

CIVILIANS IN THE AFTERMATH OF WAR

THE GEORGIA-RUSSIA CONFLICT ONE YEAR ON

AMNESTY INTERNATIONAL

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Cover photo: Tsira Kasradze Ergneti in her home, destroyed by a bomb during the conflict in August 2008.
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MAP OF GEORGIA



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Abbreviations

ABL	Administrative Boundary Line
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CIS	Commonwealth of Independent States
CoE	Council of Europe
CPT	Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
Emercom	Russian Ministry for Emergency Situations
ERW	Explosive Remnants of War
ERWCC	Explosive Remnants of War Coordination Centre
EU	European Union
EUMM	European Union Monitoring Mission
GUVD	City Police Department
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IIFFM	Independent International Fact-Finding Mission on the conflict in Georgia
IDP	Internally Displaced Person
IPRM	Incident Prevention and Response Mechanism
NPA	Norwegian People's Aid
OSCE	Organization for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund
UNOMIG	United Nations Observer Mission in Georgia
UXO	Unexploded Ordnance

1. INTRODUCTION

The five-day war that began on the night of 7-8 August 2008 between Georgia and the Russian Federation resulted in hundreds of civilian deaths, thousands of injuries and the displacement of almost 192,000 people.[1]

One year on from the conflict, its impact is still being felt – particularly in and around the disputed region of South Ossetia which is the focus of this report.[2] An estimated 30,000 people, mostly ethnic Georgians, remain displaced.[3] Of these, the UN's refugee agency, UNHCR, estimates that some 18,500 displaced people[4] from South Ossetia are unlikely to be able to return in the short term.[5] Security concerns and tensions run high in and around South Ossetia. The dangers of Explosive Remnants of War (EWR) persist and the clearance of battlefield areas is on-going. An omnipresent sense of tension and insecurity prevent many people from returning to their homes and carrying on with their lives. Many of the people who have returned are facing a new reality brought about by the conflict, a reality in which they struggle to rebuild their lives and livelihoods.

The closure of the monitoring mission of the Organization for Security and Co-operation in Europe (OSCE) covering South Ossetia, and that of the UN monitoring mission in Abkhazia, has deprived people living in these areas of a sense of international scrutiny and thereby contributed to an overarching climate of insecurity. The European Union Monitoring Mission (EUMM), a civilian mission with a mandate for monitoring the effective implementation of the ceasefire agreement throughout the territory of Georgia, are now the only internationally-mandated monitoring mission on the ground – but are currently unable to enter areas controlled by the Russian and *de facto* South Ossetian and Abkhazian authorities.

Against this background of ongoing tensions and fragile security, the issues of justice for crimes under international law committed by all sides during the conflict and reparation for the victims of such crimes remain acute.[6] Despite ongoing investigations by both the Russian and Georgian sides, to date no one has been brought to justice by the Georgian or Russian authorities for the serious violations of international law which took place during the conflict and in its immediate aftermath.

Such issues were among those highlighted in Amnesty International's publication *Civilians in the line of fire: The Georgia-Russia Conflict* (EUR: 04/005/2008) which this report updates. This report also includes a chronology of events since the August 2008 hostilities, which is set out in the Appendix. In July 2009 Amnesty International delegates travelled again to Georgia to gather first-hand information about the human rights situation generally, the observance of the human rights of displaced people, and the security situation. Amnesty International representatives visited Tbilisi, Gori, and the villages of Karaleti, Tkviavi, Ergneti, Ditsi, Karbi and Mereti in the area adjacent to South Ossetia. A representative of Amnesty International visited a temporary accommodation centre in Tbilisi (formerly the South Caucasus Headquarters of the Ministry of Defence) and new settlements for displaced people at Tserovani and Tsilkani. An Amnesty International representative also visited South Ossetia.

Amnesty International representatives met with displaced persons, representatives of international humanitarian and non-governmental organizations, as well as government officials in Tbilisi and de facto government officials in Tskhinvali. The report also makes use of photographs collected by Amnesty International, official statements and communiqués, updates and reports issued by humanitarian and human rights organizations, as well as media reports.[7]

Information collected by Amnesty International indicates that one year after the war, civilians continue to endure human rights violations, and remain directly affected by the aftermath of the conflict.



Damaged entrance to a synagogue cellar in Shaumian street, Tskhinvali, where civilians hid during hostilities in August 2008. Tskhinvali, South Ossetia, July 2009. © Amnesty International

2. DISPLACEMENT

At the height of the conflict it is estimated that a total of 192,000 people were forcibly displaced.[8] A large majority of those displaced, both to the rest of Georgia and across the border to Russia, have since managed to return to their homes. However, thousands of those forced to flee, by what appeared to be a deliberate policy aimed at the forcible displacement of ethnic Georgians from their villages, remain with little prospect of being able to return home in the short-term.

Governments are obliged to ensure the human rights of internally displaced people, and to provide protection and assistance to them in accordance with international human rights treaties. Furthermore, the authorities should ensure access to guarantees enshrined in the UN Guiding Principles on Internal Displacement. Any return of displaced people should be guided by four principles: security, voluntary return, guarantee of adequate living conditions and non-discrimination. Parties to a conflict must ensure the security of those residing in conflict-affected areas as well as to those displaced and wishing to return to territories under their effective control, without regard to ethnic affiliation. They should guarantee the right of durable return to displaced people in safety and dignity; and displaced people should be able to take part in planning and management of their return. Displaced people and returnees should be consulted about solutions, both temporary and permanent, and be adequately informed about entitlements, benefits and the choices available to them. Displaced persons who choose not to return should enjoy rights to local integration or permanent resettlement elsewhere in the country, according to each individual's voluntary choice. Humanitarian actors should have unimpeded access at all times to displaced persons and returnees.

DISPLACEMENT OF ETHNIC GEORGIANS

According to UNHCR, an estimated 138,000 ethnic Georgians were displaced during the conflict. Amnesty International acknowledges the major challenges the Georgian government has faced in coping with this wave of displaced people, in particular against the background of the estimated 222,000 people[9] who were displaced from their homes in Abkhazia and South Ossetia as a result of earlier conflicts. The Georgian government and the international community have responded promptly to the August 2008 crisis. In this light, Amnesty International especially welcomes the government's adoption in 28 May 2009 of the 2009 Action Plan on Internally Displaced People aimed at providing durable housing solutions to those displaced, irrespective of whether this was as a result of the conflict in August 2008 or earlier conflicts. Prior to this there had been a lack of harmonization between the situations of the 'old' and 'new' displaced people, in areas such as status and entitlements.

Of the estimated 138,000 displaced ethnic Georgians, UNHCR estimates that over 108,000 have returned to their homes.[10] Of the 30,000 that remain displaced, 18,000 have been re-housed by the Georgian authorities in 36 newly-constructed urban and rural settlements built in various locations, mostly in the vicinity of Gori and the area adjacent to South Ossetia.[11]

Approximately 2,700 displaced people are staying in private accommodation and 5,000 remain in collective centres in Tbilisi, the Georgian capital, and elsewhere. They are waiting for their homes to be reconstructed, to be moved to the new housing units, or to receive compensation.[12] Approximately 3,000 people who chose not to move into new houses built by the government were given a lump sum of $US 10,000.[13] According to reports, very few ethnic Georgians have returned to South Ossetia.[14] The UNHCR estimates that around 18,500 ethnic Georgians who fled South Ossetia and Akhalgori District are facing long-term displacement.[15]

The majority of these 18,500 people are now accommodated in newly-constructed housing, equipped with basic furniture and cooking facilities, and including garden plots. Some of the units, however, are located in remote areas, with limited options for income generation. Displaced people in some of the newly-built settlements are isolated from major towns, and consequently from facilities such as hospitals, shops, schools and government offices. Living conditions vary from one settlement to another. Problems of dampness and drainage are often reported,[16] allegedly due to construction inadequacies that resulted from the time pressure to finish building before winter.[17]

An Amnesty International delegate visited Tserovani and Tsilkani settlements. The residents of Tserovani settlement considered their living conditions to be generally acceptable with some exceptions. Some residents complained about dampness, leaking roofs or inadequately installed windows. All the houses in Tserovani visited by an Amnesty International delegate had indoor plumbing and drinking water, as well as clearly demarcated land for kitchen gardens. All houses in the newly-built settlement of Tsilkani have outdoor plumbing and toilet facilities, and none of the households are equipped with washing or shower facilities. Residents complained of poor sanitary conditions, with inadequate waste disposal services and limited access to water the major issues raised.[18] Several residents told Amnesty International that they only receive water for one hour each day, when around eight households sharing one tap have to queue for access to water. Despite the fact that both Tserovani and Tsilkani are largely rural settlements, residents have not been allocated any other agricultural land for cultivation, apart from a small parcel of land around their houses for kitchen gardens. The biggest challenge, they said, remained the absence of employment opportunities, which made residents increasingly dependent on humanitarian aid. Residents interviewed by Amnesty International consistently cited lack of employment, lack of earned income and a feeling of isolation as major problems. While the Georgian government and international organizations should be given credit for providing most of the displaced people with housing, much remains to be done to provide durable solutions in dignity for those living in the new housing settlements.

More than 8,000 displaced people remain in temporary accommodation in and around Tbilisi, either in collective centres or with host families while waiting for compensation, resettlement or reconstruction of their destroyed homes. Of the total of 8,000, approximately 5,000 displaced people remain accommodated in collective centres, some of which offer only rudimentary living conditions, with a lack of basic facilities such as heating, electricity and running water. Displaced people interviewed by Amnesty International at the former South Caucasus Headquarters of the Ministry of Defence in Tbilisi (which now serves as a place of temporary accommodation) expressed concern about the living and sanitary conditions, as well as an absence of certainty as to when they will receive the promised

financial assistance or be able to move to newly-constructed homes.

Following the withdrawal of Russian troops from Gori and surrounding areas, over 108,000 people have returned to their place of residence in areas adjacent to South Ossetia, including villages close to what is currently known as the administrative boundary line (ABL) which separates the *de facto* territory of South Ossetia from the rest of Georgia and which is patrolled on the north side by South Ossetian and Russian troops.[19] Several hundreds of displaced people are, however, still unable to return to many areas adjacent to South Ossetia owing to their fears about security in the area, including fear of living in close proximity to the ABL or to places where South Ossetian and Russian forces are stationed. Four people displaced from Akhalgori currently in Tsilkani settlement told Amnesty International that their return was not prevented by the Russian and *de facto* South Ossetian authorities, currently in control of Akhalgori following the August 2008 war, but they feared to return because of the presence of South Ossetian and Russian forces and the unpredictability of the attitudes or policies of these forces towards ethnic Georgians. Most of those whose homes were destroyed during the hostilities have received $US15,000 in assistance from the Georgian government to rebuild their homes. Despite this, very little reconstruction has started. Those interviewed by Amnesty International stated that they fear the possibility of new hostilities and are reluctant to invest money and effort in rebuilding homes given what they perceive as the fragility of the peace. Many of the returnees are coping with a loss of income because of the destruction of infrastructure and the loss of livestock and last year's harvest. Some cannot access land as it awaits de-mining, or, where their fields are close to the ABL, owing to firing from the other side. Others cannot resume their previous livelihoods as they are now separated from their orchards, fields or sources of timber by the ABL (see section on Security below).

Many of the displaced people interviewed by Amnesty International complained about a lack of information and the uncertainty of plans for resettlement or return. Several of them reported facing several displacements in the last year without being informed or consulted about any plans for their resettlement. Some people described how they had returned without full information about the security conditions and housing arrangements.[20] As a result, according to reports, approximately 100 returnees left their homes a second time, due to security concerns in some of the villages adjacent to South Ossetia.[21] Several accounts by displaced people collected by Amnesty International spoke of them being induced, or subjected to pressure, by officials or persons administering their temporary accommodation – such as directors of schools or kindergartens - to return without adequate information being provided by the Georgian authorities about housing arrangements and security. However, these incidents do not appear to reflect a deliberate government policy. Some displaced people told Amnesty International that government representatives organized transportation for them back to their original places of residence and, while informing them that they had to leave, told them that from that day forth the humanitarian assistance designated for them would be delivered to their original places of residence.

