



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,



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 Abkhazia¹, 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

¹ 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 Akhalkgori 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.

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.”²

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.³

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*⁴ 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;

² 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.

³ See Annex III for a listing of key meetings.

⁴ From the *UN Training Manual on Human Rights Monitoring*, retrievable at 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.⁵ 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.

⁵ 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*)⁶ 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.⁷ 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

⁶ 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)”.

⁷ The text of this binding order (retrievable at 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,⁸ 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*.⁹

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.¹⁰ 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,¹¹ 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.

⁸ Maastricht Ministerial Council decision 4/03, §13.

⁹ Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

¹⁰ 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).

¹¹ 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.¹²

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.¹³ 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.¹⁴

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.

¹² Report of the UN Secretary-General on the Situation in Abkhazia, Georgia, 23 July 2008, S/2008/480, p. 4.

¹³ OSCE Mission to Georgia, *Spot Report: Latest developments in the zone of the Georgian-Ossetian conflict*, Vienna, 4 August 2008.

¹⁴ 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 24,000.¹⁵

On 26 August 2008, Russian President Medvedev signed decrees in which the Russian Federation recognized the independence of South Ossetia and Abkhazia.¹⁶ 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.¹⁷ 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.

¹⁵ United Nations, Georgia Crisis Flash Appeal, October 2008, p. 4.

¹⁶ Statement by Ambassador Anvar Azimov, Permanent Representative of the Russian Federation to the OSCE, Special meeting of the OSCE Permanent Council, 28 August 2008.

¹⁷ 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.¹⁸ 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.¹⁹ 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.²⁰ 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.²¹ 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

¹⁸ Unless otherwise indicated the figures used are from United Nations, Georgia Crisis Flash Appeal, October 2008, pp. 4-5.

¹⁹ "Displacement Figures and Estimates – 'Georgia Crisis'", UN Georgia, 3 October 2008.

²⁰ "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.

²¹ 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.²² OSCE commitments prohibit mass expulsions and require States to facilitate the voluntary return of displaced persons in dignity and safety.²³ 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.²⁴

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

²² United Nations, Georgia Crisis Flash Appeal, October 2008, p. 15.

²³ Charter for European Security (1990), §22.

²⁴ 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.²⁵ 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."²⁶

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

²⁵ Helsinki document (1992), §27.

²⁶ 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.²⁷

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.²⁸ 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.²⁹

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.³⁰ 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.³¹

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.³² Two journalists were killed during the fighting in Tskhinvali on 10 August and another was killed during fighting on 12 August in Gori.³³ 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

²⁷ 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.

²⁸ Moscow document (1991), §24; Copenhagen document (1990), §9.6.

²⁹ Guiding Principles on Internal Displacement, §21.2.

³⁰ HRAM meeting with international organization. See also HALO Trust www.halotrust.org/georgia.html/

³¹ OSCE Mission to Georgia, Daily Patrol Report for 28 October 2008, p. 2.

³² 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).

³³ 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.

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.³⁴ 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.³⁵ 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.³⁶

³⁴ HRAM interview with NGO.

³⁵ Guiding Principles on Internal Displacement, §18.

³⁶ 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.³⁷ 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,³⁸ and as such is incorporated also into OSCE commitments.³⁹ 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.⁴⁰ 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.⁴¹

The initial hostilities took the form of aerial bombardment, which was reported by witnesses to have come from the Russian Air Force.⁴² 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.⁴³ According to eyewitness

³⁷ HRAM meeting with Deputy Chief of Police in Gori, Shalva Tramakidze; HRAM meeting with international organization.

³⁸ ICCPR article 6, ECHR article 2.1.

³⁹ Helsinki document (1975) section 1.(a) Declaration on Principles Guiding Relations between participating States – Principle X.

⁴⁰ HRAM individual interview 27.

⁴¹ HRAM individual interviews 20, 22, 110.

⁴² E.g., HRAM individual interview 33.

⁴³ HRAM individual interview 70.

reports by villagers, at least two persons were killed by bombs in the village of Megvrekisi,⁴⁴ at least two in Tirdznisi,⁴⁵ three in Zemo Nikozi,⁴⁶ six in Ergneti,⁴⁷ and eight in Gori.⁴⁸ The bodies of ten civilians killed by bombs were delivered to the military hospital in Gori.⁴⁹ 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.⁵⁰ An additional 41 civilians were admitted on 12 August when Gori was attacked.⁵¹ 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.⁵² 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;”⁵³ 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.⁵⁴ 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.⁵⁵ 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.⁵⁶

A number of civilians were injured by UXO in the “buffer zone” during this period.⁵⁷ Three persons were admitted to Gori hospital in October after stepping on UXO.⁵⁸ A

⁴⁴ HRAM individual interviews 7, 8, 9.

⁴⁵ HRAM individual interview 12.

⁴⁶ HRAM individual interview 25.

⁴⁷ HRAM meeting with Chief Doctor of Gori City Hospital, Paata Khavabadze.

⁴⁸ HRAM individual interview 5.

⁴⁹ HRAM meeting with Chief Doctor of Gori City Hospital, Paata Khavabadze.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ E.g., HRAM individual interviews 112, 34.

⁵⁴ Ibid., HRAM individual interviews 7, 9, 11, 37.

⁵⁵ HRAM individual interview 21.

⁵⁶ HRAM individual interview 37.

⁵⁷ E.g., HRAM meeting with Chief Doctor of Gori City Hospital, Paata Khavabadze.

⁵⁸ Ibid.

young boy was reportedly killed by a landmine or other UXO in Ergneti village.⁵⁹ 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.⁶⁰ 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.⁶¹

According to one NGO, the Government of Georgia began in August to make payments to families of persons killed in the conflict.⁶² 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.⁶³ In addition, the parties to the conflict have legal obligations to prevent torture and ill treatment, including under provisions of the ICCPR,⁶⁴ the Convention against Torture, the ECHR⁶⁵ 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.⁶⁶ A woman from the village of Karaleti reported to the HRAM that “Ossetians” were preventing people from extinguishing fires under threat of being killed.⁶⁷ 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.⁶⁸

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.⁶⁹ One case of rape was also documented and another identified but the victim

⁵⁹ HRAM individual interview 22.

⁶⁰ HRAM interview with international organization.

⁶¹ HRAM report from coordination meeting of humanitarian organizations operating in the Gori region.

⁶² HRAM interview with NGO.

⁶³ E.g., Charter for European Security (1990), §21.

⁶⁴ Article 7.

⁶⁵ Article 3.

⁶⁶ HRAM individual interview 11.

⁶⁷ HRAM individual interview 22.

⁶⁸ HRAM meeting with Chief Doctor of Gori City Hospital, Paata Khavabadze.

⁶⁹ HRAM interview with NGO.

declined assistance.⁷⁰ 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.⁷¹ 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.⁷²

Arbitrary detention

OSCE commitments prohibit arbitrary arrest or detention,⁷³ as do the ICCPR⁷⁴, the ECHR⁷⁵ and other instruments.

Several villagers from the “buffer zone” reported instances of arbitrary detention to the HRAM, some of them terming it “kidnapping.”⁷⁶ For example, several residents of the village of Megvrekisi were detained while trying to flee from the village, but all were eventually returned.⁷⁷ 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.⁷⁸ In Zemo Khviti, three men were detained and brought to Tskhinvali but were released within a few hours.⁷⁹

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.⁸⁰

Policing and ensuring the safety of persons

OSCE participating States are committed to abide by the rule of law⁸¹ and to take necessary measures to ensure that law enforcement personnel act in the public interest.⁸² The ICCPR and the ECHR each stipulate that everyone has the right to security of the person.⁸³

Residents began to flee from the “buffer zone” amid heightened security concerns even before the onset of hostilities.⁸⁴ Many more fled once the bombing began.⁸⁵ Most of those who remained through the bombing fled after the arrival of Ossetian

⁷⁰ Ibid.

⁷¹ HRAM interview with NGO.

⁷² HRAM interview with NGO.

⁷³ Vienna document (1989), §23.

⁷⁴ Article 9.

⁷⁵ Article 5.

⁷⁶ E.g., HRAM individual interviews 43, 7, 8.

⁷⁷ HRAM individual interviews 7, 8, 9.

⁷⁸ HRAM individual interview 26.

⁷⁹ Ibid.

⁸⁰ HRAM meeting with NGOs.

⁸¹ E.g., Copenhagen document (1990), §2.

⁸² Moscow document (1991), §21.1

⁸³ ICCPR article 9, ECHR article 5.

⁸⁴ E.g., HRAM individual interview 27.

