



**fidh**



# Living on the edge: victims' quest for accountability

## The ongoing impact of the 2008 Russia-Georgia war



## ABBREVIATIONS

**ABL** – Administrative Boundary Line

**CSCE** – Conference for Security and Cooperation in Europe

**ECtHR** – European Court of Human Rights

**EU** – European Union

**EUMM** – European Monitoring Mission

**FIDH** – International Federation for Human Rights

**FSB** – Russian Security Forces

**HRIDC** – Human Rights Centre

**HRW** – Human Rights Watch

**ICC** – International Criminal Court

**IDP(s)** – Internally Displaced Person(s)

**IIFMCG** – The Independent International Fact-Finding Mission on the Conflict in Georgia

**IPRM** – Incident Prevention and Response Mechanism

**JCC** – Joint Control Commission

**JFPK** – Joint Peacekeeping Force

**OCPG** – The Office of the Chief Prosecutor of Georgia

**OSCE** – Organisation for Security and Cooperation in Europe

**OTP** – ICC Office of the Prosecutor

**RUPKFB** – Russian Peacekeeping Forces Battalion

**TFV** – ICC Trust Fund for Victims

**UN** – United Nations

**UNGA** – United Nations General Assembly

**UNHCR** – United Nations High Commission on Refugees

**VPRS** – ICC Victims Participation and Reparations Section

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# Introduction

## Summary and rationale for the report

Following previous missions and assessments, FIDH and its Georgian member organisation, the Human Rights Centre (HRIDC), undertook a fact-finding mission to Georgia from 26 June to 4 July 2017 in order to assess how the crimes committed during the 2008 war between Georgia and Russia impacted and continue to impact the lives of victims. It is hoped that such assessment of the impact of 2008 crimes on victims may contribute to the ongoing investigation opened in January 2016 by the International Criminal Court (ICC) regarding alleged international crimes committed during the 2008 conflict<sup>1</sup>.

FIDH and HRIDC mission delegates met with 34 people in 10 villages close to the Administrative Boundary Line (ABL)<sup>2</sup> between Georgia and South Ossetia region and one IDP settlement in Gori district. Victims informed FIDH and HRIDC that the five days of war in 2008 has had an impact perceivable to date. Indeed, victims continue to live in a highly volatile security situation and desperately want justice and reparations for the harm that they suffered during the war and continue to suffer.

The Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG), established by the Council of the European Union, reported that about 850 persons died as a result of the armed conflict of 2008 while more than 100,000 civilians fled their homes. The Government of Georgia claimed that 412 persons lost their lives, out of which 228 were civilians, 170 were military personnel and 14 were policemen, while 1747 persons were wounded, and 10 military personnel and 14 policemen were reported missing. The Russian Federation provided information stipulating that 162 ethnic Ossetian civilians had died and 255 were injured, and that 48 Russian servicemen were killed and a further 162 were injured. The South Ossetian *de facto* authorities reported a total of 365 deaths of both civilians and members of South Ossetian forces.<sup>3</sup>

Furthermore, victims also suffered from other war crimes and crimes against humanity, such as the destruction of property, pillage and persecution on ethnic grounds.

Many of those spoken to relayed how they lost their land as a result of the imposition of the ABL after the war, and how this has affected their way of life. Some are not able to trade and sell produce in South Ossetia and Russia as they used to do so. The loss of land and of trade possibilities has hampered their livelihoods, affected the irrigation system, caused infrastructural hurdles and resulted in difficult living and working conditions.

Victims met by the FIDH-HRIDC delegation in April 2016 lived in houses bearing the visible traces of war. Some houses had no glass-windows, and plastic bags were used instead. Parts of houses had not been reconstructed, and the yards bore the signs of bullet-holes from air and ground assaults. Some families lived in the small emergency relocation houses constructed by the European assistance programme close to their original houses, and which were neither meant for nor adapted to shelter persons long-term.