The Georgian government has prioritized housing in an attempt to meet the immediate needs of displaced people. While the need for the authorities to address outstanding issues in relation to housing continues, given that many displaced people face no immediate prospect of a return home or resumption of their previous livelihood, Amnesty International considers that at this stage further attention should also be given to ensuring other social and economic

rights of displaced people. Many people have suffered substantial economic and financial loss as a result of conflict and displacement. The loss of access to traditional means of livelihood has a major impact on displaced people and returnees alike. In the absence of specific employment opportunities, many displaced people are increasingly dependent on humanitarian aid. Many are also facing pressure and legal action due to outstanding bank loans obtained in the period before the conflict which, as a consequence of the conflict, they are unable to repay. The Georgian authorities should take additional steps to respect and protect the rights of those people who were displaced in Georgia as a result of last year's conflict, including those people who have returned to their original places of residence. Such rights include the rights to safe and adequate housing and to an adequate standard of living.

DISPLACEMENT TO THE RUSSIAN FEDERATION

According to the Federal Migration Service of the Russian Federation (FMSR), as a result of the August 2008 war, 38,500 people left South Ossetia for the Russian Federation – the vast majority (up to 37,000 people) to the neighbouring Russian region of North Ossetia-Alania. FMSR has assisted at least thirty-four thousand persons to return to South Ossetia.[22] In April 2009, PACE reported an estimated 1,200 ethnic South Ossetians displaced as a result of the August 2008 conflict have remained in Russia.[23] The Mayor of Tskhinvali, Robert Guliev, told Amnesty International that all ethnic Ossetians who left South Ossetia during the war had returned, but no cases of ethnic Georgians returning had been observed.

THE SITUATION IN SOUTH OSSETIA

In South Ossetia, the Ministry for Emergency Situations of the Russian Federation (Emercom) and the International Committee of the Red Cross (ICRC) have provided humanitarian assistance.

An Amnesty International delegate who travelled to South Ossetia observed that most damaged government buildings in the capital, Tskhinvali,[24] have been rebuilt, including the main government building which, as of July 2009, is reportedly fully functioning. Schools and the main train station have also been rebuilt, as has the main hospital building, although some smaller associated buildings remain in need of repair. The parliament building and the Tskhinvali City Police Department (GUVD) are still in ruins. The larger apartment buildings have seen some repair, although some residents complained to Amnesty International that roofs leak because of the poor quality of repair. Amnesty International was informed that the reconstruction and repair that has taken place in the private sector has been at the initiative of the owners.

The Mayor of Tskhinvali told Amnesty International that the Russian Federation had committed 10 billion roubles (approximately $US 320 million) in assistance to South Ossetia, of which 1.5 billion roubles (approximately $US 48 million) had been disbursed in 2008. However, he added that the city authorities at present have no spare housing capacity to distribute. In Tskhinvali alone there is a need for repair and reconstruction of housing for approximately 2,000 families in the municipal sector and approximately 3,000 privately-

owned houses. The maximum compensation distributed to families is 50,000 roubles per family (approximately $US 1,600), a sum he described as inadequate to fund any substantial construction.[25] The Speaker of Parliament expressed concern that the pace of reconstruction was slow, and few families had received any compensation.[26] At present there is no official budget for South Ossetia for 2009 although, according to the Speaker of the Parliament, it should have been approved in 2008.[27]

Amnesty International has previously documented the extensive destruction of various Georgian settlements in South Ossetia that occurred after the ceasefire. Other Georgian-majority villages inside South Ossetia, especially those under *de facto* South Ossetian administrative control in the period before the conflict, suffered less destruction.[28] South Ossetians who remained in the region during the conflict, or have since returned there, have reportedly not attempted to move into the houses of ethnic Georgians in the villages between Dzhava and Tskhinvali. However, there has been no effective possibility for ethnic Georgians to return to these houses.



Children at a temporary accommodation centre in the former South Caucasus Headquarters of the Ministry of Defence, Tbilisi, Georgia, July 2009. © Amnesty International

3. HUMAN RIGHTS AND SECURITY IN THE POST CONFLICT ZONE

A FRAGILE SECURITY SITUATION

One year on from the start of the conflict, the security situation in the region presents a mixed picture. In the areas to the south of the ABL, and especially in some of the villages along the narrow frontline, despite the end of hostilities, the situation remains fragile. In the areas to the north of the ABL, according to reports and information obtained by Amnesty International delegates in Tskhinvali, the security situation in territories controlled by the Russian and the *de facto* authorities in South Ossetia is generally stable. However, concerns that incidents of shooting and other violence risk bringing about an escalation of hostilities remain. The reports of NATO exercises in Georgia in May 2009 (Cooperative Longbow 09 followed by Cooperative Lancer 09) and military exercises by Russia in July 2009 (Caucasus-2009), which involved Russian troops based in South Ossetia, have created grounds for mutual accusations of preparations for military strikes.[29] Another result is tension among the local population, especially those living in the former conflict zone, who fear the possibility of a resumption of military hostilities.

There have been efforts to put in place improved structures for monitoring and regional security. On 1 October 2008, around 200 civilian monitors from the European Union Monitoring Mission (EUMM)[30] and 20 military monitors from the Organization for Security and Co-operation in Europe (OSCE)[31] were deployed to carry out patrolling and monitoring of the security situation in the areas adjacent to South Ossetia and the rest of Georgia.

On 26 January 2009, a memorandum of understanding was signed between the EUMM and the Georgian Ministry of Defence (MoD) stipulating certain restrictions on the movements of Georgian armed forces in the vicinity of the administrative boundary lines of South Ossetia (and also Abkhazia). In line with the memorandum, the Georgian MoD has undertaken a commitment not to deploy more than one battalion of troops in areas adjacent to South Ossetia (and not to place more than one battalion of troops within 15 km of the Abkhaz administrative boundary line). The EUMM has stated that the memorandum "will help to stabilise the situation along the administrative boundary lines".[32] Despite efforts by the EUMM to encourage Russia to "reciprocate this agreement," and provide clarity about the total number of its forces within South Ossetia (and Abkhazia), as of July 2009 there had been no similar commitment from the Russian authorities. Despite these undertakings by the Georgian side, the South Ossetian and Russian sides have consistently alleged that the Georgian military is building up troops in proximity to the ABL with a view to a resumption of the conflict. Although such reports have not been confirmed by EUMM or other international organizations working on the ground, they add to the general sense of instability in the region.

On October 2008 international discussions on security and stability, mediated by the EU, the OSCE and the UN, commenced in Geneva, Switzerland.[33] Two working groups - Working Group One on security and stability and Working Group Two on displaced people and

refugees - have been set up to discuss practical issues, with a view to setting aside political differences.[34] Despite an initial deadlock, on 17-18 February 2009 the talks produced an agreement on a joint Incident Prevention and Response Mechanism (IPRM), intended to increase security along the ABL. Under the agreement, representatives of the security forces of all parties to the conflict and from the observer mission of the EU are to meet at least once a week and may agree to conduct joint visits. The parties have also agreed to set up a hotline to deal with emergency situations.[35] However as of July 2009, the mechanism had not become fully functional.[36] At the sixth round of the Geneva talks, held on 1 July 2009, the parties also reached an agreement to start work on a comprehensive plan to address issues regarding the dignified and safe return of refugees and displaced people.[37]

SECURITY IN AREAS SOUTH OF THE ADMINISTRATIVE BOUNDARY LINE (ABL)

Despite some of the positive developments and improvements to the general security situation as reported by international and humanitarian organizations working in the conflict-affected zone, security remains a strong concern in many of the areas adjacent to the South Ossetia.[38] Incidents continue to be reported, which are said to have a negative impact on residents' sense of security and willingness to return.[39] According to information provided by the Georgian authorities, since the end of hostilities in August 2008 nine civilians and 11 Georgian police officers have been killed and 57 civilians and 27 policemen injured in the areas south of the ABL.[40]

According to information submitted by the government of Georgia, the security situation in areas south of the ABL improved following the October 2008 deployment of the EUMM, combined with monitoring by the OSCE and the deployment of Georgian police. Statistics supplied by the Georgian authorities covering a timeframe from September 2008 to June 2009 show a decrease in civilian injuries and deaths, although there is a considerable increase in incidents involving local police and Interior Ministry units.[41] International organizations on the ground also report that the security situation in terms of theft and other criminal activities has improved, partly as a result of the April 2009 agreement between the *de facto* South Ossetian authorities and Russia on co-operation on "administrative border protection."[42] In line with the agreement, Russian forces jointly guard the Ossetian side of the ABL, which has made the boundary less permeable in terms of criminality, but is also one of the factors making it more difficult for residents to cross the ABL.

Local residents in the villages of Ditsi, Mereti and Karbi told Amnesty International that while large-scale looting, arbitrary detention, killings and assaults on civilians have largely ceased, incidents of sporadic shootings, theft and cattle rustling are still occurring. People told Amnesty International that the shootings come from the northern side of the ABL. The EUMM is currently still not allowed access to the territory controlled by the Russian and *de facto* South Ossetian authorities in order to monitor the situation there,[43] despite the fact that their mandate covers the entire territory of Georgia including South Ossetia.[44]

SECURITY IN AREAS NORTH OF THE ABL

According to reports and information obtained by Amnesty International delegates, the security situation in territories controlled by the Russian and the *de facto* authorities in South Ossetia in July 2009 was generally stable. According to reports, a fear that the conflict might resume in the region was not widespread among residents in South Ossetia. The main perceived security threats to residents were reportedly in relation to crossing the ABL into areas controlled by the Georgian authorities.

SECURITY RELATED TO THE ABL

At present, there are no official crossing points and no regulations concerning crossing of the ABL.[45] The official policy of the Georgian government is that, since South Ossetia is not a separate state, there can be no state border. However the Russian and the *de facto* South Ossetian authorities, which control the north side of the ABL, treat the ABL as a state border on the grounds that Russia has recognized South Ossetia as independent state. According to international organizations working on the ground, cross-boundary movement through the unmarked crossing points has officially been prohibited by the Russian and *de-facto* South Ossetian authorities and is sometimes also prevented by the Georgian side due to security concerns. The situation is different in Akhalgori district. According to reports and information received by Amnesty International's representative while in South Ossetia, as of July 2009, the Akhalgori / Leningori [46] administrative border remained open to persons with residency papers. According to these reports, South Ossetians and Georgians living in the Akhalgori / Leningori area are still able to move between the region and the rest of Georgia. In the rest of the areas adjacent to South Ossetia, local residents and returnees face considerable safety risks and limitations to their freedom of movement due to a lack of clarity regarding the location and possibility of crossing the ABL. While people on both sides continue to cross the ABL for various reasons, such as to access medical care, to visit graveyards, or to see relatives or family members on the other side, most of these movements are considered illegal by the authorities and involve people crossing the ABL at their own peril and at the discretion of the guards or police at the ABL. There is no clarity on the requirements for crossing the ABL, such as documents or the payment of a fee. There are no guarantees that, if a person is allowed to cross the ABL, they will be able to return back. This ambiguity has reportedly encouraged bribery at the crossing points.[47]

The situation is further complicated by the fact that the location of the ABL in many places is unclear. In some places the ABL is demarcated but in many places it is not. There have been reported incidents where not only civilians but international monitors have been detained for alleged 'illegal crossing'. The most recent incident of this kind known to Amnesty International occurred on 21 April 2009, when *de facto* South Ossetian authorities detained two OSCE monitors for about two-and-a-half hours for allegedly illegally crossing into territory under their control. In a separate incident, on 15 June 2009, a Russian citizen, who attempted to enter territory under Georgian control from the Russian Federation via South Ossetia, was reportedly detained.[48]

There is a need to develop clear rules and procedures on crossing the ABL that uphold the human rights of those affected by the conflict and its aftermath. In particular, measures

must be put in place that secure the right to life and freedom of movement, the rights of those displaced people to return, and the rights to an adequate standard of living, liberty and security of the person. The recently established incident prevention mechanism for future incidents might also be an appropriate forum for ensuring that procedures are put in place to uphold these rights.