⁸⁵ E.g., HRAM individual interviews 2, 20, 22, 24.

and Russian forces in the “buffer zone”.⁸⁶ 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.⁸⁷

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.⁸⁸ 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.⁸⁹ 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.⁹⁰ 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.⁹¹ 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.⁹²

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.⁹³

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

⁸⁶ E.g., HRAM individual interviews 34, 44.

⁸⁷ E.g. HRAM individual interviews 36, 37.

⁸⁸ HRAM individual interview 26.

⁸⁹ HRAM individual interview 27.

⁹⁰ HRAM individual interview 28.

⁹¹ HRAM individual interview 45.

⁹² HRAM meeting with Deputy Director of Military Hospital in Gori, Tornike Arsenashvili.

⁹³ HRAM meeting with representative of the OSCE Mission to Georgia.

*commitments and obligations.*⁹⁴ *The Fourth Geneva Convention prohibits pillage.*⁹⁵ *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.*⁹⁶ *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.*⁹⁷

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.⁹⁸ 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.⁹⁹

Many displaced persons witnessed the deliberate burning of houses. In Megvrekisi village, for example, witnesses reported that 15 houses were burned.¹⁰⁰ In Tirdznisi village about 20 houses were burned.¹⁰¹ 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.¹⁰² One displaced person described seeing Ossetians and Russians looting his house in Ergneti and then setting it afire.¹⁰³ 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.¹⁰⁴ Zemo Khviti is another village in which the majority of houses were reported to have been deliberately burned.¹⁰⁵ 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.¹⁰⁶ Several houses and apartment

⁹⁴ Copenhagen document (1990), §9.6.

⁹⁵ Fourth Geneva Convention (1949), article 33.

⁹⁶ ECHR Protocol 1, Article 1.

⁹⁷ United Nations General Assembly Resolution 60/147.

⁹⁸ HRAM observations made during visit to the “buffer zone”.

⁹⁹ HRAM interview with international organization.

¹⁰⁰ HRAM individual interviews 7, 8, 9.

¹⁰¹ Ibid.

¹⁰² HRAM individual interviews 23, 24.

¹⁰³ HRAM individual interview 24.

¹⁰⁴ HRAM individual interview 17.

¹⁰⁵ HRAM individual interviews 41, 42.

¹⁰⁶ 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.¹⁰⁷

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.¹⁰⁸

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.¹⁰⁹ 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.¹¹⁰

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.¹¹¹ Another individual from the same village reported seeing “Ossetians” collecting a large number of cows from the village and leading them away.¹¹² 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.¹¹³ 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.¹¹⁴ 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.¹¹⁵ 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.¹¹⁶

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

¹⁰⁷ HRAM individual interviews 45, 32.

¹⁰⁸ 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.

¹⁰⁹ HRAM observations made during visit to the “buffer zone”.

¹¹⁰ Ibid.

¹¹¹ HRAM individual interview 15.

¹¹² HRAM individual interview 21.

¹¹³ HRAM meeting with NGOs.

¹¹⁴ HRAM individual interview 26.

¹¹⁵ Ibid.

¹¹⁶ 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.¹¹⁷ A few asserted that the Government had promised they would receive compensation.¹¹⁸ 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.¹¹⁹

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.¹²⁰ 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.¹²¹ The OSCE has recognized the UN Guiding Principles on Internal Displacement as the relevant framework.¹²² 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.¹²³

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

¹¹⁷ E.g., HRAM group interview 2.

¹¹⁸ E.g., HRAM group interview 2.

¹¹⁹ HRAM report of coordination meeting of humanitarian organization operating in the Gori region.

¹²⁰ Moscow document (1991), §33.

¹²¹ Lisbon document (1996), §10.

¹²² Maastricht Ministerial Council decision 4/03, §13.

¹²³ Point 3. Available at

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.¹²⁴ 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.¹²⁵ A villager from Kere reported that the displaced persons from the village were “forced out” of Tbilisi and returned to the village.¹²⁶ 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.¹²⁷ There was a similar situation in Zemo Khviti, where villagers whose houses were destroyed were staying with their neighbours.¹²⁸ A number of international humanitarian organizations shared their view with the HRAM that these returns were not voluntary.¹²⁹ 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.*¹³⁰

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.¹³¹ 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).¹³² 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.¹³³ The Deputy Governor of Gori confirmed to the HRAM that although the school year has begun, some schools remain closed.¹³⁴ Many schools reopened during the two-week period that the HRAM was visiting villages in the “buffer zone”.

¹²⁴ HRAM meeting with Deputy Minister for Refugees and Accommodation, Beso Tserediani.

¹²⁵ HRAM individual interview 9.

¹²⁶ HRAM individual interview 31.

¹²⁷ HRAM individual interview 25.

¹²⁸ HRAM individual interview 41.

¹²⁹ HRAM meetings with international organizations.

¹³⁰ ICESCR article 13, CRC article 28, ECHR article 2, Protocol 1.

¹³¹ HRAM individual interview 11.

¹³² HRAM group interview 3.

¹³³ HRAM individual interview 29.

¹³⁴ 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.¹³⁵ 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.*¹³⁶

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.¹³⁷ 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.¹³⁸

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

¹³⁵ HRAM individual interview 10.

¹³⁶ ICESCR articles 9, 11, 12.

¹³⁷ This concern was expressed repeatedly in witness interviews, e.g., in HRAM individual interviews 70, 44, 112.

¹³⁸ Guiding Principles on Internal Displacement, §28.2.

food assistance since their return.¹³⁹ Another villager complained that there were no medicines available at the hospital.¹⁴⁰ A returnee to Koshka expressed concern that she had nothing to eat or drink and feared freezing as winter approached.¹⁴¹ A villager in Zemo Khviti complained of her ruined house, commenting that she and her family now sleep in the open.¹⁴² In Megvrekisi village, the HRAM observed a family of eight was staying in the shed previously used to keep cattle.¹⁴³ 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.¹⁴⁴

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,¹⁴⁵ 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.¹⁴⁶ A collective centre in Gori lacked blankets, kitchen equipment, heating and indoor water.¹⁴⁷ 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.¹⁴⁸ The Military Hospital in Gori, which was normally open to civilians, was closed to civilians because of the number of military casualties.¹⁴⁹ 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.¹⁵⁰

¹³⁹ HRAM individual interviews 14, 15, 16, 17, 18.

¹⁴⁰ HRAM individual interview 21.

¹⁴¹ HRAM individual interview 33.

¹⁴² HRAM individual interview 41.

¹⁴³ HRAM group interview 1.

¹⁴⁴ HRAM individual interview 25.

¹⁴⁵ E.g., with regard to Kere, Plavi, Plavismani, Zemo Khviti and many other villages.

¹⁴⁶ HRAM individual interviews 23, 24.

¹⁴⁷ HRAM individual interview 1.

¹⁴⁸ HRAM meeting with Chief Doctor of Gori Hospital, Paata Khavabadze.

¹⁴⁹ HRAM meeting with Deputy Director of the Military Hospital in Gori, Tornike Arsenashvili.

¹⁵⁰ 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.¹⁵¹ 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.¹⁵² 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.

¹⁵¹ “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.

¹⁵² 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,¹⁵³ and as such is incorporated also into OSCE commitments.¹⁵⁴ 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.¹⁵⁵ 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.¹⁵⁶ 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.¹⁵⁷ A rocket also hit a civilian home at Koblava 72, seriously injuring an old man.¹⁵⁸ 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.¹⁵⁹ Bombs or rockets also hit civilian targets in other villages, including Khetagurovo, where several houses were hit by bombs and a woman was killed,¹⁶⁰ and Khelchua, where villagers said a rocket hit a house on 7 August and killed the owner.¹⁶¹ According to the *de facto* authorities, 700 families had a member killed during the hostilities.¹⁶²

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.¹⁶³ Another resident reported seeing an ambulance targeted, preventing it from taking a wounded woman to the hospital.¹⁶⁴ In the village of Znauri, one civilian was killed by sniper fire and another was wounded.¹⁶⁵

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

¹⁵³ ICCPR article 6, ECHR article 2.1.

¹⁵⁴ Helsinki document (1975) section 1.(a) Declaration on Principles Guiding Relations between participating States – Principle X.

¹⁵⁵ HRAM meeting with *de facto* Foreign Minister, Murat Kuzmich Jioev.

¹⁵⁶ HRAM individual interview 22.

¹⁵⁷ HRAM individual interviews 174, 175.

¹⁵⁸ HRAM individual interview 176.

