concerned that the number of disappearances and abduction cases in Chechnya has increased in the period 2008-2009, and about allegations of mass graves in Chechnya. While noting the establishment of a special unit aimed at ensuring implementation of the judgments of the European Court of Human Rights and payment of compensation to victims, the Committee regrets that the State party has yet to bring to justice the perpetrators of the human rights violations in the cases concerned, even though the identity of these individuals is often known. The Committee also notes with concern the reports of collective punishment for relatives of terrorist suspects, such as the burning of family homes, and harassment, threats and reprisals against judges and victims and their families and regrets the failure on the part of the State party to provide effective protection to the persons concerned. (arts. 6, 7, 9 and 10)

**The State party is urged to implement fully the right to life and physical integrity of all persons on its territory and should:**

**(a) Take stringent measures to put an end to enforced disappearances, extrajudicial killings, torture, and other forms of ill-treatment and abuse committed or instigated by law enforcement officials in Chechnya and other parts of the North Caucasus;**

**(b) Ensure prompt and impartial investigation by an independent body of all human rights violations allegedly committed or instigated by State agents and suspend or reassign the agents concerned during the process of investigation;**

**(c) Prosecute perpetrators and ensure that they are punished in a manner proportionate to the gravity of the crimes committed, and grant effective remedies, including redress, to the victims;**

**(d) Take effective measures, in law and in practice, to protect victims and their families, as well as their lawyers and judges, whose lives are under threat due to their professional activities;**

**(e) Provide information on investigations launched, convictions and penalties including those by military courts in relation to human rights violations**

**committed by State agents against the civilian population in Chechnya and other parts of the North Caucasus, disaggregated by type of crime.**

15. The Committee is concerned about the continuing substantiated reports of acts of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement personnel and other State agents, including of persons who are in police custody, pretrial detention and prison. The Committee is concerned about the extremely low rate of conviction of the State agents concerned, initiated under section 117 (cruel treatment) of the Criminal Code, and that most prosecutions for cases of torture are under section 286 (abuse of power) and section 302 (extorting confessions) of the Criminal Code. While noting the establishment of investigative committees pursuant to the decree of 2 August 2007, the Committee notes that these committees are attached to the Prosecutor's Office and thus may lack the necessary independence when examining allegations of torture by public officials. The Committee also expresses concern about reports that investigations and prosecutions of alleged perpetrators of acts of torture and ill-treatment are frequently marked by undue delays and/or suspensions, and that in practice, the burden of proof rests on the victims. Furthermore, while welcoming the adoption of the 2008 Federal Law on Public Control of Monitoring of Human Rights in Places of Detention, the Committee notes with concern the lack of a functioning national system with fully trained professionals to review all places of detention and cases of alleged abuses of persons while in custody. (arts. 6, 7, and 14)

**The State party should:**

**(a) Consider amending the Criminal Code in order to criminalize torture as such;**

**(b) Take all necessary measures for a fully functioning independent human rights monitoring body to review all places of detention and cases of alleged abuses of persons while in custody, ensuring regular, independent, unannounced and unrestricted visits to all places of detention, and to initiate criminal and disciplinary proceedings against those found responsible;**

**(c) Ensure that all alleged cases of torture, ill-treatment and disproportionate use of force by law enforcement officials are fully and promptly investigated by an authority independent of ordinary prosecutorial and police organs, that those found guilty are punished under laws that ensure that sentences are commensurate with the gravity of the offence, and that compensation is provided to the victims or their families.**

16. The Committee expresses its concern at the alarming incidence of threats, violent assaults and murders of journalists and human rights defenders in the State party, which has created a climate of fear and a chilling effect on the media, including for those working in the North Caucasus, and regrets the lack of effective measures taken by the State party to protect the right to life and security of these persons. (arts. 6, 7, and 19)

**The State party is urged to:**

**(a) Take immediate action to provide effective protection to journalists and human rights defenders whose lives and security are under threat due to their professional activities;**

**(b) Ensure the prompt, effective, thorough, independent, and impartial investigation of threats, violent assaults and murders of journalists and human rights defenders and, when appropriate, prosecute and institute proceedings against the perpetrators of such acts.**

**(c) Provide the Committee with detailed information on developments in all cases of criminal prosecutions relating to threats, violent assaults and murders of journalists and human rights defenders in the State party covering the period between 2003 and 2009.**