Furthermore, many of those whom FIDH-HRIDC spoke to complained of physical ailments, psychological trauma and a lack of medical assistance. Others stated that they continue to live in fear, given that the ABL shifts every so often, encroaching further and further into Georgian territory. This is an occurrence that greatly restricts their freedom and makes them fearful of so-called 'kidnappings' by the South Ossetian *de facto* authorities and Russian military personnel. The majority of these cases concern ethnic Georgians pasturing or harvesting their land close to the ABL, which is not always clearly marked or fenced.

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1. See the ICC webpage regarding the Georgia investigation, available at: <https://www.icc-cpi.int/georgia>; and in particular the ICC OTP 'Request for authorisation of an investigation pursuant to article 15' ("Request for authorisation"), Situation in Georgia, 13 October 2015, ICC-01/15-4 13-10-2015 2/160, available at: <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/15-4>, as well as the ICC Pre-Trial Chamber I 'Decision on the Prosecutor's request for authorisation of an investigation', Situation in Georgia, 27 January 2016, ICC-01/15-12 27-01-2016, available at: <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/15-12>

2. The Administrative Boundary Line (ABL) between Georgia and *de facto* South Ossetia was set up after the 2008 war between Georgia and Russia.

3. See IIFFMCG, 'Independent International Fact-Finding Mission on the Conflict in Georgia', Volume I, September 2009, available at: [http://echr.coe.int/Documents/HUDOC\\_38263\\_08\\_Annexes\\_ENG.pdf](http://echr.coe.int/Documents/HUDOC_38263_08_Annexes_ENG.pdf)

Nine years after the 2008 conflict, little has been done for the victims of the conflict, and their hopes for justice appear to be slowly fading away. Domestically, it appears that Georgia has not taken any significant steps towards prosecuting those who were responsible for forcibly displacing hundreds of Georgians and committing acts of murder and pillage.

The ICC Office of the Prosecutor (OTP) should therefore conduct its ongoing investigation into Georgia and its case selection process in light of the assessed impact of the 2008 crimes on victims.

## Methodology

The FIDH-HRIDC June-July 2017 mission was preceded by a preliminary mission in April 2016, a few months after the opening of the ICC investigation into Georgia, which confirmed the need to organise a deeper inquiry on the impact of the 2008 war crimes on victims.

Four preparatory missions were undertaken by HRIDC in June 2017, where they visited 11 villages in order to identify a representative sample of victims of the alleged international crimes committed in 2008. These victims were then met with in June-July 2017 by the FIDH-HRIDC delegation.

The FIDH-HRIDC fact-finding mission of June-July 2017 was composed of Anushka Sehmi, international expert on victims rights at the ICC with experience in the Kenyan cases (based in The Hague), Delphine Carlens, Deputy Head of the FIDH International Justice Desk (based in Paris), Nino Tlashadze, HRIDC Deputy Executive Director, Giorgi Kakubava, lawyer at HRIDC and Natia Gogolashvili, journalist at HRIDC. The mission benefited from the Georgian-English interpretation of Nino Tlashadze, supported by George Tkebuchava.

During this mission, delegates met with **34 persons**, based in **10 villages that were affected by the 2008 conflict and in Berbuki IDP camp**, close to Gori. The villages included: Karaleti, Tkviavi, Avlevi, Tseronisi, Abisi, Ditsi, Kordi, Gugutiantkari, Dvani and Mereti. The aforementioned villages were directly affected by the 2008 conflict and many civilians were victims of crimes committed during the war between Georgian and Russian and South Ossetian *de facto* forces. A large segment of the population in these villages was forcibly displaced during the conflict. In numerous villages, homes had been burned, the remains of which were visible to see to date.

The delegation met with 15 men and 19 women, the majority were over the age of 45 years and ethnic Georgian. FIDH and HRIDC aimed to ensure that a fair representation of victims of the 2008 crimes were consulted (see anonymised list of consulted victims in Annex).

Interviews with victims were conducted in Georgian with the assistance of an interpreter translating from Georgian to English. All interviews were conducted in private. Prior to being interviewed, interviewees were informed of the purpose of the interview, what kinds of issues would be covered and asked whether they wanted to proceed. No incentives were offered or provided to the persons interviewed. The names of individuals interviewed by FIDH-HRIDC (and in some cases, other identifying information) were anonymised in order to protect their security.