¹⁵⁹ HRAM individual interviews 170, 171.

¹⁶⁰ HRAM individual interviews 164, 165.

¹⁶¹ HRAM group interview 10.

¹⁶² HRAM meeting with *de facto* Deputy Minister for Special Affairs, Kasbek Karsanov. It is understood that these figures also include military casualties.

¹⁶³ HRAM individual interview 173.

¹⁶⁴ HRAM interview with NGO.

¹⁶⁵ 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.¹⁶⁶ Two residents separately reported seeing two aircraft bomb the village, resulting in at least six persons killed.¹⁶⁷ 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.¹⁶⁸ 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.¹⁶⁹ 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.¹⁷⁰ 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.¹⁷¹

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.¹⁷² Citizens of Disevi village reported a murder by an “Ossetian” from a nearby village, in addition to deaths from bombing.¹⁷³ 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

¹⁶⁶ HRAM individual interview 68.

¹⁶⁷ HRAM individual interview 69.

¹⁶⁸ HRAM individual interview 90.

¹⁶⁹ HRAM individual interview 99.

¹⁷⁰ HRAM individual interview 91.

¹⁷¹ HRAM individual interview 107.

¹⁷² HRAM individual interview 100.

¹⁷³ HRAM individual interview 59.

not allowed to since it was too late in the day and the Russian army had imposed a curfew.¹⁷⁴ 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.¹⁷⁵ In Ksuisi village, a witness described how when he went outside after the bombing ended he came under sniper fire from an Ossetian village.¹⁷⁶ 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.¹⁷⁷ In Avnevi, a man was killed when he refused to let marauders into his house.¹⁷⁸

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.¹⁷⁹ 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.¹⁸⁰ In Charebi, Russian soldiers came and removed an unexploded bomb from a villager’s garden.¹⁸¹ In Nuli, Russian troops handed out white armbands to the population to protect them from “Ossetians”.¹⁸² Villagers from Kekhvi,¹⁸³ Satskheneti¹⁸⁴ and Ikoti¹⁸⁵ 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.¹⁸⁶

Freedom from torture and ill-treatment

OSCE participating States have adopted numerous commitments prohibiting torture or ill-treatment.¹⁸⁷ In addition, the parties to the conflict have legal obligations to prevent torture and ill-treatment, including under provisions of the ICCPR,¹⁸⁸ the Convention against Torture, the ECHR¹⁸⁹ 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.

¹⁷⁴ HRAM individual interviews 66, 67.

¹⁷⁵ HRAM individual interview 158.

¹⁷⁶ HRAM individual interview 82.

¹⁷⁷ HRAM individual interview 102.

¹⁷⁸ HRAM individual interview 166.

¹⁷⁹ HRAM individual interview 64.

¹⁸⁰ HRAM individual interview 85.

¹⁸¹ HRAM individual interview 101.

¹⁸² HRAM individual interviews 107, 108.

¹⁸³ HRAM individual interview 113, 91.

¹⁸⁴ HRAM individual interview 102.

¹⁸⁵ HRAM individual interview 121.

¹⁸⁶ HRAM meeting with Head of the Human Rights Protection Unit, Office of the Prosecutor General of Georgia, Archil Giorgadze.

¹⁸⁷ E.g., Charter for European Security (1990), §21.

¹⁸⁸ Article 7.

¹⁸⁹ 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.¹⁹⁰ Three villagers who returned to Ksuisi after having fled the village were beaten.¹⁹¹ A woman from Tamarasheni described being beaten by seven “Ossetian” women while soldiers stood by and did not interfere.¹⁹² 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.¹⁹³

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.¹⁹⁴

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.¹⁹⁵ An NGO provided the HRAM with an account of a Georgian soldier who was beaten and tortured with a lighter while in captivity.¹⁹⁶

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.¹⁹⁷ The *de facto* Prosecutor General said that some persons detained by the Georgians were badly tortured, but provided no specifics.¹⁹⁸ 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.¹⁹⁹

Arbitrary detention

OSCE commitments prohibit arbitrary arrest or detention,²⁰⁰ as do the ICCPR²⁰¹, the ECHR²⁰² and other instruments.

¹⁹⁰ HRAM individual interview 82.

¹⁹¹ HRAM individual interview 88.

¹⁹² HRAM individual interview 64.

¹⁹³ HRAM individual interview 62.

¹⁹⁴ HRAM meeting with Head of the Human Rights Protection Unit, Office of the Prosecutor General of Georgia, Archil Giorgadze.

¹⁹⁵ HRAM meeting with Head of the Human Rights Protection Unit, Office of the Prosecutor General of Georgia, Archil Giorgadze.

¹⁹⁶ HRAM interview with NGO.

¹⁹⁷ HRAM meeting with *de facto* Deputy Minister for Special Affairs, Kazbek Karsanov.

¹⁹⁸ HRAM meeting with *de facto* Prosecutor General, Tejmuraz Khugaev.

¹⁹⁹ HRAM interview with NGO.

²⁰⁰ Vienna document (1989), §23.

²⁰¹ Article 9.

²⁰² 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.²⁰³ 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.²⁰⁴

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.²⁰⁵

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.”²⁰⁶ 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.²⁰⁷ Another resident of the same village gave a very similar account.²⁰⁸

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

²⁰³ HRAM individual interview 63.

²⁰⁴ HRAM individual interview 64.

²⁰⁵ HRAM individual interviews 86, 87.

²⁰⁶ HRAM individual interview 113.

²⁰⁷ HRAM individual interview 113.

²⁰⁸ 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.²⁰⁹

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.²¹⁰

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.²¹¹ The *de facto* Minister of Interior said that 16 Ossetians are currently detained in Georgia for crossing the administrative boundary illegally.²¹² 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.²¹³

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.²¹⁴ The *de facto* Prosecutor General asserted that 15 people have been kidnapped along the border under false pretexts since the end of the conflict.²¹⁵ The *de facto* Minister of Interior also expressed concerns that Ossetians were being kidnapped with no word to either

²⁰⁹ HRAM individual interview 152.

²¹⁰ HRAM meeting NGOs.

²¹¹ HRAM meeting with *de facto* Prosecutor General, Tejmuraz Khugaev.

²¹² HRAM meeting with *de facto* Minister of Interior, Mikhail Majramovich Mindzaev.

²¹³ HRAM meeting with “Commandant of Tskhinvali”, Colonel Anatoly Tarasov of the Russian Federation Armed Forces.

²¹⁴ HRAM meeting with *de facto* Ombudsman, David Sanakoev.

²¹⁵ HRAM meeting with *de facto* Prosecutor General, Tejmuraz Khugaev.

their relatives or to the authorities.²¹⁶ A woman in Khelchua village told the HRAM that her father had been kidnapped.²¹⁷

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.²¹⁸

Policing and ensuring the safety of persons

OSCE participating States are committed to abide by the rule of law²¹⁹ and to take necessary measures to ensure that law enforcement personnel act in the public interest.²²⁰ The ICCPR and the ECHR each stipulate that everyone has the right to security of person.²²¹

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.²²² The *de facto* Prosecutor General also complained about lawlessness along the administrative boundary.²²³ In the village of Khelchua, residents complained to the HRAM that there are constant shootings at night in the village.²²⁴ 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.²²⁵ 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.²²⁶ 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.²²⁷ The Fourth Geneva Convention prohibits pillage.²²⁸

²¹⁶ HRAM meeting with *de facto* Minister of Interior, Mikhail Majramovich Mindzaev.

²¹⁷ HRAM individual interview 160.

²¹⁸ HRAM meeting with *de facto* Ombudsman, David Sanakoev.

²¹⁹ E.g., Copenhagen document (1990), §2.

²²⁰ Moscow document (1991), §21.1

²²¹ ICCPR article 9, ECHR article 5.

²²² HRAM meeting with *de facto* Minister of Foreign Affairs, Murat Kuzmich Jioev.

²²³ HRAM meeting with *de facto* Prosecutor General, Tejmuraz Khugaev.

²²⁴ HRAM individual interview 160.

²²⁵ HRAM interview with NGO.

²²⁶ HRAM group interviews 11.

²²⁷ 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.*²²⁹ 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.²³⁰

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.²³¹ 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.²³² 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.²³³ 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.²³⁴

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,²³⁵ as did Kekhvi.²³⁶ Among the building destroyed by bombs in Kekhvi was the kindergarten; the children were not in attendance at the time.²³⁷ 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.²³⁸ Bombs also fell on civilian targets in Tamarasheni,²³⁹ Charebi and Nuli. Other villages reported to be heavily damaged by aerial bombing included Zemo Achabeti, Kvemo Achabeti, Dzartsevni, Kheiti, Avnevi, and Okona.²⁴⁰

²²⁸ Fourth Geneva Convention (1949), article 33.