17. The Committee is concerned about reports of extraditions and informal transfers by the State party to return foreign nationals to countries in which the practice of torture is alleged while relying on diplomatic assurances, notably within the framework of the 2001 Shanghai Convention on Combating Terrorism, Separatism and Extremism. In particular, the Committee notes with concern the return to Uzbekistan of persons suspected of involvement in the Andijan protests of 2005. (arts. 6, 7, and 13)

**The State party should ensure that no individual, including persons suspected of terrorism, who are extradited or subjected to informal transfers, whether or not in the context of the Shanghai Cooperation Organisation, is exposed to the danger of torture or cruel, inhuman or degrading treatment or punishment. Furthermore, the State party should recognise that, the more systematic the practice of torture or cruel, inhuman or degrading treatment, the less likely it will be that a real risk of such treatment can be avoided by diplomatic assurances, however stringent any agreed follow-up procedure may be. The State party should exercise the utmost care in the use of such assurances and adopt clear and transparent procedures allowing review by adequate judicial mechanisms before individuals are deported, as well as effective means to monitor the fate of the affected individuals.**

18. While the Committee welcomes the various measures taken by the State party to combat trafficking in persons, in particular through legislation and international cooperation, the Committee is concerned about the notable lack of recognition of the rights and interests of trafficking victims in the counter-trafficking efforts of the State party. (art. 8)

**The State party should, as a matter of priority, take all necessary measures to ensure that victims of trafficking in human beings are provided with medical, psychological, social and legal assistance. Protection should be provided to all witnesses and victims of trafficking so that they may have a place of refuge and an opportunity to give evidence against those held responsible. The State party should also continue to reinforce international cooperation as well as existing measures to combat trafficking in persons**

**and the demand for such trafficking, by devoting sufficient resources to prosecuting perpetrators and imposing sanctions on those found responsible.**

19. The Committee expresses concern about the significant number of persons with mental disabilities who are deprived of their legal capacity in the State party and the apparent lack of adequate procedural and substantive safeguards against disproportionate restrictions in their enjoyment of rights guaranteed under the Covenant. In particular, the Committee is concerned that there are no procedural safeguards and no recourse to appeal against the judicial decision based on the mere existence of a psychiatric diagnosis to deprive an individual of his/her legal capacity, as well as against the decision to institutionalize the individual which often follows legal incapacitation. The Committee is also concerned that persons deprived of legal capacity have no legal recourse to challenge other violations of their rights, including ill-treatment or abuse by guardians and/or staff of institutions they are confined to, which is aggravated by the lack of an independent inspection mechanism regarding mental health institutions. (arts. 9 and 10)

**The State party should:**

(a) **Review its policy of depriving persons with mental disabilities of their legal capacity and establish the necessity and proportionality of any measure on an individual basis with effective procedural safeguards, ensuring in any event that all persons deprived of their legal capacity have prompt access to an effective judicial review of the original decision, and, when applicable, of the decision to subject them to institutionalization;**

(b) **Ensure that persons with mental disabilities are able to exercise the right to an effective remedy against violations of their rights and consider providing less restrictive alternatives to forcible confinement and treatment of persons with mental disabilities;**

(c) **Take appropriate measures to prevent all forms of ill-treatment in psychiatric institutions, including through the establishment of inspection systems that take into account the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (adopted by the General Assembly in resolution 46/119).**

20. While welcoming the adoption of the Federal Special-Purpose Programme for the Development of the Penal Correction System for 2007-2016, pursuant to Government decision No. 540 of September 2006, as well as the overall reduction of the prison population to conform to institutional capacity and the allocation of necessary resources, the Committee remains concerned about overcrowding in prisons which continues to be a problem in some areas, as acknowledged by the State party. (art. 10)

**The State party should continue to take measures to improve conditions of detention of persons deprived of their liberty through its Federal Special-Purpose Programme,**

**particularly in relation to the problem of overcrowding in prisons, with a view to achieving full compliance with requirements of article 10.**

21. The Committee is concerned about the lack of independence of judges in the State party. In particular, the Committee is concerned about the appointment mechanism for judges that exposes them to political pressure and about the lack of an independent disciplinary mechanism, particularly in cases of corruption. The Committee is also concerned about the relatively low rate of acquittal for criminal cases. (arts. 2 and 14)