THREATS FROM EXPLOSIVE REMNANTS OF WAR (ERW)

People who return to their place of residence along the Gori - Tskhinvali corridor in some areas still face risks as a result of Explosive Remnants of War (ERW). A total of 25 villages, within a corridor 10 km wide and 20 km long from Tskhinvali to Gori, have been contaminated by the remnants of war. Sixteen of the 25 villages experienced the impact of cluster bombs; nine villages are affected by unexploded ordnance (UXO).[49] Clearance is currently on-going in the Gori-Tskhinvali corridor area and, while roughly two-thirds of the work has been completed, even after all reasonable efforts and checks have been made to clear contaminated areas, the local population will continue to face residual risks. In addition, there are concerns about risks deriving from the possibility that new explosive devices may be planted. [50]

Following an initial survey and demarcation, the non-governmental organizations Halo Trust and Norwegian People's Aid (NPA) continue to clear the contaminated area on Georgian-controlled territory up to the ABL, mainly removing cluster bomb sub-munitions. In February 2009, an Explosive Remnants of War Coordination Centre (ERWCC) was set up in Tbilisi. The ERWCC is responsible for co-ordinating activities conducted by all implementing partners, as well as providing quality control for the work of the Halo Trust and the NPA. Due to the fertility of the land in the areas concerned, and therefore its importance to the livelihoods of residents, time-consuming sub-surface clearance is necessary. It is anticipated that this will be completed by the end of 2009.

In South Ossetia, the ICRC has run a campaign in and around Tskhinvali to inform residents of the dangers posed by unexploded mines and other ordinance. It has also marked contaminated areas with signs. The Russian Ministry for Emergency Situations, Emercom, has completed basic UXO clearance around Tskhinvali. According to the Russian government, by April 2009, the Russian military had de-mined 165,000 UXO.

HUMAN RIGHTS IMPLICATIONS OF THE SECURITY SITUATION

People living in the post-conflict zone on both sides of the ABL continue to face risks to their life and health due to the threats remaining from ERW.

South of the ABL, the Georgian government reports that civilians continue to suffer from armed attacks[51] and violations to their lives and health from killings and injuries, and a lack of security prevents many of the displaced persons returning to their villages in the areas adjacent to South Ossetia, [52] violating their right to a safe and dignified return. Some displaced people who returned early – reportedly without informed consent in some cases – have left again because of concerns for their security. Some villages have become virtually depopulated as a result of the conflict. According to information provided by the Georgian government, an estimated 50 people, mostly elderly, continue to live in the areas of Big

Liakhvi, Small Liakhvi and Frone Valley, out of an original population of some 13,400 persons registered as living in these areas before the August war. A similar situation is reported in Akhalgori region, where an estimated 1,000 persons remain out of a previously registered 7,800.

People on both sides of the border are prevented from visiting their loved ones and relatives on the other side of the ABL. Family reunifications function very much as a "one-way ticket" - people can cross the ABL displaced to the south of the ABL to be reunited with their loved ones on the other side, but there are no guarantees that they will be allowed back. Many elderly people, and especially those in mixed marriages who chose to remain in their homes, are deprived of help and support from younger family members who fled and remain on the other side of the ABL as a result of the conflict. Many people are prevented from visiting the burial sites of their families and relatives, and are not able to arrange to have their dead buried in the historical family graveyards that are on the other side of the ABL.

Insecurity, unpredictability and lawlessness associated with the ABL also affect people on both sides of the ABL who suffer from arbitrary detentions and violations of their rights to physical and mental integrity. Uncertainties regarding ABL closure and policies with regard to crossing of the ABL also interfere with the resident's rights to freedom of movement and security as, in many instances, people say they do not know where the ABL lies and they fear shootings and detention due to allegations of illegal crossing.

Security concerns also have implications for the livelihoods of people living in the conflict-affected areas, violating their rights to adequate standards of living and the right to live in dignity. People on the north side of the ABL can no longer trade as they did previously with the rest of Georgia, or in some cases access medical care or other essential facilities located on the south side. Local people in some villages close to the ABL are prevented from having access to pasture, arable land and forest for the collection of firewood. Returnees in Ergneti and Ditsi, (on the south side of the ABL), for example, told Amnesty International they are not able to access their orchards and agricultural land because they fear shootings from the South Ossetian side of the ABL. In some cases, returnees no longer have access to their plots of land and orchards, either because the land is now situated on the other side of the ABL or because the clearing of ERW has not been completed in these areas. According to UNHCR monitoring findings, on the south side of the ABL more than 8,000 families have lost access to pasture and more than 1,700 families have lost access to arable land as a result of the conflict.

Problems with access to water and irrigation also remain important concerns with regard to livelihoods and securing adequate standards of living in several villages, where the *de facto* South Ossetian authorities have reportedly cut villages to the south of the ABL off from access to water, with a detrimental effect on crops and harvests. According to reports, a large proportion of returned people have lost their means of livelihood - both this year's and next year's harvest.[53] Those living on the north side of the ABL reportedly also suffer from a lack of access to gas supplies from the Georgian side. Authorities on both sides of the ABL should ensure that political disputes do not continue to obstruct residents' access to essential services and enjoyment of the right to an adequate standard of living.

Ensuring the rights of those who return to their places of residence – including the right to

life, physical safety, health and freedom of movement - remains a major challenge one year after the conflict. Security has been a cause for divisions rather than co-operation among the sides to the conflict. Against a background of a lack of information and transparency, people in the region are more likely to perceive the other side as a potential threat to their own security, thereby further damaging the already fragile peace. Security issues, if left unaddressed, have the potential to further increase tensions.

Amnesty International considers that there is an urgent need for steps to be taken by the responsible authorities to ensure the human rights and safety of the population in the conflict-affected areas. Such steps should include restoration of the rule of law, prevention of crime in a manner that respects and protects human rights, and creation of the conditions which are conducive for the safe, durable and dignified return of displaced people who wish to do so. Under international law, all parties – the Georgian, Russian and *de facto* South Ossetia authorities - are responsible for protecting the rights and maintaining the security of the civilian population.[54] Such responsibility includes the prevention of crime, the maintenance of law and order, respect for the rights of persons, and the protection of property.

HUMANITARIAN ACCESS

Amnesty International is concerned about the obstacles placed by all sides to the conflict on access to conflict-affected areas. All parties must immediately lift arbitrary impediments to the delivery of humanitarian assistance across the ABL. Political concerns should not stand in the way of providing humanitarian assistance to those in need. All parties should adhere and implement their obligations under international law to ensure respect of, and protection for, the rights of persons under their effective control; the parties should also implement UN Security Council Resolution 1866(2009),[55] adopted on 13 February 2009, that calls, among other things, for facilitating humanitarian access and refraining from placing any impediment to humanitarian assistance to persons affected by the conflict, including refugees and internally displaced persons.

Humanitarian access to conflict-affected populations in South Ossetia has remained problematic for the majority of aid agencies. Authorities in South Ossetia allow international assistance exclusively through the territory of the Russian Federation. The Law on Occupied Territories of Georgia, adopted on 23 October 2008, restricts access to South Ossetia (and Abkhazia) for foreigners and stateless persons, who may enter those territories only from the Georgian side. The European Commission for Democracy through Law (the Venice Commission) reviewed the Law on Occupied Territories of Georgia and found that "it impeded humanitarian aid and was contrary to the rule of customary international law."[56] The Georgian authorities have indicated an understanding of the fact that emergency considerations might require urgent entry into the occupied territories from the north. Therefore, in consultation with the Venice Commission, the Georgian authorities report that they are preparing amendments to the Law on Occupied Territories that will allow access from the north for the delivery of humanitarian assistance. In addition, the proposed amendments are said to explicitly exempt from criminal responsibility those persons who have crossed the ABL from the north to seek refuge or asylum in Georgia.



ABL demarcation on the Georgian side of the village of Adzvi. © Courtesy of the EUMM in Georgia



Checkpoint near the village of Knolevi. © Courtesy of the EUMM in Georgia

4. PRISONERS OF WAR, DETAINEES AND MISSING PERSONS

According to the parties to the conflict, all prisoners of war have been exchanged. The exchange was facilitated by the Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg. Both the Russian and Georgian sides report that they hold no more prisoners of war.[57]

However, there continues to be a contested narrative between the sides over issues regarding alleged arbitrary detentions, prevention of hostage taking and the tracing of missing persons. According to the Georgian authorities, as of July 2009, four Georgian civilians were being held without charge by the *de facto* authorities in Tskhinvali.[58] According to information submitted to Amnesty International by the *de facto* South Ossetian officials, the fate of more than 10 missing Ossetians is not known. Among them, according to these officials, are three men who were reportedly seized on 14 October 2008 by Georgian authorities while they were travelling from Khelcho to Tskhinvali.[59] The *de facto* South Ossetian authorities allege they have a video that shows these men being tortured by Georgian police. The Georgian authorities claim that they do not hold the three in their custody and have expressed a willingness to cooperate on this issue with the European Union Monitoring Mission (EUMM).[60] Several meetings have been held with the participation of the EUMM and the Georgian and Ossetian sides at which the Georgian authorities have requested that the video tape be assessed by independent experts. However, as of July 2009, no agreement on this has been reached.

The Mayor of Tskhinvali has alleged to Amnesty International that the Georgian authorities continue to hold a number of imprisoned citizens of South Ossetia, and refuse to return them on grounds that they have been convicted of a criminal offence. However, according to the Georgian authorities, all prisoners held by Georgia have been handed over.[61]

The Russian government continues to have some concerns regarding missing persons. The Russian authorities are seeking information regarding Captain A.A. Koventsov, commander of a TU-22 MZ bomber, who they say is missing in action. In a separate development, in March 2009 the Russian side received 12 fragments of unidentified remains from Georgia, thought to be of Russian service personnel. The Russian authorities have reportedly requested that the Georgian authorities provide further information in relation to these remains. However, according to the Russian authorities, the Georgian side refuses to allow a meeting of experts to discuss this issue.[62]

5. INTERNATIONAL SCRUTINY

Following the end of hostilities, international organizations have played an important role in meeting the post-conflict needs of the people in the region, not only providing humanitarian assistance, but also carrying out human rights monitoring and conducting programmes aimed at contributing to stabilization.