²²⁹ ECHR Protocol 1, Article 1.

²³⁰ United Nations General Assembly Resolution 60/147.

²³¹ HRAM observation.

²³² Ibid.

²³³ HRAM observation.

²³⁴ OSCE Mission to Georgia, Spot Report: OSCE Material Losses in Tskhinvali, Vienna, 25 September 2008.

²³⁵ HRAM individual interview 68.

²³⁶ HRAM individual interview 92.

²³⁷ HRAM individual interview 90.

²³⁸ HRAM individual interview 96.

²³⁹ HRAM individual interviews 63, 64.

²⁴⁰ 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.²⁴¹

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.²⁴² 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."²⁴³ 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.²⁴⁴ One resident reported that of about 300 houses in the village, all but seven were burned; the seven houses spared belonged to ethnic Ossetians.²⁴⁵ An NGO reported to the HRAM that the destruction in Disevi included cultural monuments dating from 14th century and earlier.²⁴⁶ Destruction of historic monuments is a violation of the Geneva Conventions.²⁴⁷ 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.²⁴⁸ In Vanati, according to a villager, Russian troops and tanks stood by while "Ossetians" set fire to most houses in the village.²⁴⁹ Tamarasheni village, according to one individual, had so many burning houses that it was impossible to count them.²⁵⁰ In Ksuisi, a witness told the HRAM, all but about five houses were deliberately set afire.²⁵¹ One resident of Ksuisi told the HRAM that he saw individuals in civilian clothing setting fire to houses;²⁵² another

²⁴¹ HRAM meeting with *de facto* Prosecutor General, Tejmuraz Khugaev.

²⁴² HRAM individual interview 71.

²⁴³ HRAM individual interview 72.

²⁴⁴ HRAM individual interviews 54, 55, 56, 58, 59, 61.

²⁴⁵ HRAM individual interview 59.

²⁴⁶ HRAM interview with NGOs.

²⁴⁷ 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.

²⁴⁸ HRAM individual interview 97.

²⁴⁹ HRAM individual interviews 66, 67.

²⁵⁰ HRAM individual interview 104.

²⁵¹ HRAM individual interview 82.

²⁵² HRAM individual interview 162.

displaced person from Ksuisi reported that Russians participated in the arson.²⁵³ Kekhvi village, according to a former resident, was “a mass of burnt ruins” by the time she left.²⁵⁴ In Satskheneti, a former resident said, only three houses were left standing.²⁵⁵ Nuli village was also systematically burned; one witness reported that Russians troops were accompanying Ossetians and helping to set the fires.²⁵⁶ 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.²⁵⁷ 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.²⁵⁸ According to the Office of the Prosecutor General of Georgia the villages of Tamarasheni, Kurta, Avnevi, Nuli and Prisi no longer exist.²⁵⁹ 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,²⁶⁰ Beloti²⁶¹ and Nuli.²⁶² The sports hall in Ksuisi was burned.²⁶³ 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.²⁶⁴

²⁵³ HRAM individual interview 83.

²⁵⁴ HRAM individual interview 93.

²⁵⁵ HRAM individual interview 102.

²⁵⁶ HRAM individual interview 107.

²⁵⁷ HRAM individual interviews 66, 67.

²⁵⁸ HRAM individual interview 100.

²⁵⁹ HRAM meeting with Regional Prosecutor, David Sakvarelidze.

²⁶⁰ HRAM individual interview 100.

²⁶¹ HRAM individual interview 123.

²⁶² HRAM Individual interview 106.

²⁶³ HRAM individual interview 81.

²⁶⁴ 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.²⁶⁵ 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.²⁶⁶ 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.²⁶⁷ Yet a third witness from the village told how his cattle and his harvest were looted.²⁶⁸

Villagers from Kekhvi told a very similar tale of “Ossetians” looting houses of all their valuables before setting them afire.²⁶⁹ 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.²⁷⁰ 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.²⁷¹

Individuals from Eredvi also recounted to the HRAM how houses were pillaged before they were burned.²⁷² 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.²⁷³

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

²⁶⁵ HRAM individual interview 84.

²⁶⁶ HRAM individual interview 81.

²⁶⁷ HRAM individual interview 83.

²⁶⁸ HRAM individual interview 88.

²⁶⁹ HRAM individual interview 90.

²⁷⁰ HRAM individual interview 93.

²⁷¹ HRAM individual interview 93.

²⁷² HRAM individual interview 71.

²⁷³ 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).²⁷⁴ The looters were armed and threatened the villagers if they protested.²⁷⁵

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.²⁷⁶ 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.²⁷⁷ In Satskheneti, “the Ossetians” also looted and burned, taking away cows, bulls and pigs, and pillaging the crops and stocks of cheese.²⁷⁸ In Kekhvi, South Ossetian militia looted residents’ houses while they watched, taking furniture, appliances, cars and animals.²⁷⁹ 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.²⁸⁰ Another witness’s home was looted but not burned, but her garden was destroyed.²⁸¹ 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.²⁸² 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.²⁸³ 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.²⁸⁴

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.

²⁷⁴ HRAM individual interviews 98, 99.

²⁷⁵ HRAM individual interviews 98, 99.

²⁷⁶ HRAM individual interview 100.

²⁷⁷ HRAM individual interview 101.

²⁷⁸ HRAM individual interview 102.

²⁷⁹ HRAM individual interview 113.

²⁸⁰ HRAM individual interview 121.

²⁸¹ HRAM individual interview 122.

²⁸² HRAM individual interviews 66, 67.

²⁸³ HRAM individual interview 106.

²⁸⁴ 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.²⁸⁵

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.²⁸⁶

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.²⁸⁷ 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.²⁸⁸ An Ossetian villager in Prisi, in contrast, commented that when Georgian troops were in their village, they did not enter any private houses.²⁸⁹ In the village of Khetagurovo, Georgian troops reportedly entered the houses but did no harm.²⁹⁰

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.²⁹¹ The authorities say they have already registered all damage to houses and have begun to make payments.²⁹² Some residents of Tskhinvali confirmed to the HRAM that they have already received their payments.²⁹³ The *de facto* authorities appear to consider these payments as humanitarian assistance rather than compensation.²⁹⁴ One official commented that the compensation issue will have to be resolved in complex negotiations between South Ossetia and Georgia.²⁹⁵

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.²⁹⁶ They are further committed to facilitate the voluntary return in safety and dignity, of internally displaced persons,

²⁸⁵ HRAM meeting with the "Commandant of Tskhinvali", Colonel Anatoly Tarasov of the Russian Federation.

²⁸⁶ HRAM meeting with Head of the International Relations Division, Ministry of Justice of Georgia, Levan Meskhoradze.

²⁸⁷ HRAM group interview 12.

²⁸⁸ HRAM individual interview 168.

²⁸⁹ HRAM individual interview 154.

²⁹⁰ HRAM individual interview 165.

²⁹¹ HRAM meeting with *de facto* Deputy Minister for Special Affairs, Kazbek Karsanov.

²⁹² Ibid.

²⁹³ HRAM group interview 15.

²⁹⁴ HRAM meeting with Head of the State Commission on Humanitarian Assistance, Kosta Georgievich Dzugavaev.

²⁹⁵ Ibid.

²⁹⁶ 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.*²⁹⁷ *The OSCE has recognized the UN Guiding Principles on Internal Displacement as the relevant framework.*²⁹⁸ *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.*²⁹⁹

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,³⁰⁰ Ksuisi³⁰¹ Kekhvi³⁰² and Nuli,³⁰³ 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 Vanati³⁰⁴ and Akhlagori³⁰⁵ and the town of Tskhinvali.³⁰⁶ Many villagers fled through the forests,³⁰⁷ while a few reported that they were assisted to safe refuge by the ICRC.³⁰⁸

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;³⁰⁹ in at least one instance these Ossetians told the villagers that “if you don’t leave, you will be killed.”³¹⁰ Another villager from Eredvi reported to the HRAM that one old couple was threatened by “Russians and Ossetians” and forced to leave.³¹¹ 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.³¹² 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.³¹³

²⁹⁷ Lisbon document (1996), §10.

²⁹⁸ Maastricht Ministerial Council decision 4/2003, §13.

²⁹⁹ Point 3. Available at

www.elysee.fr/documents/index.php?lang=fr&mode=view&cat_id=8&press_id=1738.

³⁰⁰ HRAM individual interview 68.