At the present time, FIDH-HRIDC was not able to visit South Ossetian victims of the 2008 war given security implications related to meeting victims of the conflict in this region. FIDH-HRIDC notes with concern that a number of reputable NGOs in South Ossetia who often worked with their Georgian counterparts have closed down in recent times. Furthermore, international governmental organisations and human rights mechanisms such as the Office of the UN High Commissioner for Refugees (UNHCR), the Commissioner for Human Rights of the Council of Europe, the Organisation for Security and Cooperation in Europe and the Europe High Commissioner for National Minorities have limited access to the territory of South Ossetia region.<sup>4</sup> As has been well documented, the nature of the conflict in 2008 was such that civilians on both sides were severely affected by the conflict, and Georgian troops heavily targeted Tskhinvali resulting in a significant number of

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4. See Public Defender (Ombudsman) of Georgia Report, 'The Rights of Women and Children in Conflict –Affected Regions', 2017, p. 36.



# I - Background: The 2008 Russia-Georgia Conflict

## 1) The first stages

South Ossetia is located along Georgia's northern frontier in the Caucasus Mountains, bordering North Ossetia, a republic of the Russian Federation. South Ossetia is inhabited mostly by Ossetians. Before the 2008 conflict, ethnic Georgians made up about a third of the population, and a number of villages in South Ossetia were overwhelmingly populated by ethnic Georgians. With a handful of exceptions in the west of South Ossetia, prior to the 2008 conflict, villages inhabited mainly or exclusively by ethnic Georgians were administered by Tbilisi, while Tskhinvali and Ossetian-inhabited villages were under the administration of the *de facto* South Ossetian authorities.

The genesis of the 2008 armed conflict in Georgia dates back to 1921 when Georgia was annexed by the Soviet Union after a short period of independence obtained following the 1917 Russian revolution. South Ossetia obtained the status of an autonomous region within the Georgian Soviet Socialist Republic (Georgian SSR), but was not regarded as an autonomous republic with a more advanced status.

A number of countries that formed the USSR underwent violent or armed post-Soviet transition where contemporary Russia played a role, to different degree supporting the breakaway entities within the former soviet socialist republics, including in Georgia. Furthermore, political manoeuvres by Georgia had the effect of fuelling the separatist movements in the region.

The separatist movement in South Ossetia in the late 1980s centred on merging South Ossetia with Russian North Ossetia. In November 1989, the South Ossetian regional council requested the Georgian SSR Supreme Council to upgrade the region to the status of an "autonomous republic", which the Georgian SSR subsequently refused. The resulting escalating tensions triggered three months of fighting, with the nationalist movement gaining ground in Georgia. On 20 September 1990, South Ossetians declared full sovereignty from Georgia, affirming that they now formed a part of the USSR. Ossetians boycotted the subsequent Georgian parliamentary elections and held their own elections in December 1990. Georgia declared the Ossetian election illegitimate and abolished South Ossetia's autonomous status altogether. Nationalist tensions escalated on both sides resulting in a violent conflict. On 7 December 1990 Soviet troops, who later sided with South Ossetian separatists, were sent to maintain peace. Georgia officially declared its independence in April 1991 despite the on-going conflict. Only on 24 June 1992, leaders from Georgia and the newly reshaped Russian Federation<sup>6</sup> signed an armistice in Sochi<sup>7</sup> ending a two-year war.

The Sochi agreement established a civilian commission, a Joint Control Commission (JCC) and a Joint Peacekeeping Force (JPKF) for South Ossetia. The JPKF was commanded by a Russian officer and consisted of three battalions of 500 servicemen each provided by Russia, Georgia and *de facto* South Ossetia authorities. The Conference for Security and Cooperation in Europe (CSCE)<sup>8</sup> established an observation mission in November 1992 that was mandated to assist conflicting parties in reaching a peaceful political settlement.<sup>9</sup> At the time, South Ossetia became a semi-autonomous area governed by a South Ossetian *de facto* administration, which was not recognized by the Georgian Government.