The Council of Europe's Commissioner for Human Rights has made four trips to the region, in August, September and November 2008, and in February 2009, and reported publicly on issues arising. [63] Among other things, the Commissioner facilitated further releases and the exchange of persons held by parties to the conflict and, in early September, just after the end of the hostilities, spelled out six principles for ensuring protection of human rights and provision of humanitarian security.[64]

The Parliamentary Assembly of the Council of Europe (PACE) has made a number of demands of the parties to the conflict, and monitored their implementation or otherwise. Its Rapporteurs produced a major report in April 2009 on post-conflict developments which concluded that "Georgia has not yet fully complied with all of the Assembly's demands. Russia, for its part, has failed to comply with most of the demands and might even be seen as moving further away from the minimum conditions for meaningful dialogue."[65] Rapporteurs have subsequently carried out repeated visits and the PACE has adopted subsequent resolutions and recommendations aimed at promoting the respect and protection of human rights. The PACE continues to monitor the progress of the implementation of its recommendations by both the Russian Federation and Georgian authorities in reports that are subject to debate and made public. The PACE has invited the Committee of Ministers of the Council of Europe to develop a comprehensive action plan to ensure that the rights guaranteed under the ECHR are effectively secured for persons residing in South Ossetia (and Abkhazia).[66]

On 2 December 2008, an Independent International Fact-Finding Mission on the conflict in Georgia (IIFFM) was set up under the auspices of the European Union to conduct an investigation into the August 2008 conflict, with a sufficiently broad geographical and chronological scope to determine all possible causes of the conflict. The mandate of the mission is to investigate the origins and the course of the conflict, including violations in the conduct of the war and allegations of war crimes.[67] The IIFFM, headed by the Swiss diplomat Heidi Tagliavini and composed of lawyers, historians, military staff, and human rights experts, is expected to present its report by September 2009.

EU Monitors were deployed to Georgia in October 2008, following the decision by the EU to establish an autonomous civilian monitoring mission in Georgia.[68] The EUMM's current mandate – drawn up when the UN and OSCE missions were still operative -- is exclusively monitoring; the mission has no executive powers. The monitors have three different types of expertise: military, police and human rights/humanitarian.

Some of the 200 unarmed EU monitors based in Georgia conduct regular patrols near the ABL and in the area adjacent to South Ossetia controlled by Georgian authorities. There are

approximately 20 patrols each day, reporting on the security situation and the presence of military and police forces in the area, as well as human rights, gender issues and general grievances of the local population.[69] As noted above, the EUMM's mandate covers the entire territory of Georgia, including South Ossetia (and Abkhazia). However, the Russian and *de facto* South Ossetian authorities maintain that following recognition of the statehood of South Ossetia (and Abkhazia) by Russia and Nicaragua, the EU must negotiate with South Ossetia (and Abkhazia) as independent states for permission to deploy EUMM observers in those territories.[70] Currently the EU patrolling capacity in relation to South Ossetia covers 130 km along the ABL, and the monitors have no access to territories controlled or patrolled by South Ossetia and Russia. EUMM monitors have to go through check points when implementing their monitoring functions. While they are allowed to pass through Georgian checkpoints, they are not allowed to pass South Ossetian or Russian checkpoints. The limitations on access mean that the mission has no direct information regarding developments on the north side of the ABL. This is a serious impediment to the ability of the mission to fully and effectively carry out its monitoring function, thereby limiting its ability to contribute to the protection of human rights, achieving a reduction in tensions and promoting confidence-building. A further factor reducing the potential effectiveness of the EUMM is that neither its incident reports nor its general security assessments are made publicly available. Amnesty International considers that access of the monitors to both sides of the ABL is essential to enhance the capacity of the mission to monitor the human rights situation and contribute to the establishment of transparency, information exchange and reduction of tensions on the ground.

REDUCTION IN INTERNATIONAL MONITORING CAPACITY

On 31 December 2008, the mandate of the Organization for Security and Co-operation in Europe (OSCE) Mission to Georgia expired.[71] A separate mandate for 20 unarmed OSCE military monitors expired on 30 June 2009. The OSCE Mission had operated in Georgia from 1992, carrying an extensive mandate that balanced security monitoring and reporting tasks with activities to promote confidence building, conflict prevention and human rights. OSCE monitors patrolled both sides of the Georgia-South Ossetia conflict zone. Prior to the August 2008 conflict, the mission also operated a Field Office in Tskhinvali.[72]

The mandate of the UN Observer Mission in Georgia (UNOMIG)[73] expired on 15 June 2009. UNOMIG had been monitoring observance of the 1994 Moscow Agreement on the ceasefire and separation of forces between the Abkhaz and Georgian sides since 1993. UNOMIG's mandate included conducting regular patrols in the Kodori Valley to prevent incidents and to investigate and report on violations. UNOMIG also included a Human Rights Office for the promotion and protection of human rights in Abkhazia, staffed jointly by the OSCE and the Office of the High Commissioner for Human Rights (OHCHR), which reported to the High Commissioner for Human Rights.[74] During the period of UNOMIG's mandate the UN Secretary-General reported regularly on the situation in Abkhazia, including work the mission had undertaken with respect to human rights[75].

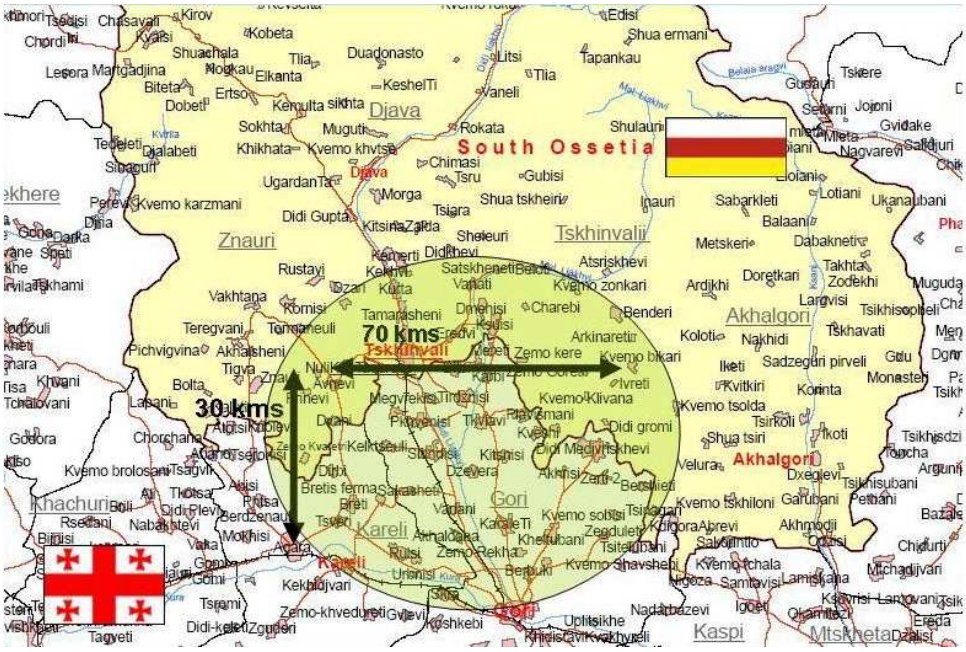
In both cases the extension of the mandates was opposed by the Russian Federation. The shutdown of the OSCE Mission and UNOMIG reduced the capacity for monitoring both

security and human rights throughout Georgia. In contrast with the EUMM, both the OSCE and UNOMIG had been able to work on both sides of the administrative borders in their respective areas of operation.

This leaves the EUMM as the sole international observer body operating in Georgia. While an important actor on the ground, the mission suffers limitations, as discussed above, owing to the restrictions on its access to the post-conflict zone and its strictly non-executive mandate.

Amnesty International considers that continued monitoring of the human rights situation throughout the conflict zone is essential for the security of civilian populations as well as for creation of durable conditions for safe and dignified return. Amnesty International considers that a strengthened presence of international monitors in the region, with a mandate that included public reporting, could contribute to easing tensions, prevent incidents, and provide reliable and unbiased information about the observance of human rights and the security of displaced persons to national and international bodies. A strengthened monitoring capacity could help improve security and human rights protection for those on both sides of the ABL affected by the war and its aftermath.

In this new context of reduced capacity for monitoring and public reporting, Amnesty International therefore considers that the EU could make an important contribution by carrying out an assessment of the current monitoring needs in Georgia, with the aim of seeing whether the working practices of the EUMM could be realigned to meet the gaps that have emerged in international scrutiny. This could include *inter alia* trial observations, prison monitoring and human rights promotion, as well as a function of public reporting.



Area patrolled by the EUMM, 130 kms on the Georgian side of the ABL with South Ossetia. © Courtesy of the EUMM in Georgia

6. ACCOUNTABLITY FOR HUMAN RIGHTS VIOLATIONS AND WAR CRIMES

RESPONSIBILITY TO INVESTIGATE AND PROSECUTE

The authorities of Georgia and Russia have an obligation under international law to ensure prompt, independent, impartial and thorough investigations of alleged violations of human rights and humanitarian law, and where appropriate to prosecute those reasonably suspected of committing such violations in proceedings that meet international standards of fairness. This includes the duty to ensure the investigation, prosecution and fair trial of anyone within their armed forces reasonably suspected of responsibility for such violations. The parties should also provide reparation for violations of humanitarian and human rights law, including restitution of property and payment of compensation to the victims of such violations, rehabilitation, satisfaction and guarantees of non-repetition.

Amnesty International has gathered significant evidence that war crimes and possibly crimes against humanity have been committed during the conflict and its aftermath. The same conclusion has been reached by other observers, including, for example, the PACE, which has concluded there is overwhelming evidence that both Georgia and Russia violated human rights and international humanitarian law.[76]

Georgian forces did not appear to take appropriate precautionary measures to protect civilians in their assault on Tskhinvali on the night of 7-8 August 2008. Dozens of civilians were killed during the assault, which also caused extensive damage to civilian infrastructure. Much of the damage was caused by GRAD rockets, a weapon known to be difficult to direct accurately and therefore not suitable for use in densely populated civilian areas.

In the aftermath of the Georgian withdrawal from South Ossetia, militia groups[77] loyal to the *de facto* South Ossetian authorities carried out the large-scale pillaging and arson of several Georgian-majority settlements in South Ossetia, and threatened, abused and in some cases killed the residents there. Russian forces reportedly failed to take adequate action to prevent these actions, in settlements which were under Russian military control at the time.

In addition Russian aerial and artillery attacks, while mostly appearing to have targeted Georgian military positions outside of built-up areas, also hit villages and towns amid reports that some attacks may have been indiscriminate, or directly targeted civilians and/or civilian infrastructure. [78]

Amnesty International is also concerned by the use of cluster bombs by both Georgia and Russia in the course of the conflict. The use of cluster bombs in the conflict has been

acknowledged by Georgia, but denied by Russia. Georgian authorities admitted using cluster munitions in two different locations on 8 August.[79] Russian forces reportedly used cluster bombs in the Gori and Kareli districts on 8-12 August.[80] Neither Georgia nor Russia is a party to the Convention on Cluster Munitions opened for signature in December 2008 (to date 96 states have signed, seven have ratified). Georgia and Russia should become parties to the Convention, and in the meantime act in the spirit of the Convention.

INDIVIDUAL CRIMINAL RESPONSIBILITY

On 9 August 2008, the Prosecution Service of Georgia opened an investigation into alleged violations committed during the Russian-Georgian war in August 2008. The investigation covers Articles 411 (deliberate violation of humanitarian law provisions during internal and international armed conflicts) and Article 413 (other violations of international humanitarian law, including looting, illegal acquisition and destruction of civilian property) of the Criminal Code of Georgia. On August 11, another criminal case was opened in relation to the looting of houses, under Article 413 of the Criminal Code of Georgia. The two investigations have been merged into one criminal case.

According to Georgian authorities, the investigations deal with all violations committed during, and in the aftermath of, the conflict, regardless of the nationality of the perpetrator.

Up to 4,000 initial statements have been taken in the course of the investigations, including from 13 Georgian prisoners of war and 159 civilian detainees. The investigations have been carried out in conflict-affected areas currently under Georgian control. The Georgian authorities have cited the lack of access to the affected areas in the Tskhinvali region and South Ossetia generally as a serious impediment to the investigation. As of July 2009, investigations are still on-going and no charges had been filed against any individual in connection with these investigations.