³⁰¹ HRAM individual interview 81.

³⁰² HRAM individual interview 90.

³⁰³ HRAM individual interview 106.

³⁰⁴ HRAM individual interviews 66, 67.

³⁰⁵ HRAM individual interview 119.

³⁰⁶ HRAM individual interview 103.

³⁰⁷ E.g., HRAM individual interviews 93, 102.

³⁰⁸ E.g., HRAM individual interviews 102, 103.

³⁰⁹ HRAM individual interview 75.

³¹⁰ HRAM individual interview 72.

³¹¹ HRAM individual interviews 72, 73.

³¹² HRAM individual interview 77.

³¹³ 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.³¹⁴ 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...”³¹⁵

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.³¹⁶ 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.”³¹⁷ 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.³¹⁸

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.³¹⁹ 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.³²⁰ 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.³²¹

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.³²² 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

³¹⁴ “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.

³¹⁵ ICJ Order of 15 October 2008, *supra* note 6, §149.

³¹⁶ HRAM meeting with *de facto* Minister of Interior, Mikhail Majramovich Mindzaev.

³¹⁷ HRAM meeting with Deputy Chairman of the *de facto* Council of Ministers, Elenora Bedoeva.

³¹⁸ HRAM meeting with the “Commandant of Tskhinvali”, Colonel Anatoly Tarasov of the Russian Federation.

³¹⁹ HRAM individual interview 57.

³²⁰ HRAM meeting with NGOs.

³²¹ HRAM individual interview 58.

³²² HRAM individual interviews 66, 67.

village.³²³ Other villagers reported they were afraid to go back to their villages after their experiences there, for example, in Khetagurovo³²⁴ and Akhalgori.³²⁵ A villager from Okona said she would not return to her village as long as the Russians are there.³²⁶ 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.³²⁷

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.³²⁸ 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.³²⁹ 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.³³⁰

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.³³¹ 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.”³³² A villager from Ksuisi said that the few persons remaining in the village were still able to cross the administrative boundary to Mereti.³³³

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.³³⁴ Another villager from Akhalgori, however, said that she

³²³ HRAM individual interview 84.

³²⁴ HRAM individual interview 115.

³²⁵ HRAM individual interview 119.

³²⁶ HRAM individual interview 112.

³²⁷ HRAM individual interview 65.

³²⁸ HRAM individual interview 98.

³²⁹ HRAM individual interview 153.

³³⁰ HRAM individual interview 95.

³³¹ HRAM individual interview 93.

³³² HRAM individual interview 106.

³³³ HRAM individual interview 161.

³³⁴ HRAM individual interview 120.

is afraid to go back.³³⁵ A woman from Disevi said she had been back to her village twice.³³⁶ 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.³³⁷

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.³³⁸ 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.³³⁹ 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.³⁴⁰ 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.”³⁴¹ The 15 October order of the ICJ also requires the parties to refrain from placing any impediment to humanitarian assistance.³⁴²

³³⁵ HRAM individual interview 119.

³³⁶ HRAM individual interview 62.

³³⁷ HRAM individual interview 125.

³³⁸ HRAM meeting with Head of the State Commission on Humanitarian Assistance, Kosta Georgievich Dzugaev.

³³⁹ HRAM interview with international organization.

³⁴⁰ HRAM individual interview 169.

³⁴¹ Guiding Principles on Internal Displacement, §25.

³⁴² 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.*³⁴³

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.³⁴⁴

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.³⁴⁵ 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.³⁴⁶ A woman from Charebi commented that her children are in school "but they have nothing, no exercise books, so I feel ashamed."³⁴⁷

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.*³⁴⁸

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.³⁴⁹ 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

³⁴³ ICESCR article 13, CRC article 28, ECHR article 2, Protocol 1.

³⁴⁴ HRAM individual interview 154.

³⁴⁵ HRAM individual interview 82.

³⁴⁶ HRAM individual interview 90.

³⁴⁷ HRAM individual interview 101.

³⁴⁸ ICESCR articles 9, 11, 12.

³⁴⁹ HRAM individual interview 70.

able to return.³⁵⁰ 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.³⁵¹ They claimed also not to be receiving food or health care.³⁵² 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,³⁵³ there was no tea or sugar, the roof of the collective centre was damaged and there was no running water.³⁵⁴ 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.³⁵⁵ A displaced person from Kurta commented on the very poor conditions in another collective centre with no beds and limited food.³⁵⁶ A displaced person from Tamarasheni was in yet another collective centre with no heating or running water.³⁵⁷ 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.³⁵⁸ A couple from Beloti said they were not receiving health care or food.³⁵⁹ 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 Ksovrissi, 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.³⁶⁰ At another collective centre an international company was at work installing showers, an oil heater and hot water.³⁶¹ 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.³⁶² Another reported receiving food aid from the United Nations, and other bilateral donors.³⁶³ Other families also reported getting some assistance from NGOs.³⁶⁴

³⁵⁰ United Nations, Georgia Crisis Flash Appeal, October 2008, pp. 4-5.

³⁵¹ HRAM individual interview 125.

³⁵² HRAM individual interview 125.

³⁵³ HRAM individual interview 58

³⁵⁴ HRAM individual interview 59.

³⁵⁵ HRAM individual interview 92.

³⁵⁶ HRAM individual interview 95.

³⁵⁷ HRAM individual interview 59.

³⁵⁸ HRAM individual interviews 66, 67

³⁵⁹ HRAM individual interview 124.

³⁶⁰ HRAM individual interview 113.

³⁶¹ HRAM individual interview 69.

³⁶² HRAM individual interview 81.

³⁶³ HRAM individual interview 113.

³⁶⁴ 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.³⁶⁵ 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.³⁶⁶ An elderly displaced couple from Eredvi told the HRAM they needed to see a doctor but had no money to pay for a visit.³⁶⁷ Yet another displaced person reported that there were no doctor visits at his collective centre but some medicines were handed out.³⁶⁸ 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.³⁶⁹ Another displaced person reported being told that he could have a free medical examination if he needed one.³⁷⁰ 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.³⁷¹

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.³⁷² 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.³⁷³ 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.³⁷⁴

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 Kurta³⁷⁵ and Disevi.³⁷⁶ Humanitarian organizations confirmed that displaced persons from the August conflict were not being accorded official IDP status.³⁷⁷ Not being officially registered as IDPs could

³⁶⁵ HRAM individual interview 64.

³⁶⁶ HRAM individual interview 85.

³⁶⁷ HRAM individual interviews 72, 73.

³⁶⁸ HRAM individual interview 64.

³⁶⁹ HRAM individual interview 97.

³⁷⁰ HRAM individual interview 86.

³⁷¹ HRAM meeting with international NGO.

³⁷² HRAM individual interviews 68, 92, 107, 109, 110.

³⁷³ HRAM individual interview 58.

³⁷⁴ HRAM individual interview 103.

³⁷⁵ HRAM individual interview 95.

³⁷⁶ HRAM individual interview 62.

³⁷⁷ 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.³⁷⁸

Some displaced persons complained that they were placed in collective centres away from other members of their families or residents of their home villages.³⁷⁹

Importantly, displaced persons who are pensioners reported to the HRAM that they are able to continue to collect their pensions despite their displacement.³⁸⁰ 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.³⁸¹ A displaced person from Ksuisi concurred that there was no information about the future.³⁸² 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.³⁸³

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.³⁸⁴ 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

³⁷⁸ HRAM individual interviews 69, 77, 113.

³⁷⁹ E.g., HRAM individual interviews 78, 119, 86.

³⁸⁰ HRAM individual interviews 79, 92, 93.

³⁸¹ HRAM individual interview 78.

³⁸² HRAM individual interview 85.

³⁸³ HRAM individual interview 92.

³⁸⁴ HRAM meeting with the Deputy Minister for Refugees and Accommodation, Beso Tserediani.

Government, not official information.³⁸⁵ 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.”³⁸⁶ 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.³⁸⁷ 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.³⁸⁸ A man from Kurta said he had gone to the town hall asking about future accommodation and shelter, but had not received any answers.³⁸⁹ On the other hand, the HRAM also spoke with displaced persons from Disevi,³⁹⁰ Satskheneti³⁹¹ and Tamarasheni³⁹² 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.³⁹³ 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.³⁹⁴

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.³⁹⁵ 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.³⁹⁶ 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.³⁹⁷ 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.³⁹⁸ 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

³⁸⁵ HRAM individual interview 64.

³⁸⁶ HRAM individual interview 90.

³⁸⁷ HRAM individual interview 64.