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6. On 25 December 1991, the USSR was dissolved into 15 post-Soviet states.

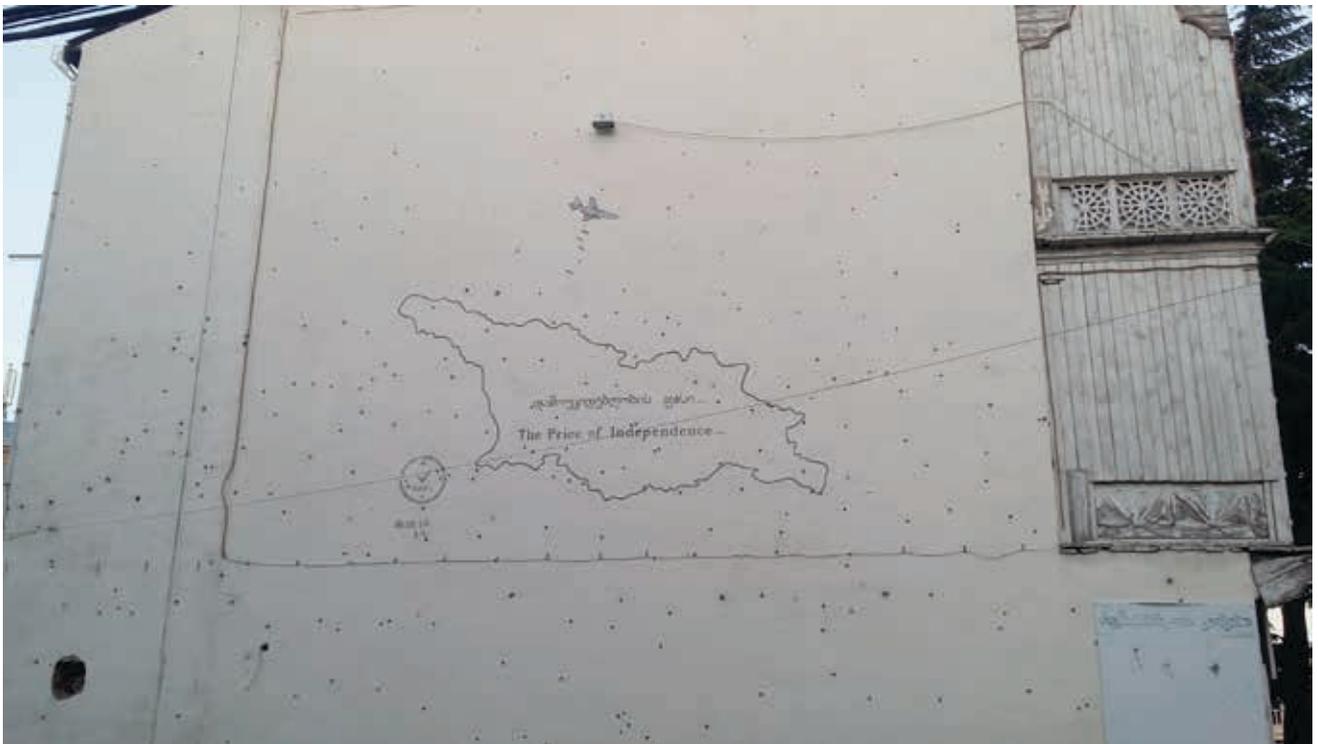
7. Agreement on the Principles of Settlement of the Georgian-Ossetian Conflict (Sochi Agreement), 24 June 1992: [https://peacemaker.un.org/sites/peacemaker.un.org/files/GE%20RU\\_920624\\_AgreemenOnPrinciplesOfSettlement\\_GeorgianOssetianConflict.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/GE%20RU_920624_AgreemenOnPrinciplesOfSettlement_GeorgianOssetianConflict.pdf)

8. In 1993, the CSCE was renamed the Organization for Security and Cooperation in Europe (OSCE), an inter-governmental organisation that encompasses politico-military, economic and environmental, and human aspects. All 57 participating States (including from North America, Europe and Asia) enjoy equal status, and decisions are taken by consensus on a politically, but not legally binding basis. Both Georgia and the Russian Federation are OSCE Member States.