According to the Russian government, the role of the Russian Prosecutor General in South Ossetia during the conflict was restricted to oversight of the legality of the behaviour of Russian troops.[81] The Russian Investigative Committee of the Office of the General Prosecutor and the Military Prosecutor of the Russian Federation concluded that there were no instances of illegal behaviour (including violations of international humanitarian and human rights law) by Russian military personnel in the course of the conflict, including against civilians of either side.[82] The Investigative Committee of the Office of the General Prosecutor of the Russian Federation also gathered information and evidence about crimes allegedly committed by Georgian armed groups in South Ossetia in August 2008, including alleged genocide committed by Georgian troops in relation to Russian citizens.[83]

To date, no persons have been charged by the Russian authorities in relation to violations of international or national law committed in the context of the conflict and its immediate aftermath.

According to the information provided to Amnesty International by the *de facto* South Ossetian authorities, 81 violations of administrative law and 5 of criminal law cases have been brought to trial and successfully prosecuted by South Ossetian authorities against

individuals, mostly in relation to incidents of robbery and theft in villages with a predominantly Georgian population. [84]

THE INTERNATIONAL CRIMINAL COURT

The prosecutor of the International Criminal Court (ICC), Luis Moreno-Ocampo, confirmed on 12 August 2008 that his office had received "communications" on the situation between Georgia and Russia.[85] The ICC tries individuals charged with grave crimes under the Rome Statute, including genocide, crimes against humanity and war crimes. The Office of Prosecutor of the ICC is conducting a preliminary analysis to determine whether to launch an investigation into the situation.

STATE RESPONSIBILITY: JURISDICTION AND DE FACTO CONTROL

Both international humanitarian law, including the 1949 Geneva Conventions and their Protocols and customary law, and international human rights law, including, among other treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), are applicable to the conflict between Georgia and the Russian Federation and its aftermath.

Under international human rights law, Georgia and Russia have an obligation to secure the rights and freedoms guaranteed under the ICCPR and ECHR to all persons within their jurisdiction. The concept of jurisdiction has primarily a territorial meaning in international law. However, the Grand Chamber of the European Court pointed out, in the case of *Ilascu and Others v Moldova and Russia*, that there are circumstances which may limit a state's ability to exercise its authority on part of its territory.[86] These circumstances may include belligerent occupation of some or all of the territory of the state or other loss of effective control over all or part of the territory or a person, such as another state's supporting the installation of a separatist state within the territory of the state concerned. In such circumstances, the state (here Georgia) remains liable to take all appropriate measures which are still within its power to guarantee those within such territory their human rights.

It is also now well-established by international human rights standards and jurisprudence that jurisdiction is not limited to territory, but it is also engaged beyond territorial zones, meaning a state's obligations under international law can extend beyond its physical territory.[87] States (in this case Russia),have jurisdiction in areas outside their territory, where the state exercises effective or *de facto* control over territory or over individuals[88] beyond its borders, including in situations of occupation.[89] In the terms of the conflict between Georgia and Russia, Georgia, it appears, has been prevented from exercising its full authority and control over areas of South Ossetia. At the same time, Russia may be considered to have had *effective control* over territories it occupied during the course of the August 2009 conflict and in its aftermath. Russia therefore bears responsibility for violations committed by its forces, or at the behest of its authorities, in South Ossetia.[90] Georgia bears responsibility for violations of international law committed by its forces or at the behest of its authorities.

It should be noted that proceedings before the European Court of Human Rights and the International Court of Justice described below concern state liability for violations of international human rights law, and not the individual criminal responsibility of leaders, commanders or combatants for specific violations of international humanitarian or criminal law.

EUROPEAN COURT OF HUMAN RIGHTS

Thousands of applications have been filed with the European Court of Human Rights by applicants seeking redress against either Georgia or Russia for alleged violations of obligations under the ECHR in the context of the conflict. The cases remain pending before the Court.

In particular, more than 3,300 applications have been filed by South Ossetians against Georgia with the Court, alleging that Georgia violated provisions of the ECHR. On 16 January 2009, the Court announced it would urgently examine seven of the applications by South Ossetians against Georgia, which it considered representative of the total number of applications filed.

As of 18 March 2009, over 100 cases, involving some 600 Georgian applicants, had been filed in the Court against Russia, alleging that the Russian Federation violated its obligations under the ECHR.

In addition, Georgia filed an inter-state complaint against Russia before the Court alleging violations of Articles 2 (right to life) and 3 (prohibition of inhuman and degrading treatment) of the ECHR and Article 1 of Protocol No. 1 (protection of property) to the Convention. In the context of this complaint, on 12 August 2008 the Court indicated interim measures to both Russia and Georgia under Rule 39 of the Rules of the Court, applicable where the Court considers a situation gives rise to a real and continuing risk of serious violations of the Convention. With a view to preventing such violations, the Court called upon both parties to the conflict to comply with their engagements under the ECHR, particularly in respect of Articles 2 and 3 of the Convention. The Court also requested both governments to inform the Court of the measures taken to ensure full compliance with the Convention. The Court has clarified that the failure of a state to comply with interim measures indicated by the Court "is to be regarded as preventing the Court from effectively examining the applicant's complaint and as hindering the effective exercise of his or her right and, accordingly, as a violation of Article 34 [of the ECHR]."[91]

INTERNATIONAL COURT OF JUSTICE

On 12 August 2008, Georgia submitted an application before the International Court of Justice (ICJ - the principal judicial organ of the United Nations which hears cases brought against individual States), instituting proceedings against the Russian Federation. The proceedings concern the Russian Federation's international responsibility for "actions on and around the territory of Georgia" in the period from 1990 to August 2008, which Georgia submits were in breach of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD).[92] Georgia also invoked Article IX of the Genocide

Convention as an additional basis of jurisdiction.

In its pleadings before the ICJ, Georgia is alleging that Russia's intervention in South Ossetia and Abkhazia, which began on 8 August 2008, is what it considers to be a "third phase" of intervention in violation of Russia's obligations under the CERD.[93] Georgia has requested the ICJ to order "the Russian Federation to take all steps necessary to comply with its obligations under [the] CERD", including articles 2[94], 3[95], 4[96], 5[97] and 6.[98] Russia argued that the ICJ had no jurisdiction over Russian actions in Georgia and that there were no grounds for provisional measures because Russia was not engaging in prohibited discrimination. However, in the context of considering the request by Georgia that the Court issue interim measures in the case, the ICJ ruled in October 2008 that it has *prima facie* jurisdiction under Article 22 of CERD (dispute resolution clause) to which both Russia and Georgia were state parties without reservations.[99] Moreover, the Court indicated provisional measures with respect to both Russia and Georgia under Article 41 of the ICJ's Statute (which grants the Court the power to indicate provisional measures which ought "to be taken to preserve the respective rights of either party," in other words, to prevent irreparable damage to an applicant state. Under the provisional measures, the Court ordered that both parties within South Ossetia and Abkhazia in Georgia: "1. Refrain from any act of racial discrimination against persons, groups of persons or institutions; 2. Abstain from sponsoring, defending or supporting racial discrimination by any persons or organizations; 3. Do all in their power, whenever and wherever possible, 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 4. To stop all public authorities or institutions under their control or influence from engaging in acts of racial discrimination against persons, groups of persons or institutions." The case remains pending with the Court; Georgia's initial pleadings are due to be filed with the ICJ in September 2009 and Russia's counter pleadings are due in July 2010.



Abandoned Georgian enclave between Tshkinvali and Djava in South Ossetia, where houses were reportedly torn down and looted. July 2009, South Ossetia. © Amnesty International

7. RECOMMENDATIONS

In its November 2008 report, *Civilians in the Line of Fire: The Georgia-Russia Conflict* (Index: EUR 04/005/2008), Amnesty International made a number of recommendations to the parties to the conflict and called on them to comply in order to improve security in the region, to improve the lives of displaced people and to facilitate and conduct effective investigations into human rights violations. While some of the recommendations have been implemented (such as partial clearance of mines) regrettably there has been little improvement in some key areas. One year on from the outbreak of the conflict in August 2008, Amnesty International calls on the parties to implement the following recommendations.

Amnesty International calls upon the Georgian and Russian governments:

In relation to displaced people:

- To agree, through the discussions currently under way in Geneva, measures for the safe, voluntary and dignified return of refugees and displaced people as soon as possible;

- To ensure the security of all those residing in areas affected by the conflict and those displaced, including those wishing to return to territories under their effective control, without regard to their ethnic affiliation;

- To ensure that internally displaced persons are fully informed as to their rights to return, to resettlement or integration with local society, or to permanent resettlement elsewhere in the country, according to each individual's voluntary choice;

- To take steps to ensure respect and protection of the social and economic rights of displaced people and those who return to their original places of residence, especially in terms of developing the initial humanitarian response measures into durable solutions;

- To ensure the right to safe and adequate housing of the displaced and those who return to their places of residence;

- To ensure the right to an adequate standard of living, including by taking steps to address the issues of sustainable livelihoods for displaced people and people who return to conflict affected areas;

- To ensure that all humanitarian aid and essential supplies reach persons in need;

- To create a database of displaced people and refugees, that would enable an accurate assessment of both the wishes of these groups, for example in relation to returning to their homes, and their needs in relation to housing, financial assistance, employment, access to resources and other relevant issues; to ensure adequate safeguards are in place with regard to

access to the database to prevent misuse of the information;

- To provide regular and up-to-date information to internally displaced persons on the security situation in their home areas so as to facilitate informed and voluntary return in safety and dignity for those who wish to do so and prevent repeat displacement.

In relation to the investigation of human rights violations:

- To ensure the prompt, independent, thorough and impartial investigation, in accordance with international standards, into allegations that their respective forces committed crimes under international law during the conflict, including war crimes. Such investigations should include investigation of allegations of crimes of omission, for instance, the failure to prevent killings, beatings, looting, and arson in areas under their control, as well as allegations of crimes of commission;

- Wherever there is sufficient admissible evidence, to ensure that anyone reasonably suspected of crimes under international law is brought to justice in proceedings which comply fully with international fair trial standards;

- To ensure full and effective reparation for victims through access to national courts and reparation programs, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

In relation to security and international monitoring:

- To cooperate fully with all international monitoring teams so as to facilitate the voluntary and durable return of displaced persons, in safety and with dignity as soon as possible;

- To co-operate fully with the EU Monitoring Mission and to ensure access by its monitors to South Ossetia (and Abkhazia);

- To implement measures to ensure respect and protection of the rights of those seeking to cross the ABL, in particular their right to life and freedom of movement; the right of internally displaced people to return; and rights to an adequate standard of living, liberty and security of the person.

- To allow unimpeded access to the region for humanitarian, human rights and monitoring purposes;

- To ensure improved law enforcement and protection of human rights for the local population in the conflict affected areas, and especially of these living in proximity to the ABL.

In relation to military forces, unexploded ordnance and cluster bombs:

- To ensure that all military and police forces comply with international human rights law and take appropriate measures to protect human rights;

- To continue to facilitate the on-going de-mining efforts; to speedily ensure clearance of cluster weapon munitions and make all areas safe for civilians; both governments should also continue to ensure that the public is made aware of the dangers of unexploded ordnance, including through public information campaigns;

- To announce a moratorium on the use of all cluster weapons; and ratify the Cluster Weapons Convention.

Amnesty International calls upon the South Ossetian *de facto* administration:

- To take all necessary lawful action - including through public statements and law enforcement measures conducted in a manner that respects and protects human rights --, to ensure that there are no further attacks, including the unlawful seizure and destruction of property and looting, against ethnic Georgians;

- To investigate violations and abuses of international human rights and humanitarian law alleged to have been committed by South Ossetian forces, militia and individuals;

- To investigate and prosecute those responsible for the destruction or looting of houses and ensure that the homes, property, belongings and physical safety of all persons regardless of their ethnic origin are protected;

- To agree to the deployment of international human rights monitors to South Ossetia, including the EUMM, and to cooperate fully with them;

- To ensure full and effective reparation for victims through access to national courts and reparation programmes, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition;

- To ensure the safe, voluntary and durable return in dignity of those displaced from the territory of the former South Ossetian autonomous region now under its control, and publicly affirm the right of return of those displaced;

- To ensure the adequate and equal access to rehabilitation assistance and aid, both material and financial, to all residents without discrimination.