³⁸⁸ HRAM individual interview 115.

³⁸⁹ HRAM individual interview 98.

³⁹⁰ HRAM individual interview 62.

³⁹¹ HRAM individual interview 102.

³⁹² HRAM individual interview 89.

³⁹³ HRAM individual interview 85.

³⁹⁴ This was an often-repeated concern, e.g., HRAM individual interviews 103, 58, 73.

³⁹⁵ HRAM individual interview 157.

³⁹⁶ HRAM individual interview 159.

³⁹⁷ HRAM individual interview 158.

³⁹⁸ HRAM individual interview 162.

had reached her.³⁹⁹ 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.⁴⁰⁰ 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.⁴⁰¹

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.⁴⁰² 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.⁴⁰³

Within South Ossetia, the reconstruction of damaged buildings was reportedly being handled by the Russian Federation's emergency relief agency EMERCOM,⁴⁰⁴ 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.⁴⁰⁵ 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

³⁹⁹ HRAM individual interviews 155, 156.

⁴⁰⁰ HRAM group interview 13.

⁴⁰¹ HRAM meeting with Deputy Head of the Regional Administration, Vladimir Gabarev.

⁴⁰² HRAM meeting with the *de facto* Deputy Minister for Special Affairs, Kazbek Karsanov.

⁴⁰³ HRAM group interview 14.

⁴⁰⁴ 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.

⁴⁰⁵ 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.⁴⁰⁶ 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.⁴⁰⁷ 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.⁴⁰⁸ 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.⁴⁰⁹ 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.⁴¹⁰ 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.⁴¹¹ 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

⁴⁰⁶ See relevant sections below.

⁴⁰⁷ Report of the United Nations Secretary-General on the Situation in Abkhazia, Georgia, 3 October 2008, S/2008/631, p. 2.

⁴⁰⁸ HRAM group interviews 4, 8.

⁴⁰⁹ See Freedom of movement, below.

⁴¹⁰ Report of the United Nations Secretary-General on the Situation in Abkhazia, Georgia, 3 October 2008, S/2008/631, p. 2.

⁴¹¹ Ibid.

to the protection of human rights even though as a generally unrecognized entity they cannot sign international human rights treaties.⁴¹²

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,⁴¹³ and as such is incorporated also into OSCE commitments.⁴¹⁴ 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.⁴¹⁵ 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.⁴¹⁶ Villagers from the valley, however, told the HRAM that there was no warning of the impending air strikes.⁴¹⁷ 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.⁴¹⁸

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.⁴¹⁹ 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.⁴²⁰ 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.⁴²¹ 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

⁴¹² HRAM meeting with Representative for Human Rights Issues of the *de facto* President, Georgiy Otyrba.

⁴¹³ ICCPR article 6, ECHR article 2.1.

⁴¹⁴ Helsinki document (1975) section 1.(a) Declaration on Principles Guiding Relations between participating States – Principle X.

⁴¹⁵ HRAM individual interviews 134, 141.

⁴¹⁶ HRAM meeting with international organization.

⁴¹⁷ 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.

⁴¹⁸ HRAM group interview 4.

⁴¹⁹ HRAM individual interview 134.

⁴²⁰ HRAM individual interview 141.

⁴²¹ HRAM individual interview 140.

checkpoint.⁴²² In addition, an Abkhaz car hit a mine on the Georgian side of the administrative boundary on 17 August, killing three of the occupants.⁴²³ 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.⁴²⁴ Another international organization reported that three civilians were injured during the air strikes, including two women.⁴²⁵ 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.⁴²⁶

Freedom from torture and ill-treatment

OSCE participating States have adopted numerous commitments prohibiting torture or ill-treatment.⁴²⁷ In addition, the parties to the conflict have legal obligations to prevent torture and ill-treatment, including under provisions of the ICCPR,⁴²⁸ the Convention against Torture, the ECHR⁴²⁹ 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.⁴³⁰

Arbitrary detention

OSCE commitments prohibit arbitrary arrest or detention,⁴³¹ as do the ICCPR⁴³², the ECHR⁴³³ 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 law⁴³⁴ and to take necessary measures to ensure that law enforcement personnel act in the public interest.⁴³⁵ The ICCPR and the ECHR each stipulate that everyone has the right to security of the person.⁴³⁶

⁴²² HRAM interview with international organization

⁴²³ HRAM interview with international organization.

⁴²⁴ Ibid.

⁴²⁵ HRAM interview with international organization.

⁴²⁶ HRAM meeting with Head of Department for Refugees of Abkhazia Government-in-exile, Tengiz Bendeliani.

⁴²⁷ E.g., Charter for European Security (1990), §21.

⁴²⁸ Article 7.

⁴²⁹ Article 3.

⁴³⁰ HRAM individual interview 145.

⁴³¹ Vienna document (1989), §23.

⁴³² Article 9.

⁴³³ Article 5.

⁴³⁴ E.g., Copenhagen document (1990), §2.

⁴³⁵ Moscow document (1991), §21.1

⁴³⁶ 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.⁴³⁷ An international official who visited Kodori offered his view that the residents there did not appear to be frightened.⁴³⁸ 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.⁴³⁹

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.⁴⁴⁰ The HRAM met with a number of villagers who were clearly scared and made nervous by the strong military presence.⁴⁴¹ An HRAM team witnessed a group of residents of the Kodori valley that was acting aggressively.⁴⁴² An official from an international organization confirmed that the population is uncomfortable with the heavier military presence since the conflict.⁴⁴³ 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.⁴⁴⁴ 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.”⁴⁴⁵ 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.⁴⁴⁶ 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.⁴⁴⁷

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.*⁴⁴⁸ *The Fourth Geneva Convention prohibits pillage.*⁴⁴⁹ *Protocol 1 of the ECHR stipulates that no person shall be deprived of his possessions*

⁴³⁷ HRAM individual interview 132.

⁴³⁸ HRAM interview with international organization.

⁴³⁹ HRAM interview with international organization.

⁴⁴⁰ HRAM group interview 5.

⁴⁴¹ HRAM group interview 5.

⁴⁴² Observed by HRAM.

⁴⁴³ HRAM interview with international organization.

⁴⁴⁴ HRAM interviews with NGOs and meeting with Deputy Head of the Administration in Gali on cultural issues, Justan Gergedava.

⁴⁴⁵ HRAM individual interview 145.

⁴⁴⁶ HRAM meeting with Head of the Human Rights Committee of the *de facto* Parliament of Abkhazia, Bata Kobakhia.

⁴⁴⁷ Report of the UN Secretary-General on the Situation in Abkhazia, Georgia, 3 October 2008, S/2008/631, §32.

⁴⁴⁸ Copenhagen document (1990), §9.6.

⁴⁴⁹ Fourth Geneva Convention (1949), article 33.

*except in the public interest and through a process of law.*⁴⁵⁰ 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.⁴⁵¹

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.⁴⁵² A woman from Sakheni reported that her house was damaged by bombs,⁴⁵³ as did a man from Gentsvishi.⁴⁵⁴ Another man's house was damaged when a bomb dropped in his yard, 20 meters from his house.⁴⁵⁵ In Ajara a woman reported that four or five houses were destroyed by bombs.⁴⁵⁶

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.⁴⁵⁷ A woman from Ptishi said that she returned to find her house looted, as did several of her neighbours.⁴⁵⁸ The houses were not burned, however. Even the UNOMIG base in Ajara was emptied of all movable assets and was occupied by Abkhaz personnel.⁴⁵⁹

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.⁴⁶⁰ A man from Gentsvishi said that he had not been able to locate his cattle since his return.⁴⁶¹ An international humanitarian organization also confirmed that villagers' cattle had disappeared.⁴⁶²

An NGO in Gali reported to the HRAM that there were claims that the Russians were building fortifications on private property without offering compensation.⁴⁶³ The HRAM saw soldiers uprooting trees and digging trenches on the grounds adjacent to the dispensary/kindergarten building in Nabakevi.

⁴⁵⁰ ECHR Protocol 1, article 1.

⁴⁵¹ United Nations General Assembly Resolution 60/147.

⁴⁵² HRAM individual interview 134.

⁴⁵³ HRAM individual interview 178.

⁴⁵⁴ HRAM individual interview 138.

⁴⁵⁵ HRAM individual interview 140.

⁴⁵⁶ HRAM individual interview 141.

⁴⁵⁷ HRAM individual interview 132.

⁴⁵⁸ HRAM individual interview 134.

⁴⁵⁹ Report of the UN Secretary-General on the Situation in Abkhazia, Georgia, 3 October 2008, S/2008/631, §47.