9. For the modalities establishing the CSCE mission see: OSCE, "Establishment of the Personal Representative of the Chairman-in-Office for Georgia", 6 November 1992.

Political stalemate followed and calls for a separate South Ossetia became less pronounced during President Shevardnadze's rule in Georgia, but the issues returned to the fore when Mikheil Saakashvili replaced him in 2004. One of President Saakashvili's main campaign promises was the restoration of Georgia's territorial integrity. Emboldened by his success in re-establishing Georgian control over Adjara, another autonomous region, Saakashvili set his sights on South Ossetia in the summer of 2004. The Georgian government ordered the closure of Ergneti market on the border with South Ossetia region<sup>10</sup>, which contributed to armed clashes between Georgian armed forces and *de facto* South Ossetian forces in August 2004, and further polarization between the two communities.

From the late 1990s onwards, the Russian Federation conferred citizenship and passports to the vast majority of residents of South Ossetia, also granting them pension, medical and social benefits. This policy ultimately resulted in a visa-free regime for South Ossetian residents following the enforcement of a visa regime between Russia and Georgia in 2000.<sup>11</sup> In 2006, the South Ossetia *de facto* authorities further cemented this process by adopting their own 'Citizens Act' under which all South Ossetians were entitled to acquire Russian citizenship in addition to their non-recognised "domestic South Ossetian citizenship".<sup>12</sup>



"The Price of Independence", mural in a street of Gori, Georgia. Photo taken on 30 June 2017 - ©FIDH-HRIDC

## 2) The 2008 war

In the months leading up to the August 2008 armed conflict, both the Georgian and the South Ossetian *de facto* authorities sides built up forces in their respective areas of control, while armed clashes between them increased. Tensions heightened in South Ossetia on 3 July 2008, when an Ossetian village police chief was killed and the head of the pro-Georgian "government" in South Ossetia, Dmitriy Sanakoyev, had a narrow escape from a roadside mine. That night, both the Georgians and South Ossetians launched artillery attacks on each other's villages and

10. Ergneti market was an important place for contact between people from Georgia and South Ossetia region, but it was closed by Mikheil Saakashvili's government in 2004 to tackle smuggling. Now, Ergneti has become a place where the conflicting parties regularly meet to speak about problems caused by the Russia-Georgia war in 2008.

11. Parliament of Georgia, "Statement on the introduction of visa regime between Russia and Georgia", 24 November 2000.

12. RIA Novosti, "South Ossetia Began to Issue Its Own Passports [Южная Осетия начала выдавать собственные паспорта]", 15 August 2006.

checkpoints, purportedly resulting in about a dozen killed or wounded. War eventually broke out on the night of 7 to 8 August 2008 when Georgia launched an intensive air and ground assault attack on South Ossetia's main city, Tskhinvali, while Russian armed forces, covered by air strikes and by elements of its Black Sea fleet, penetrated deep into Georgia, cutting across the country's main east-west road, reaching the port of Poti and stopping short of Georgia's capital city, Tbilisi<sup>13</sup>.

On 11 August 2008, Russia bombed apartment buildings in the city of Gori – within Georgian controlled territory – and occupied the city. From 15 August 2008 onwards, Russian troops began to withdraw from undisputed Georgian territory but created a 20km wide “buffer zone” within parts of Georgian territory beyond the boundary of the South Ossetian administrative zone. On 16 August 2008, French President Nicolas Sarkozy on behalf of the European Union (EU) and Russian President Dmitry Medvedev negotiated and signed a ceasefire accord, and later in September drew out the provisions of the 6-point peace plan, specifying:

- Russian forces would withdraw from areas adjacent to the borders of Abkhazia and South Ossetia by midnight on 10 October 2008;
- Georgian forces would return to their barracks by 1 October 2008;
- International observers already in place from the United Nations (UN) and the Organization for Security and Cooperation in Europe (OSCE) would remain; and
- The number of international observers would be increased by 1 October 2008, to include at least 200 EU observers.