Amnesty International calls upon the international community (including the European Union)

- To ensure that effective judicial and administrative mechanisms are established to provide full and effective reparation for violations of international law, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition;

- To ensure that states exercise jurisdiction, including, where necessary, universal jurisdiction, over suspects of crimes under international law, including war crimes committed in the context of this conflict;

- To end the use, stockpiling and transfer of all cluster weapons, by private companies and

individuals as well as states, and support the Cluster Weapons Convention.

- To continue efforts to seek access to all Georgian territory for the EUMM, including to Abkhazia and South Ossetia.

- To conduct an assessment of the current monitoring needs in Georgia, following the closure of the UNOMIG and OSCE missions, including through examining the mandate and/or working practices of the EUMM with a view to addressing gaps in international monitoring and public reporting;

- To ensure that EUMM staff have the relevant experience, training and qualifications to carry out the mission's mandate with regards to human rights and gender issues;

Appendix 1 - A chronology: After the war

August 2008
On 12 August, a ceasefire was agreed between Russia and Georgia, brokered by the EU. The agreement envisaged the opening of international discussions on the security situation, as well as the voluntary return of displaced persons to their homes, in accordance with "recognized principles and practice of post-conflict settlement."

On 12 August, the European Court of Human Rights, in relation to an inter-state complaint brought by Georgia against Russia, alleging violations of Articles 2 (right to life) and 3 (prohibition of inhuman and degrading treatment) and Article 1 of Protocol No. 1 (protection of property) of the European Convention on Human Rights, indicated interim measures to both Russia and Georgia. The Court called upon both parties to the conflict to comply with their engagements under the ECHR, particularly in respect of Articles 2 and 3 of the Convention, and requested both Governments to inform the Court of the measures taken to ensure full compliance with the Convention.

On 26 August 2008, President Medvedev signed decrees recognising the independence of Georgia's breakaway regions of Abkhazia and South Ossetia following the motions of 25 August 2008 passed by the Federation Council and State Duma to recognise the independence of the two regions and establish diplomatic relations.

September 2008
On 3 September, Georgia severed diplomatic relations with the Russian Federation.

On 8 September, an accord was reached on implementing measures for the ceasefire agreement of 12 August 2008.

On 15 September, the Council of European Union established an autonomous civilian European Union Monitoring Mission in Georgia (EUMM).

October 2008
On 1 October, approximately 200 EUMM monitors from 22 EU Member States were deployed to Georgia.

On 15 October, the agreement on the Collective Peacekeeping Forces of the Commonwealth of Independent States (CIS), in place in the conflict zone for 14 years, was officially terminated by decision of the Ministers for Foreign Affairs of the CIS.

On 15 October, the first Geneva meeting of international discussions, mediated by the EU, the OSCE and the UN, was held between delegations from Georgia, the Russian Federation and the United States, with Abkhaz and South Ossetian representatives participating in the discussions.

On 17 October, the International Court of Justice issued interim measures against both Georgia and Russia, in the framework of its consideration of the application submitted on 12 August 2008 by Georgia against the Russian Federation concerning the latter's "actions on and around the territory of Georgia" in the period from 1990 to August 2008.

On 23 October, the Parliament of Georgia adopted a Law on Occupied Territories of Georgia which declared South Ossetia and Abkhazia "occupied territories" and the Russian Federation a "military occupier." The law, signed on 31 October by the President of Georgia, declared null and void all legislative and administrative acts issued by the *de facto*

authorities in Abkhazia and South Ossetia. It also restricts access to these territories and prohibits economic and financial activities that do not comply with Georgian law. These restrictive provisions raised concerns within the international community with regard to humanitarian access to the conflict-affected areas.

November 2008
On 4 November, the Parliament of the Russian Federation ratified Russian-South Ossetian and Russian-Abkhaz treaties on friendship, cooperation and mutual assistance. Russian officials stated that the presence of Russian armed forces in Abkhazia and South Ossetia would be based on these documents and announced plans for the establishment of military bases and the deployment of 3,700 troops in Abkhazia and South Ossetia.

On 18 and 19 November, the second round of Geneva talks was held. Two working groups — on security and stability, and on refugees and internally displaced persons — were established. Agreement was reached to focus on practical issues and to address continuing security incidents on the ground by creating an Incident Prevention and Response Mechanism (IPRM).

December 2008
On 2 December 2008, an Independent International Fact-Finding Mission was set up under the auspices of the European Union to conduct an investigation into the August 2008 conflict. The IIFFM is expected to present its report by September 2009.

On 22 December, the OSCE participating states failed to reach consensus on a renewal of the mandate for the OSCE mission in Georgia, which expired on 31 December.

On 17 and 18 December, the third round of Geneva talks was held. The working group on security and stability discussed a proposal for a joint IPRM mechanism. The working group on refugees and internally displaced persons discussed concrete steps to improve the living conditions of the displaced population.

February 2009
On 17-18 February, the fourth round of the Geneva talks was held reaching an agreement on setting up the IPRM.

April 2009
On 16 April, the European Court of Human Rights held a Chamber hearing in the case of *Georgia v. Russia (No. 1).* The case concerned the alleged harassment of the Georgian immigrant population in the Russian Federation following the arrest in Tbilisi, on 27 September 2006, of four Russian military personnel by the Georgian authorities on suspicion of espionage against Georgia.

On 23 April, the first meeting under the Geneva-agreed IPRM took place in Ergneti, between the checkpoints on ABL. The meeting was attended by representatives of the Georgian, Russian and *de facto* South Ossetia authorities and was facilitated by the EUMM and OSCE.

On 27 April, a delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) began an eight-day visit to Abkhazia (Georgia). The *de facto* authorities in Abkhazia were said to have fully co-operated with the delegation, which was granted access to all places of deprivation of liberty which it wished to visit and was able to interview, in private, persons deprived of their liberty. The CPT was refused access to South Ossetia.

On 30 April, Russian President Dmitri Medvedev and the *de facto* Presidents of South Ossetia and Abkhazia – Eduard Kokoity and Sergei Bagapsh – signed an agreement on co-operation on border protection. These agreements allowed for joint protection by South Ossetian, Abkhazian and Russian forces of the respective *de facto* borders between the territories administered by the *de facto* authorities of South Ossetia and Abkhazia and the rest of Georgia.

May 2009
On 2 May, the deployment of Russian border guards in the territories of South Ossetia and Abkhazia began.

On 14 May, the Chairperson of the OSCE Permanent Council announced that the OSCE Chairmanship had suspended negotiations on a continued OSCE presence in Georgia until further notice.

On 19 May, the fifth round of Geneva talks on security and stability took place. The parties discussed security arrangements and humanitarian concerns. Participants agreed to a joint needs assessment team, led by an international expert under the auspices of the OSCE, to look at the repairs necessary to guarantee water supplies.

On 29 May, the second meeting under the IPRM took place in Dvani (between two checkpoints on the ABL). The issues discussed included access to cemeteries and places of worship, access to fields and pastures, and the gas supply to Akhalgori.

On 31 May, elections to the *de facto* Parliament were held in South Ossetia. According to the election results made public on 1 June, the Party of Unity of *de facto* President Kokoity won with 46.3% of the votes. The People's Party received 22.6% of the votes and the Communist Party 22.2% of the votes. The Fatherland Party failed to reach the 7% threshold to enter the *de facto* Parliament. Leaders of the South Ossetia opposition claimed violations and intimidation of voters, and questioned the official figures of voter turnout of over 80%.

June 2009
On 11 June, a third scheduled meeting under the IPRM was postponed. The South Ossetia side refused to take part until it received information about the fate of three young South Ossetians who went missing in October 2008.

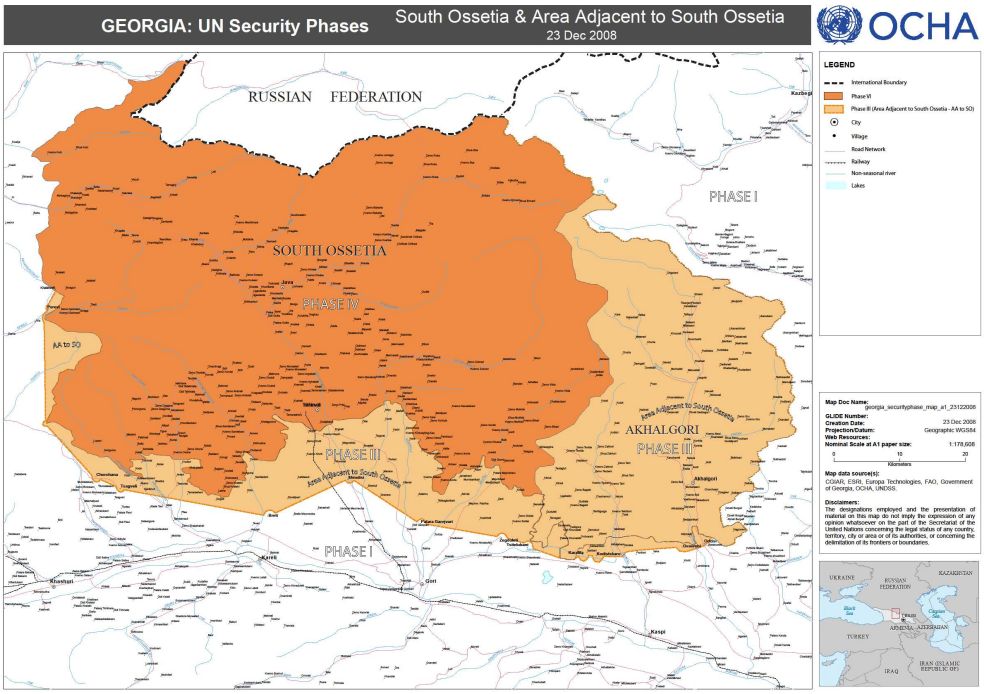
On 15 June, the United Nations Observer Mission in Georgia (UNOMIG) closed down after Russia exercised its right to veto a draft Resolution proposing a two-week technical roll-over of UNOMIG, which had operated in the region for nearly 16 years.

On 23 June, a third scheduled meeting of the IPRM did not take place when the South Ossetian side refused to take part.

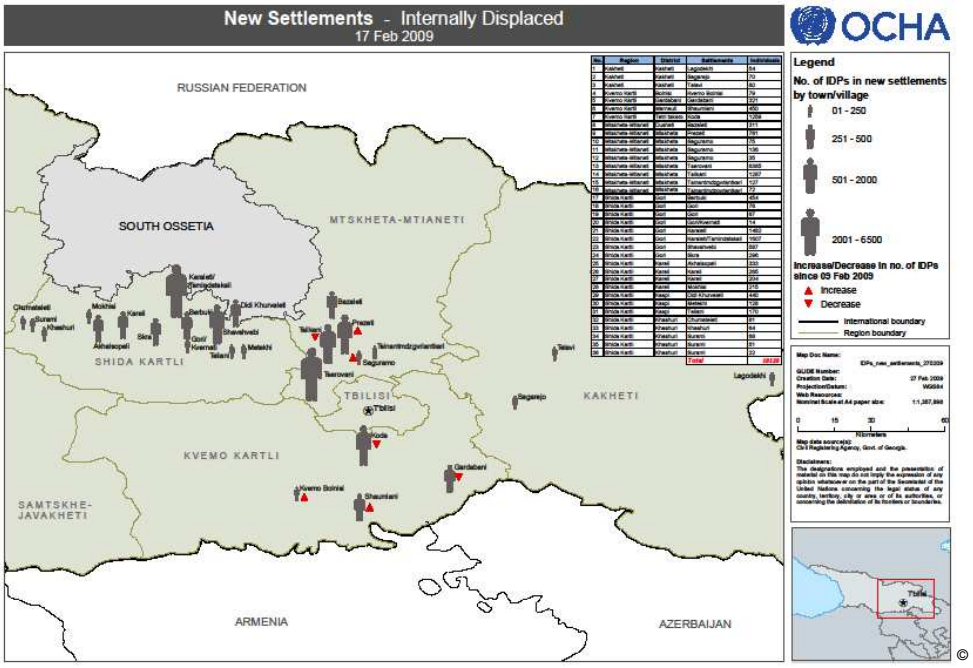
On 30 June, the OSCE mission to Georgia was closed down.