⁴⁶⁰ HRAM individual interview 142.

⁴⁶¹ HRAM individual interview 138.

⁴⁶² HRAM interview with international organization.

⁴⁶³ 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.⁴⁶⁴ 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.⁴⁶⁵ The OSCE has recognized the UN Guiding Principles on Internal Displacement as the relevant framework.⁴⁶⁶ 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.⁴⁶⁷

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.⁴⁶⁸ Many of those who fled still do not believe that security conditions in the Kodori gorge permit their safe return.⁴⁶⁹ A displaced person from Ptishi, for example, told the HRAM that she is not willing to return to Kodori unless the Russians withdraw.⁴⁷⁰ Some residents are convinced that Russian troops are blocking access to the gorge and preventing returns.⁴⁷¹ Others are unwilling to return because they believe their possessions have been looted.⁴⁷² 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.⁴⁷³

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.⁴⁷⁴ 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.⁴⁷⁵

According to information received by the HRAM, there were about 2,500 ethnic Georgians in the Kodori gorge prior to the August conflict.⁴⁷⁶ Of these, only between

⁴⁶⁴ Moscow document (1991), §33.

⁴⁶⁵ Lisbon document (1996), §10.

⁴⁶⁶ Maastricht Ministerial Council decision 4/03, §13.

⁴⁶⁷ Point 3. Available at

www.elysee.fr/documents/index.php?lang=fr&mode=view&cat_id=8&press_id=1738.

⁴⁶⁸ See “Right to life”, above.

⁴⁶⁹ See “Policing and ensuring the safety of persons”, above.

⁴⁷⁰ HRAM individual interview 142.

⁴⁷¹ HRAM group interview 9.

⁴⁷² HRAM meeting with Head of the Department for Refugees, Abkhaz Government-in-exile, Tengiz Bendeliani.

⁴⁷³ HRAM individual interview 140.

⁴⁷⁴ HRAM group interviews 132, 133, 135, 136, 137, 138.

⁴⁷⁵ HRAM individual interview 132.

⁴⁷⁶ HRAM meeting with Head of the Department for Refugees, Abkhaz Government-in-exile, Tengiz Bendeliani.

100 and 150 are reported to have returned.⁴⁷⁷ Most of the returnees are reported to be single men, although the HRAM also spoke with a few families who have returned.⁴⁷⁸ Very few young people have returned.⁴⁷⁹

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;⁴⁸⁰ 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.⁴⁸¹ 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.⁴⁸² 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.⁴⁸³ 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.⁴⁸⁴ 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.⁴⁸⁵

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.⁴⁸⁶ The administrative boundary is now guarded by Russian troops who strictly enforce the closure.⁴⁸⁷ Only a few people with special passes, for instance

⁴⁷⁷ HRAM individual interview 147; HRAM interview with NGO.

⁴⁷⁸ HRAM interview with international organization.

⁴⁷⁹ HRAM individual interview 139.

⁴⁸⁰ HRAM meeting with Head of the Human Rights Committee of the *de facto* Parliament of Abkhazia, Bata Kobakhia.

⁴⁸¹ HRAM meeting with *de facto* Minister of Foreign Affairs, Sergej Shamba.

⁴⁸² HRAM meetings with international organizations.

⁴⁸³ HRAM interview with international organization; HRAM interview with NGO.

⁴⁸⁴ HRAM interview with international organization.

⁴⁸⁵ Ibid.

⁴⁸⁶ HRAM interview with international organization.

⁴⁸⁷ 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.⁴⁸⁸ The *de facto* authorities are building a physical barrier along the administrative boundary that will further impede freedom of movement.⁴⁸⁹ 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.⁴⁹⁰

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.⁴⁹¹ Health workers are also blocked from passage and residents of Gali can no longer visit medical facilities in Zugdidi.⁴⁹² 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.⁴⁹³ Another health worker, however, told the HRAM that she had been able to transport serious cases across the administrative boundary.⁴⁹⁴

Among international humanitarian organizations, UNHCR has been able to cross the administrative boundary, but several other organizations have not.⁴⁹⁵

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.⁴⁹⁶ OSCE commitments further stipulate that persons belonging to national minorities have the right to establish their own educational institutions.⁴⁹⁷

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.⁴⁹⁸

⁴⁸⁸ Ibid.

⁴⁸⁹ HRAM observed Russian armed forces personnel digging trenches as part of building border facilities.

⁴⁹⁰ HRAM meeting with *de facto* Minister of Foreign Affairs, Sergej Shamba.

⁴⁹¹ HRAM individual interview 179; HRAM group interview 5.

⁴⁹² HRAM individual interview 180.

⁴⁹³ HRAM individual interview 143.

⁴⁹⁴ HRAM individual interview 145.

⁴⁹⁵ HRAM interview with international NGOs.

⁴⁹⁶ ICESCR article 13, CRC article 28, ECHR article 2, Protocol 1.

⁴⁹⁷ Copenhagen document (1990), §32 and Vienna document (1989), §19.

⁴⁹⁸ 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.⁴⁹⁹

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.⁵⁰⁰ 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.⁵⁰¹ 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.⁵⁰² 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;⁵⁰³ other information collected by the HRAM did not bear out this assertion, although it appears that some families have left for this reason.⁵⁰⁴ 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.⁵⁰⁵

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.⁵⁰⁶ 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.⁵⁰⁷ 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.⁵⁰⁸

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.⁵⁰⁹

⁴⁹⁹ HRAM individual interview 151.

⁵⁰⁰ HRAM individual interview 144.

⁵⁰¹ HRAM interview with NGOs and meeting with Deputy Head of the Administration in Gali on cultural issues, Justan Gergedava.

⁵⁰² HRAM individual interview 151.

⁵⁰³ HRAM meeting with Head of Department for Refugees of the Abkhaz Government-in-exile, Tengiz Bendeliani.

⁵⁰⁴ HRAM individual interview 151.

⁵⁰⁵ Ibid.

⁵⁰⁶ HRAM interview with international organization.

⁵⁰⁷ HRAM interview with NGO.

⁵⁰⁸ HRAM individual interview 145.

⁵⁰⁹ 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.*⁵¹⁰

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.⁵¹¹ A resident of Ajara commented that he has potatoes, meat and cheese, but he had to sell his cattle.⁵¹² 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.⁵¹³ 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.⁵¹⁴ 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.⁵¹⁵

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.⁵¹⁶ 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.⁵¹⁷ 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.⁵¹⁸ A mother complained to the HRAM that

⁵¹⁰ ICESCR articles 9, 11, 12.

⁵¹¹ HRAM individual interview 132.

⁵¹² HRAM individual interview 135.

⁵¹³ HRAM individual interview 139.

⁵¹⁴ HRAM interview with international organization.

⁵¹⁵ HRAM interview with international organization.

⁵¹⁶ HRAM interview with NGOs and meeting with Deputy Head of the Administration in Gali on cultural issues, Justan Gergedava.

⁵¹⁷ HRAM meeting with international NGOs.

⁵¹⁸ HRAM individual interview 180.

she was no longer able to travel and see her children in Zugdidi, or even to send them food.⁵¹⁹

Another NGO reported that 90 per cent of the population of Abkhazia can be considered economically vulnerable,⁵²⁰ while still another said that there is no expectation of a healthy economy in the near future.⁵²¹ 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.⁵²²

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.⁵²³ 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.⁵²⁴ 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.⁵²⁵ Another collective centre for former residents of Ajara has electricity and food, but no running water.⁵²⁶ 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.⁵²⁷

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.⁵²⁸ 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.⁵²⁹ Others have heard that the Government will build cottages somewhere for them but they have no details and have not been asked their preferences.⁵³⁰

⁵¹⁹ HRAM individual interview 145.

⁵²⁰ HRAM interview with NGO.

⁵²¹ HRAM interview with NGO.

⁵²² HRAM interview with NGO.

⁵²³ HRAM group interview 6.

⁵²⁴ HRAM individual interview 142.

⁵²⁵ HRAM individual interview 142.

⁵²⁶ HRAM individual interview 141.

⁵²⁷ HRAM meeting with Head of the Department for Refugees of the Abkhaz Government-in-exile, Tengiz Bendeliani.

⁵²⁸ HRAM individual interview 134.

⁵²⁹ HRAM individual interview 141.

⁵³⁰ HRAM group interview 6.