**The State party should amend the relevant domestic legal provisions in order to ensure the full independence of the judiciary from the executive branch of government and consider establishing, in addition to the collegiate corpus of judges, an independent body responsible for matters relating to the appointment and promotion of judges, as well as their compliance with disciplinary regulations.**

22. The Committee expresses concern about the potential impact of the proposed draft law on lawyers' activity and the Bar on the independence of the legal profession and the right to a fair trial as stipulated in article 14 of the Covenant. In particular, it notes with concern that the bill proposes to enable the State Registration Agency to remove a lawyer's licence to practise through a court action without prior approval of the Chambers of Lawyers under certain circumstances, and to obtain access to the legal files of lawyers under investigation and demand information on any case in which they are involved. (art. 14)

**The State party should review the compatibility of the proposed draft law on lawyers' activity and the Bar with its obligations under article 14 of the Covenant, as well as article 22 of the Basic Principles on the Role of Lawyers and refrain from taking any measures that constitute harassment or persecution of lawyers and unnecessarily interfere with their defence of clients.**

23. While welcoming the reduction, in 2008, of the prescribed length of civilian service for conscientious objectors from 42 months to 21 months, the Committee notes with concern that it is still 1.75 times longer than military service, and that the State party maintains the position that the discrimination suffered by conscientious objectors is due to such alternative service amounting to "preferential treatment" (para. 151, CCPR/C/RUS/6). The Committee notes with regret that the conditions for alternative service are punitive in nature, including the requirement to perform such services outside places of permanent residence, the receipt of low salaries, which are below the subsistence level for those who are assigned to work in social organizations, and the restrictions in freedom of movement for the persons concerned. The Committee is also concerned that the assessment of applications, carried out by a draft panel for such service, is under the control of the Ministry of Defence. (arts. 18, 19, 21, 22 and 25)

**The State party should recognize fully the right to conscientious objection, and ensure that the length and the nature of this alternative to military service do not have a punitive character. The State party should also consider placing the assessment of applications for conscientious objector status entirely under the control of civilian authorities.**

24. The Committee is concerned that media professionals continue to be subjected to politically motivated trials and convictions, and in particular, that the practical application of the Mass Media Act as well as the arbitrary use of defamation laws has served to discourage critical media reporting on matters of valid public interest, adversely affecting freedom of expression in the State party. (arts. 9, 14, and 19)

**The State party should ensure that journalists can pursue their profession without fear of being subjected to prosecution and libel suits for criticizing Government policy or Government officials. In doing so, the State party should:**

**(a) Amend its Criminal Code to reflect the principle that public figures should tolerate a greater degree of criticism than ordinary citizens;**

**(b) Decriminalise defamation and subject it only to civil lawsuits, capping any damages awarded;**

**(c) Provide redress to journalists and human rights activists subjected to imprisonment in contravention of articles 9 and 19 of the Covenant;**

**(d) Bring relevant provisions of the Mass Media Act into line with article 19 of the Covenant by ensuring a proper balance between the protection of a person's reputation and freedom of expression.**

24. In light of numerous reports that the extremism laws are being used to target organizations and individuals critical of the Government, the Committee regrets that the definition of "extremist activity" in the Federal Law on Combating Extremist Activity remains vague, allowing for arbitrariness in its application, and that the 2006 amendment to this law has made certain forms of defamation of public officials an act of extremism. The Committee also notes with concern that some provisions of article 1 of the Federal Law on Combating Extremist Activity include acts that are not sanctioned in the Criminal Code and are only punishable under the Code of Administrative Offences, such as mass dissemination of extremist materials, the application of which may not be subject to judicial review. The Committee is also concerned about the loose manner in which the definition of "social groups" in article 148 of the Criminal Code has been interpreted by the courts and their reliance on various experts in this respect, granting protection for State organs and agents against "extremism". (arts. 9 and 19)

**The Committee reiterates its previous recommendation (CCPR/CO/79/RUS, paragraph 20) that the State party should revise the Federal Law on Combating Extremist Activity with a view to making the definition of "extremist activity" more precise so as to exclude any possibility of arbitrary application, and consider repealing the 2006 amendment. Moreover, in determining whether written material constitutes "extremist literature", the State party should take all measures to ensure the independence of experts upon whose opinion court decisions are based and guarantee the right of the defendant to counter-expertise by an alternative expert. The State party should also define the concept of "social groups" as stipulated in section 148 of the Criminal Code in a manner that does not include organs of the State or public officials.**