Russia recognised Abkhazia and South Ossetia as separate republics on 26 August 2008.<sup>14</sup> In September 2008 Russia signed Friendship, Cooperation, and Mutual Assistance agreements with Abkhazia and South Ossetia making the regions dependent on Russia. The agreements also allow Russian border troops to help defend the regional borders, provide for free entry into Russia by residents of the regions, and allow Russian embassies to protect the interests of the residents of the regions when they travel abroad.

### 3) The aftermath of the 2008 war

In April 2009, Russia cemented its position in South Ossetia by signing a five-year agreement to take formal control of its frontiers with Georgia. Furthermore, in 2015 Russia signed an “alliance and integration agreement” with South Ossetia *de facto* authorities that abolished border checkpoints. Georgia expressed concerns that this would result in Russian annexation of the region, especially when Russian forces pushed the ABL 1.5 km further into Georgia proper - a short distance from the country's main west-east highway.<sup>15</sup> In March 2017, parts of the South Ossetian military units were incorporated within the army of the Russian Federation.

At present, South Ossetia has been recognised by four UN Member States, namely: Russia, Nicaragua, Venezuela, and the Pacific Island of Nauru.

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13. The Independent International Fact-Finding Mission on the Conflict in Georgia (IIFMCG) report, Volume I, September 2009: [http://echr.coe.int/Documents/HUDOC\\_38263\\_08\\_Annexes\\_ENG.pdf](http://echr.coe.int/Documents/HUDOC_38263_08_Annexes_ENG.pdf)

14. Ria Novosti, “Russia recognizes Georgia's breakaway republics”, 26 August 2008.

15. See report by the BBC ‘South Ossetia’, available at: <http://www.bbc.com/news/world-europe-18269210>

## II - The ICC investigation into international crimes committed during the 2008 war

### 1) The ICC preliminary examination into Georgia

#### ICC jurisdiction

Georgia is a party to the Rome Statute of the International Criminal Court (ICC), having signed and ratified the ICC Statute in September 2003. Russia had signed the treaty in 2000 but did not ratify the ICC Statute, and resultantly never became a member subject to its jurisdiction. However, in November 2016, President Vladimir Putin signed an executive order explaining that Russia did not intend to ratify the ICC's founding treaty.<sup>16</sup> Interestingly, this took place two days after the Prosecutor of the International Criminal Court issued her report on the status of preliminary examinations, including those into Russia's annexation of Crimea and the conflict in Eastern Ukraine in 2014<sup>17</sup>. This declaration appeared to be purely media oriented, and had the effect that Russian, regional and international media repeatedly and wrongfully reported that Russia had "withdrawn from the ICC".

On a practical level the declaration has little impact on ICC investigations as Russia has never been an ICC State Party. Furthermore, under Article 12 of the ICC Statute, the ICC has jurisdiction over international crimes committed on the territory of a State Party to the Rome Statute. As such, alleged crimes committed on the territory of South Ossetia will fall under ICC jurisdiction given that South Ossetia is not considered to be an independent State, nor is it a Member State of the United Nations. A number of resolutions adopted by the UN General Assembly (UNGA) since 2009 refer to South Ossetia as a part of Georgia. Indeed, for the purposes of her Request for authorisation to carry out investigations in Georgia, the Prosecutor also considered that South Ossetia was a part of Georgia at the time of commission of the alleged crimes and was occupied by Russia at least until 10 October 2008, when Russian troops withdrew as per the 6-point peace plan.<sup>18</sup>