Citizenship

OSCE commitments state that no one should be deprived of his or her nationality arbitrarily.⁵³¹ The right to nationality is also protected by the CERD.⁵³² 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.⁵³³ The ICCPR also guarantees persons belonging to minorities to enjoy their own and to use their own language.⁵³⁴ 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.⁵³⁵ 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.⁵³⁶ 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.⁵³⁷ Most ethnic Georgians opted instead for a residence permit, sometimes referred to as a “form nine.”⁵³⁸

There are now growing pressures on residents of the Gali district to obtain Abkhaz passports, which may be significant enough to constitute coercion.⁵³⁹ 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.⁵⁴⁰ 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.⁵⁴¹ 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.⁵⁴² A doctor in Gali said she did not want to apply for an Abkhaz passport, but “we have to apply.”⁵⁴³ Many members of the population already feel they will have no choice but to obtain Abkhaz citizenship or to leave

⁵³¹ Charter for European Security (1990), §19.

⁵³² Article 5(a)(d)(iii).

⁵³³ Copenhagen document (1990), §§30, 32.

⁵³⁴ ICCPR article 27.

⁵³⁵ HRAM meetings with NGOs.

⁵³⁶ 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.

⁵³⁷ HRAM interview with NGO.

⁵³⁸ HRAM interview with NGO; and HRAM interview with international organization.

⁵³⁹ HRAM meetings with NGOs and international organizations.

⁵⁴⁰ HRAM interview with NGOs and meeting with Deputy Head of the Administration in Gali on cultural issues, Justan Gergedava.

⁵⁴¹ HRAM individual interview 180; HRAM interview with NGOs and meeting with Deputy Head of the Administration in Gali on cultural issues, Justan Gergedava.

⁵⁴² HRAM interview with NGO.

⁵⁴³ HRAM group interview 7.

Gali.⁵⁴⁴ 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.⁵⁴⁵

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.⁵⁴⁶ The rumours have sparked widespread fear among the population that they will lose their rights if they do not take Abkhaz citizenship.⁵⁴⁷ 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.⁵⁴⁸ 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.⁵⁴⁹

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.⁵⁵⁰ Reportedly, the application form for an Abkhaz passport includes a statement that "I voluntarily renounce my Georgian citizenship."⁵⁵¹ 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.⁵⁵² Abkhaz law permits dual citizenship with Russia, but not with Georgia,⁵⁵³ 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.⁵⁵⁴

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

⁵⁴⁴ HRAM interview with NGOs and meeting with Deputy Head of the Administration in Gali on cultural issues, Justan Gergedava.

⁵⁴⁵ HRAM meeting with Head of the Department for Refugees, Abkhaz Government-in-exile, Tengiz Bendeliani.

⁵⁴⁶ HRAM interview with NGO.

⁵⁴⁷ HRAM interview with NGOs and meeting with Deputy Head of the Administration in Gali on cultural issues, Justan Gergedava.

⁵⁴⁸ HRAM meeting with *de facto* Minister of Foreign Affairs, Sergej Shamba.

⁵⁴⁹ HRAM meeting with Head of the Human Rights Committee of the *de facto* Parliament of Abkhazia, Bata Kobakhia.

⁵⁵⁰ HRAM interview with NGO.

⁵⁵¹ HRAM interview with international organization.

⁵⁵² HRAM interview with international organization.

⁵⁵³ HRAM meeting with Head of the Human Rights Committee of the *de facto* Parliament of Abkhazia, Bata Kobakhia.

⁵⁵⁴ HRAM meeting with *de facto* Minister of Foreign Affairs, Sergej Shamba.

payments from the Georgian Government.⁵⁵⁵ Others fear that renouncing Georgian citizenship will impede their ability to visit relatives or to obtain higher education at Georgian language universities.⁵⁵⁶ In addition, some ethnic Georgians in Gali are reluctant to obtain Abkhaz citizenship for fear of being considered traitors to Georgia.⁵⁵⁷ 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.⁵⁵⁸ According to various reports, therefore, less than 100 ethnic Georgians have applied for Abkhaz citizenship so far.⁵⁵⁹

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.⁵⁶⁰

⁵⁵⁵ HRAM interview with international NGOs.

⁵⁵⁶ HRAM individual interview 180; HRAM interview with NGOs and meeting with Deputy Head of Administration in Gali on cultural issues, Justan Gergedava.

⁵⁵⁷ HRAM interview with NGO.

⁵⁵⁸ HRAM individual interview 180; HRAM interview with NGOs and meeting with Deputy Head of Administration in Gali on cultural issues, Justan Gergedava.

⁵⁵⁹ HRAM interview with international organizations.

⁵⁶⁰ 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 commitments⁵⁶¹ and other international obligations,⁵⁶² including the recent order of the International Court of Justice.⁵⁶³

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.⁵⁶⁴ 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.⁵⁶⁵ 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.

⁵⁶¹ E.g., Lisbon document (1996), §10.

⁵⁶² E.g., ICCPR article 12.

⁵⁶³ ICJ Order of 15 October 2008, *supra* note 6, especially §149.

⁵⁶⁴ ICESCR article 11.

⁵⁶⁵ 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 commitments⁵⁶⁶ and other international obligations.⁵⁶⁷ 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.”⁵⁶⁸ 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 commitments⁵⁶⁹ and other international obligations,⁵⁷⁰ 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.⁵⁷¹

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

⁵⁶⁶ E.g., Lisbon document (1996), §10.

⁵⁶⁷ E.g., ICCPR article 12.

⁵⁶⁸ Framework Convention for the Protection of National Minorities, article 17.1.

⁵⁶⁹ E.g., Helsinki document (1992), §51.

⁵⁷⁰ E.g., the ICJ Order of 15 October 2008, *supra* note 6, especially §149.

⁵⁷¹ “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 commitments⁵⁷² and other international obligations.⁵⁷³ 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.⁵⁷⁴

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.⁵⁷⁵

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.⁵⁷⁶ 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.⁵⁷⁷ 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.

⁵⁷² E.g., Helsinki document (1992), §26.

⁵⁷³ E.g., CoE Framework Convention for the Protection of National Minorities, articles 4,5, and 17.

⁵⁷⁴ HRAM interview with international organization.

⁵⁷⁵ E.g., Framework Convention for the Protection of National Minorities, article 17.1.

⁵⁷⁶ 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.

⁵⁷⁷ 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 Law⁵⁷⁸ 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.⁵⁷⁹

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.⁵⁸⁰ 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.⁵⁸¹ 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.⁵⁸² The Government of Georgia has also filed an interstate application against the Russian Federation at the European Court of Human Rights.⁵⁸³ The Prosecutor of the International Criminal Court is collecting information about violations of international criminal law that may have taken place during the conflict.⁵⁸⁴

⁵⁷⁸ United Nations General Assembly resolution 60/147.

⁵⁷⁹ Ibid, articles 18-21.

⁵⁸⁰ HRAM meeting with Regional Prosecutor, Davit Sakvarelidze.

⁵⁸¹ HRAM meeting with *de facto* Deputy Minister of Special Affairs, Kazbek Karsanov.

⁵⁸² “Case concerning Application of the International Convention on the Elimination of all Forms of Racial Discrimination” (Georgia v. Russian Federation), 15 October 2008.

⁵⁸³ Press release by the Registrar, European Court of Human Rights, 10 October 2008.

⁵⁸⁴ 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.⁵⁸⁵ The Georgian Ministry of Justice is working with NGOs to collect evidence for additional cases to be presented to the Court.⁵⁸⁶ 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,⁵⁸⁷ 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”.⁵⁸⁸ 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.⁵⁸⁹

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.

⁵⁸⁵ Press release by the Registrar, European Court of Human Rights, 10 October 2008.

⁵⁸⁶ HRAM interview with NGO.

⁵⁸⁷ 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/

⁵⁸⁸ Press release by the Registrar, European Court of Human Rights, 10 October 2008.

⁵⁸⁹ 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”.⁵⁹⁰
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.”⁵⁹¹ 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.

⁵⁹⁰ See *supra* note 6.

⁵⁹¹ 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.”⁵⁹²
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

⁵⁹² 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.⁵⁹³
24. Encourage and facilitate continued contacts, dialogue and co-operation among human rights NGOs across the region.

⁵⁹³ 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.⁵⁹⁴ 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 commitments⁵⁹⁵ and other international obligations.⁵⁹⁶ Citizenship laws should not be discriminatory.
31. Ensure that all children from minority communities may study in their mother tongue.

⁵⁹⁴ Universal Declaration of Human Rights, preamble.

⁵⁹⁵ E.g., Helsinki document (1992), §26.

⁵⁹⁶ 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

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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 Cruelly 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

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

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

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>

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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>

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<http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/georgia-update-061108>