25. The Committee is concerned about the reports of excessive use of force by the police during demonstrations, in particular in the context of the 2007 Duma elections and the 2008 presidential elections, and regrets that it did not receive any information from the State party on any investigation or prosecution measures taken in relation to members of the police in connection with the excessive use of force. (art. 21)

**The State party should provide detailed information on the results of any investigation, prosecution and disciplinary measures taken vis-à-vis members of the police in connection with the alleged cases of excessive use of force in the context of the Duma elections in 2007 and the presidential elections in 2008. The State party should establish an independent body with authority to receive, investigate and adjudicate all complaints of excessive use of force and other abuses of power by the police.**

26. The Committee notes with concern that, despite the amendments of July 2009, the restrictions on the registration and operation of associations, non-governmental organizations and political parties under the 2006 Non-Profit Organizations Act continue to pose a serious threat to the enjoyment of the rights to freedom of expression, association and assembly in the State party. The Committee also notes with regret that the measures taken by the State party to reduce the number of international donors benefiting from tax exemption in the Russian Federation has significantly limited the availability of foreign funding to non-governmental organizations. (arts. 19, 21, and 22)

**The State party should ensure that any restriction on the activities of non-governmental organizations under the 2006 Non-Profit Organizations Act is compatible with the provisions of the Covenant by amending the law as necessary. The State party should refrain from adopting any policy measures that directly or indirectly restrict or hamper the ability of non-governmental organizations to operate freely and effectively.**

27. The Committee is concerned about acts of violence against lesbian, gay, bisexual and transgender (LGBT) persons, including reports of harassment by the police and incidents of people being assaulted or killed on account of their sexual orientation. The Committee notes with concern the systematic discrimination against individuals on the basis of their sexual orientation in the State party, including hate speech and manifestations of intolerance and prejudice by public officials, religious leaders and in the media. The Committee is also concerned about discrimination in employment, health care, education and other fields, as well as the infringement of the right to freedom of assembly and association and notes the absence of legislation that specifically prohibits discrimination on the basis of sexual orientation. (art. 26)

**The State Party should:**

**(a) Provide effective protection against violence and discrimination based on sexual orientation, in particular through the enactment of comprehensive anti-discrimination legislation that includes the prohibition of discrimination on grounds of sexual orientation;**

**(b) Intensify its efforts to combat discrimination against LGBT persons, including by launching a sensitization campaign aimed at the general public as well as providing appropriate training to law enforcement officials;**

**(c) Take all necessary measures to guarantee the exercise in practice of the right to peaceful association and assembly for the LGBT community.**

28. While welcoming decree No. 132 of 4 February 2009 on the sustainable development of indigenous peoples in the North, Siberia and the Far East, and the corresponding action plan for 2009-2011, the Committee expresses concern about the alleged adverse impact upon indigenous peoples of: (a) the 2004 amendment to article 4 of the Federal Law on Guarantees of the Rights of Numerically Small Indigenous Peoples; (b) the process of consolidation of the constituent territories of the Russian Federation through absorption of national autonomous areas; and (c) the exploitation of lands, fishing grounds and natural resources traditionally belonging to indigenous peoples through granting of licenses to private companies for development projects such as the construction of pipelines and hydroelectric dams. (art.27)

**The State party should provide, in its next periodic report, detailed information on the impact of these measures upon the traditional habitat, way of life and economic activities of indigenous peoples in the State party, as well as on their enjoyment of rights guaranteed under article 27 of the Covenant.**

29. The Committee requests the State party to publish its sixth periodic report and these concluding observations, making them widely available to the general public and to the judicial, legislative and administrative authorities. Printed copies should be distributed to universities, public libraries, the library of the parliament, lawyers' associations, and other relevant places. The Committee also requests the State party to make the sixth periodic report and these concluding observations available to civil society and to the non-governmental organizations operating in the State party. In addition to Russian, the Committee recommends that the report and the concluding observations be translated into the main minority languages spoken in the Russian Federation.

30. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the recommendations in paragraphs 13, 14, 16 and 17 above.

31. The Committee requests the State party to include in its seventh periodic report, due to be submitted by 1 November 2012, specific, up-to-date information on follow-up action taken on all the recommendations made and on the implementation of the Covenant as a whole. The Committee also requests that the seventh periodic report be prepared in consultation with civil society organizations operating in the State party.

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