July 2008
On 1 July, a sixth round of talks was held in Geneva. At the working group on security issues, the Georgian and Russian sides exchanged written proposals on the non-use of force. At the working group on humanitarian issues, negotiators agreed to move towards a comprehensive plan to address displacement, including the issues of ensuring adequate conditions conducive to returns, such as security, confidence building and human rights; the socio-economic rehabilitation of infrastructure; and the provision of public services. It was agreed to reconvene for the seventh round of talks on 17 September.

Appendix 2 – Map of South Ossetia and area adjacent to South Ossetia



Appendix 3 – Map of new settlements for internally displaced persons in Georgia



© Appendices 1 and 2 courtesy of the UN Office for the Coordination of Humanitarian Affairs

1 UNHCR, "Revised figures push number of Georgia displaced up to 192,000," 12 September 2008, available: http://www.unhcr.org/48ca8d804.html

2 For the purposes of this report the term South Ossetia is used to refer to the territory currently under the control of the de facto authorities there, and should not in any way be interpreted as recognition of the territory de jure.

3 UNHCR, "Displacement Figures and Estimates - August 2008 Conflict" updated in May 2009.

4 Displaced people, or internally displaced persons (IDPs) are "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border." (Guiding Principles on Internal Displacement, Introduction, para. 2).

5 UNHCR, "Displacement Figures and Estimates - August 2008 Conflict" updated in May 2009.

6 Civilians in the Line of Fire: The Georgia-Russia Conflict, Amnesty International, 2008 (Index: EUR 04/005/2008).

7 The report also incorporates the information supplied to Amnesty International by the Russian, Georgian and the de facto South Ossetia authorities in response to the letters sent seeking updated information on number of issues in advance of publication.

8 UNHCR, "Displacement Figures and Estimates - August 2008 Conflict" updated in May 2009

9 UNCHR, "Georgia Country Operations Profile". Available at http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e48d2e6

10 UNHCR, "Displacement Figures and Estimates - August 2008 Conflict" updated in May 2009

11 UNHCR, "Displacement Figures and Estimates - August 2008 Conflict" updated in May 2009

12 UNHCR, "Displacement Figures and Estimates - August 2008 Conflict" updated in May 2009

13 UNHCR, "Displacement Figures and Estimates - August 2008 Conflict" updated in May 2009

14 According to UNHCR few ethnic Georgians, mostly elderly and those with mixed marriages have returned to South Ossetia. However, according to the Mayor of Tskhinvali, Robert Guliev, no ethnic Georgians had returned to South Ossetia (Amnesty International interview with Robert Guliev, 7 July 2009).

15 UNHCR, "Displacement Figures and Estimates - August 2008 Conflict" updated in May 2009

16 Amnesty International interviews with residents of Tserovani and Tsilkani, July 12, 2009

17 Transparency International in Georgia. "Internally Displaced Persons in Georgia: Issues of Concern." Tbilisi 3 April 2009. Available at http://www.transparency.ge/files/215_500_756716_IDPs%20in%20Georgia%20-%20Issues%20of%20Concern%20(TI%20Georgia)%20April%202009%20ENG.pdf.

18 According to the United Nations Children's Fund (UNICEF), 47% of IDPs in the settlements and collective centres lack access to adequate water for daily use as of June 2009. On July 2009 UNICEF with support from SIDA launched a project to assist the Georgian government in addressing water, sanitation and hygiene needs of the IDPs in 21 collective centres and 35 settlements (http://www.reliefweb.int/rw/rwb.nsf/db900SID/EGUA-7TWMSS?OpenDocument).

19 UNHCR, "Displacement Figures and Estimates - August 2008 Conflict" updated in May 2009

20 Amnesty International interviews with local inhabitants in villages adjacent to South Ossetia.

21 "The humanitarian consequences of the war between Georgia and Russia", PACE Resolution 1648, 28 January 2009.

22 Information supplied by Amnesty International by the Russian Ministry of Foreign Affairs, 14 July 2009. According to the Russian government, at the start of the conflict, Russia was home to 12,650 registered displaced persons who had left Georgia as a result of conflicts in 1989-1992

23 Information supplied by Amnesty International by the Russian Ministry of Foreign Affairs, 14 July 2009. See also, Parliamentary Assembly of the Council of Europe, "Resolution 1647 (2009) Implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia." Available at http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/ERES1647.htm

24 Tskhinvali is known to Ossetians as Tskhinval

25 Amnesty International interview with the Mayor of Tskhinvali, Robert Guliev, 7 July 2009.

26 Amnesty International interview with Speaker of the South Ossetian Parliament, Stanislav Kochiev, 7 July 2009.

27 Amnesty International interview with Speaker of the South Ossetian Parliament, Stanislav Kochiev, 7 July 2009.

28 Civilians in the Line of Fire: The Georgia Russia Conflict, (AI Index: EUR 04/005/2008, November 2008).

29 Pavel Felgenhauer "Russian Military Chief Accuses Georgia of Preparing Aggression," Jamestown Foundation Eurasia Daily Monitor Volume: 6 Issue: 117., available at http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5Btt_news%5D=35140

30 The European Union Monitoring Mission (EUMM) is an autonomous civilian monitoring mission in Georgia set up by the Council of EU to monitor the implementation of the peace agreements of 12 August and 8 September, and to contribute to stabilisation and normalisation in post-conflict Georgia. By October 1st -, EU succeeded to deploy more than 200 monitors from 22 Member States on the ground. More information available at: http://www.eumm.eu/en/about_eumm

31 Twenty unarmed military monitoring officers were deployed to the areas adjacent to South Ossetia following the 19 August 2008 decision of the OSCE Permanent Council in Vienna to increase the number of OSCE monitors in the Mission to Georgia up to 100. The military monitors ceased their operation on 30 June 2009 following the expiration of their mandate. http://www.osce.org/georgia/33133.html

32 Point one of the August 12 Six-Point-Plan ceasefire accord. In April 2009, the mission pronounced itself 'very satisfied' with Georgian compliance with a pledge to limit armaments in areas bordering South Ossetia and Abkhazia (for the purposes of the report the terms ABL and administrative border will be used interchangeably).

33 The talks are conducted pursuant to the six-point agreement of 12 August 2008 and subsequent implementing measures of 8 September 2008 and are co-chaired by UN, EU and OSCE. Delegations from Georgia, the Russian Federation and the United States, as well as Abkhaz and South Ossetian representatives participate in the discussions.

34 UN Security Council, Report of the Secretary-General on the situation in Abkhazia, Georgia, pursuant to Security Council resolution 1839 (2008), 3 February 2009, S/2009/69, available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Georgia%20S2009%2069.pdf

35 Amnesty International meeting with the representatives of the Ministry of Internal Affairs. Tbilisi, July 9, 2009.

36 The Ministry of Foreign Affairs of Georgia "Statement of the Ministry of Foreign Affairs of Georgia on the Sixth Round of the Geneva Discussions" available at: http://www.mfa.gov.ge/index.php?lang_id=ENG&sec_id=30&info_id=10574

37 The Ministry of Foreign Affairs of Georgia "Statement of the Ministry of Foreign Affairs of Georgia on the Sixth Round of the Geneva Discussions" available at: http://www.mfa.gov.ge/index.php?lang_id=ENG&sec_id=30&info_id=10574

38 Amnesty International interviews with residents of the villages in Karaleti, Ditsi, Ergneti and Karbi, Mereti.

39 Council of Europe: Commissioner for Human Rights, "Report on Human Rights Issues Following the August 2008 Armed Conflict, by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe: Tbilisi, Sukhumi and Gali, 8 to 12 February 2009", 15 May 2009, CommDH(2009)22, available at: https://wcd.coe.int/ViewDoc.jsp?id=1444917&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679).

40 Information supplied to Amnesty International by the Georgian Ministry of Foreign Affairs, 15 July, 2009.

41 Information supplied to Amnesty International by the Georgian Ministry of Foreign Affairs, 15 July, 2009.

42 The official website of the President of Russia."Agreement between the Russian Federation and the Republic of South Ossetia on joint efforts in protecting the state border of the Republic of South Ossetia. The Kremlin, Moscow. April 30, 2009," Available at http://www.kremlin.ru/text/docs/2009/04/215691.shtml

43 Amnesty International meeting with EUMM monitors in Gori on 8 July, 2009.

44 EU Monitoring Mission in Georgia "EUMM's Mandate and Strategy" available at http://www.eumm.eu/en/about_eumm/eumms_mandate

45 Amnesty International interview with EUMM ground staff, Gori, 8 July, 2009.

46 Following the August 2008 war the Russian and de facto South Ossetian authorities who are in de facto control the region previously controlled by the Georgian authorities reportedly changed the name of the town from Akhalgori to Leningori.

47 Council of Europe: Secretary General, "Report on the human rights situation in the areas affected by the conflict in Georgia . Second report (April – June 2009)", 30 June 2009, SG/Inf(2009)9 available at: https://wcd.coe.int/ViewDoc.jsp?id=1466203&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75

48 Georgian authorities cited violation of the law "On Occupied Territories". See "Russian citizen detained in Georgia", The Georgian Times. 15 June 2009, available at:http://www.georgiatimes.info/en/news/16594.html.

50 Amnesty International interview with the Integrated Mine Action Programme (IMAP) in Georgia.,Tbilisi, July 14 2009.

51 According to information supplied to Amnesty International by the government of Georgia, 27 armed attacks were reported following the end of hostilities from August 2008 to June 2009, with the latest attack taking place in June.

52 Amnesty International interviews with the displaced persons and returnees in the area adjacent to South Ossetia in Georgia, July 2009.

53 International Crisis Group (ICG), Georgia-Russia: Still Insecure and Dangerous, 22 June 2009, Europe Briefing N°53, available at: http://www.crisisgroup.org/home/index.cfm?id=6171

54 In the case of Russia, this responsibility derives from the 1907 Hague Convention (IV) on the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land as well as the Fourth Geneva Convention of

1949 relative to the Protection of Civilian Persons in Time of War. In particular, Article 42 of the Hague Convention Regulations , defining occupation and article 43 requiring the occupying power to ensure as far as possible public order and safety while respecting, unless absolutely prevented, the laws in force in the country. The duties of occupying powers are furthermore set out in the provisions of the Regulations including, among others, Article 46 on respecting the lives of persons and private property, and prohibiting the confiscation of private property; Article 47 prohibiting pillage, as well as provisions of the Fourth Geneva Convention including, among others, Article 29 on the responsibility of powers in de facto control of territory; Article 27 on protection of protected persons from all acts of violence without discrimination, Article 33 and Article 53.

55 UN Security Council, Security Council resolution 1866 (2009) [on extension of the mandate of the UN Observer Mission in Georgia (UNOMIG)], 13 February 2009, S/RES/1866 (2009), available at: http://www.unhcr.org/refworld/docid/499d23b12.html [accessed 21 July 2009].

56 The European Commission for Democracy Through Law (the Venice Commission) reviewed the law, and found inter alia that "the criminalisation of irregular entry into the occupied territories with no exclusion of humanitarian aid and no exception for emergency situations, the restriction and criminalisation of economic activities necessary for the survival of the population [...] as well as a (potential) restriction and criminalisation of humanitarian aid is contrary to the rule of customary international law."

57 According to the information supplied to Amnesty International by the Ministry of Defence of the Russian Federation 14 July 2009, 85 Georgian citizens were detained in the course of military operations by Russian and South Ossetian forces. On 27 August 2008 all citizens of Georgia detained by the Russian authorities were passed over to the Georgian authorities. 13 Russian troops were handed to the Russian authorities by the Georgian side.

58 According to the information supplied to Amnesty International by the Ministry of Foreign Affairs of Georgia 15 July 2009, the names of persons detained were: Zurab Kobaladze, detained on November 6, 2008, who according to his family members is in need of continuous medical treatment; Demur Tsikhladze and David Kapanadze - detained on February 27, 2009 and Alan Odikidze – detained on June 2, 2009.

59 According to the information supplied to Amnesty International by by the de facto South Ossetian Authorities on 14 July 2009 the names of the missing persons were: Khugaev, Pliev and Khachirov – the youngest, Khachirov, was reportedly a teenager born in 1992.

60 European Union: European Commission, Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament "Implementation of the European Neighbourhood Policy in 2008": Progress Report Georgia, 23/04/2009 SEC(2009) 513/2, available at: http://eu-integration.gov.ge/uploads/ProgressReportGeorgia231_04_09en.pdf [accessed 23 July 2009]

61 According to the information supplied to Amnesty International by the Georgian authorities July 15, 2009, they handed over a total of 47 individuals in exchange for the 159 Georgian civilians and 39 POWs held under Russian authority: five POWs, 32 members of "separatist illegal armed groups", one apparent mercenary, and nine convicted criminals requested by Russian authorities – according to the Georgian authorities these last had been prisoners serving sentences in Georgia for criminal convictions committed before and unrelated to - the war).

62 Information supplied to Amnesty International by the Russian Ministry of Foreign Affairs, 14 July 2009.

63 See, i.a., "Special Follow-Up Mission to the Areas Affected by the South Ossetia Conflict: Implementation of the Commissioner's six principles for urgent human rights and humanitarian protection, Thomas Hammarberg, Commissioner for

Human Rights of the Council of Europe, 12-14 November 2008, Tblisi, Tskhinvali and Gori, CommDH(2008)37, Strasbourg, 16 December 2008.

64 After an eight-day mission to Vladikavkaz, Tskhinvali, Gori, Tbilisi and Moscow in August 2008, the Human Rights Commissioner of the Council of Europe, Thomas Hammarberg, drew up six principles for ensuring human rights and providing humanitarian protection and assistance in the war affected area: 1. The right to return of those who fled or were displaced must be guaranteed; 2. Those who fled or were displaced must be ensured adequate living conditions until they can return home; 3. The whole area affected by the warfare must be de-mined; 4. Physical assault, torching of houses and looting must be totally stopped and persons responsible for such crimes apprehended and held to account; 5. Prisoners of War, other detainees and persons stranded in unsafe situations must be protected and rescued through continued humanitarian efforts; 6. International presence and assistance are needed in the area affected by the conflict. The programmes of UNHCR, UNICEF, ICRC and other agencies should be supported and the OSCE be given authority and resources to expand its mission.

65 "Follow-up given by Georgia and Russia to Resolution 1647 (2009). Doc 11876", Parliamentary Assembly of the Council of Europe, 28 April 2009.

66 Council of Europe: Parliamentary Assembly, Follow-up given by Georgia and Russia to Resolution 1647 (2009), 28 April 2009, Doc. 11876, available at:http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/ERES1647.htm

67 Council of European Union. Council Decision 2008/901/CFSP of 2 December 2008 concerning an independent international fact-finding mission on the conflict in Georgia. Available at:http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008D0901:EN:NOT

68 The mandate of EUMM, based on the peace agreements of 12 August and 8 September 2008, covers the entire territory of Georgia but has no executive powers. Apart from monitoring the implementation of the peace agreement, the EUMM is also tasked with contributing to the stabilisation and normalisation of the situation in the areas affected by the war, monitoring the deployment of Georgian police forces and observing compliance with human rights and the rule of law (see http://www.eumm.eu/en/about_eumm).

69 Ibid.

70 Vladimir Socor.European Union Mission Deploys to Georgia while Questions persist about Geneva Talks. Eurasia Daily Monitor Volume: 5 Issue: 192. October 7, 2008. Available at:http://www.jamestown.org/single/?no_cache=1&tx_ttnews[tt_news]=34000

71 The OSCE Mission originated in the process of negotiations between the conflicting parties in the zone of the 1992 Georgian-Ossetian conflict , and supported the UN-led peace process in the zone of the Georgian-Abkhaz conflict (1993). It was a participant in the Joint Control Commission co-chaired by the Georgian, Russian Federation, North Ossetian and South Ossetian sides and monitored the Joint Peacekeeping Forces (JPKF) in the zone of the Georgian-Ossetian conflict. After hostilities broke out in South Ossetia in August 2008, the Mission refocused its work toward urgent stabilization and easing of the humanitarian crisis, rapidly assimilating 20 new monitoring officers.

72 OSCE Mission to Georgia. More information available at:http://www.osce.org/publications/mg/2008/02/29837_1073_en.pdf

73 UNOMIG was established in August 1993 to verify compliance with the ceasefire agreement between the government of Georgia and the Abkhaz authorities in Georgia. UNOMIG's mandate was expanded following the signing by the parties of the 1994 Agreement on a Ceasefire and Separation of Forces. Due to a failure among Security Council members to agree on an extension of the mandate, the mission came to an end at midnight on 15 June 2009.

74 United Nations Observer Mission in Georgia. More information available at: http://www.un.org/Depts/dpko/missions/unomig/mandate.html

75 See UN Security Council, Report of the Secretary-General on the situation in Abkhazia, Georgia, pursuant to Security Council resolution 1839 (2008), 3 February 2009, S/2009/69, available at: http://www.unhcr.org/refworld/docid/4992dff02.html.

See also: UN Security Council, Report of the Secretary-General on the situation in Abkhazia, Georgia, 3 October 2008, S/2008/631, available at: http://www.unhcr.org/refworld/docid/48eb1e0f2.html .

76 Parliamentary Assembly of the Council of Europe, "The Consequences of the War between Georgia and Russia," Resolution 1633 (2008) at para 11 available at: http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta08/ERES1633.htm).

77 The term 'South Ossetian militias' includes here both the police and security forces of the de facto South Ossetian administration and the paramilitary groups composed mostly of South Ossetians spontaneously taking up arms, North Ossetians and other ethnic groups from the North Caucasus.

78 Amnesty International, Civilians in the line of fire: the Georgia-Russia Conflict, pp. 39-43.

79 Amnesty International, Civilians in the line of fire: the Georgia-Russia Conflict, p. 33.

80 Ibid.

81 Information supplied to Amnesty International by the Russian Ministry of Foreign Affairs, 14 July 2009.

82 Ibid.

83 These include the killing of 13 peacekeepers and the wounding of 36 on 8 August 2008; the alleged genocide in the killing of citizens of the Russian Federation; the killing of 162 inhabitants of South Ossetia and various degrees of harm to 255 civilians of Ossetian ethnicity; the killing of 40 Russian military personnel and 10 peacekeepers; the destruction by Georgian military of settlements with primarily Ossetian inhabitants; the deliberate and indiscriminate use of heavy weapons against housing and other infrastructure; the complete destruction of 655 houses, 2139 partly destroyed (mostly of Ossetians): the destruction of 29 education facilities, 17 health institutions, 10 transport institutions, 68 km of gas pipeline, 160 km of water pipes, 458 km electricity supply lines (ibid.).

84 Amnesty International Interview with Eldar Dmitrievich Kokoev, Deputy Prosecutor General of South Ossetia, 8 July, 2009.

85 UNPO. "Georgia:Proceedings against Russia before ICJ." 14.08.2008 available at: http://www.unpo.org/content/view/8521/236/

86 Ilascu and Others v Moldova & Russia (2004).

87 The European Court held that a State also exercised jurisdiction over persons under its 'authority and control' even where these persons are on a territory over which the state does not exercise de facto control (Issa v Turkey, 2004).

88 Ibid.

89 See, International Court of Justice: "Advisory Opinion. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory";" (ICJ Press Release 2004/28, 9 July 2004); and DRC v Uganda; (2005; see http://www.icj-cij.org/docket/index.php?p1=3&code=co&case=116&k=51 accessed on 22 July, 2009);Human Rights Committee General Comment 31, "Nature of the General Legal Obligations Imposed on States parties to the Covenant", 26 May, 2004, (CCPR/C/Rev.1/Add.13, para 10; Decision); decision on admissibility of the European Court of Human Rights in Al_-Saadoon and

Mufdhi v United Kingdom (30 June 2009). It should also be noted that responsibility on the part of a state may arise, as the European Court ruled was the case in Transdniestria in the case of Ilascu and Others v Moldova & Russia (2004), where that state exercises effective authority or at the very least 'decisive influence'. See also Issa v Turkey, 2004.

90 According to the information supplied to Amnesty International by the Russian Ministry of Foreign Affairs, in the official Russian view, Russia is not an occupier and does not exercise effective control over the Republic of South Ossetia; the Russian authorities play no role ensuring security for persons and property in the Republic, or warning, prevention or investigation of violations of their rights, including criminal proceedings, all of which is exclusively the competence of the Republic of South Ossetia. Russian authorities and officials and military personnel do not undertake policing or other functions on the territory of this state. However, in extreme circumstances, guided by principles of humanity, to prevent illegal acts against persons or their property, Russian military detained south Ossetian violators and immediately handed them over to the South Ossetian authorities. ("Kommentarii k voprosam "Amnesty International" po problematike gruzino-iugoosetinskogo konflikta", Addendum to letter from O. Malginov, director of the DeparmentDepartment for Humanitarian Cooperation and Human Rights, Ministry of Foreign Affairs, Russian Federation, received 14 July 2009).

91 See Mamatkulov and Askarov v. Turkey [GC] (nos. 46827/99 and 46951/99, at para 128

92 The CERD was adopted by the United Nations General Assembly on 21 December 1965 in resolution 2106 and has been ratified by both Russia and Georgia. It entered into force on 4 January 1969. Article 22 of the Convention stipulates that unresolved disputes between Parties will be referred to the International Court of Justice.

93 Georgia submits the first phase took place between 1991 and 1994, when the Russian Federation "provided essential support to South Ossetian and Abkhaz separatists in their attacks against…virtually the entire ethnic Georgian population of South Ossetia and Abkhazia." Georgia claims that the signing of the "Sochi Agreement" on 24 June, 1992 marked the beginning of a second phase as a fresh round of Russian intervention. The Agreement was signed by Georgia, the South Ossetian separatist forces and the Russian Federation. In Abkhazia, a similarly de facto autonomous region in the west of Georgia, a second phase of Russian intervention allegedly began following the signing of the 14 May 1994 "Moscow Agreement". Under these two agreements, a joint peacekeeping force was created to monitor the ceasefires. "By implementing racially discriminatory policies in South Ossetia and Abkhazia", Georgia submits, "under the cover of its peacekeeping mandate the Russian Federation has sought to consolidate the forced displacement of the ethnic Georgian and other populations that resulted from "ethnic cleansing" from 1991-1994."

94 Article 2: States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races; and shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case en tail as a con sequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

95 Article 3: States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

96 Article 4: States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination

in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination.

97 Article 5: In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law.

98 Article 6: States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

99 Article 22 of CERD provides that: Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

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