#### The ICC preliminary examination

The ICC Prosecutor announced the preliminary examination of the situation in Georgia on 14 August 2008.<sup>19</sup> On 8 October 2015, the ICC Presidency assigned the situation in Georgia to Pre-Trial Chamber I, following a notification by the Prosecutor of her intention to submit a request to a Pre-Trial Chamber for authorisation to open an investigation into the situation in Georgia pursuant to Article 15(3) of the Statute.<sup>20</sup>

On the basis of the information available, the Prosecutor concluded that there was a reasonable basis to believe that crimes within the jurisdiction of the Court had been committed in Georgia in the context of the armed conflict of August 2008. Under Article 15 of the Rome Statute the

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16. See [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XVIII-10&chapter=18&lang=en#9](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-10&chapter=18&lang=en#9). In a communication received on 30 November 2016, the Government of the Russian Federation informed the UN Secretary-General of the following:

*"I have the honour to inform you about the intention of the Russian Federation not to become a party to the Rome Statute of the International Criminal Court, which was adopted in Rome on 17 July 1998 and signed on behalf of the Russian Federation on 13 September 2000.*

*I would kindly ask you, Mr. Secretary-General, to consider this instrument as an official notification of the Russian Federation in accordance with paragraph (a) of Article 18 of the Vienna Convention on the Law of Treaties of 1969."*

17. See ICC OTP report on preliminary examinations, November 2016: available at: [https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE\\_ENG.pdf](https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf)

18. ICC OTP 'Request for authorisation of an investigation pursuant to article 15' ("Request for authorisation"), Situation in Georgia, 13 October 2015, ICC-01/15-4 13-10-2015 2/160, para 54, available at: <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/15-4>

Pre-Trial Chamber I also agreed with the Prosecutor that South Ossetia should be considered part of Georgia and not an independent State.

19. ICC OTP Report on Preliminary Examination Activities, 13 December 2011, para. 88, available at: <https://www.icc-cpi.int/NR/rdonlyres/63682F4E-49C8-445D-8C13-F310A4F3AEC2/284116/OTPreportonPreliminaryExaminations13December2011.pdf>

20. ICC OTP, 'Request for authorisation of an investigation pursuant to article 15' ("Request for authorisation"), Situation in Georgia, 13 October 2015, ICC-01/15-4 13-10-2015 2/160.

Prosecutor can investigate allegations of crimes not only upon referral from the Security Council and States Parties, but also on information from victims, non-governmental organisations or any other reliable source. As per Article 15(3), "If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence." In January 2016, Pre-Trial Chamber I found that there was a reasonable basis to proceed with the investigation into the Georgia situation and granted the Prosecutor's request.<sup>21</sup>

## 2) The scope of the ICC investigation into Georgia

In her request the Prosecutor states that there is a reasonable basis to believe that **war crimes and crimes against humanity** were allegedly **committed in and around South Ossetia from 1 July 2008 to 10 October 2008**, including within the 'buffer zone'.<sup>22</sup> In particular, she states that the Office of the Prosecutor has gathered information on alleged crimes attributed to the **three main parties** to the conflict - the Georgian armed forces, the South Ossetian forces and the Russian armed forces.<sup>23</sup> Furthermore, as a result of the preliminary examination carried out, the Prosecutor of the ICC found that the following war crimes and crimes against humanity were committed in South Ossetia:

- killings, forcible displacement and persecution of ethnic Georgian civilians, and destruction and pillaging of their property by South Ossetian forces and irregular armed groups (with possible participation by Russian forces);
- Intentionally directing attacks against Georgian peacekeepers by South Ossetian forces; and against Russian peacekeepers by Georgian forces.<sup>24</sup>

According to the Prosecutor's Request for authorisation, between 51 to 113 ethnic Georgian civilians were killed as a result of forced displacement by South Ossetian *de facto* forces, and a further 13400 to 18500 ethnic Georgians were forcibly displaced from South Ossetia, while over 5000 dwellings belonging to South Ossetians were destroyed.<sup>25</sup> The Prosecutor found that there is conflicting information regarding the involvement by the Russian armed forces in these crimes.<sup>26</sup> For instance, there are reports that Russian forces actively participated in the hostilities, whilst other Russian units took a more passive role or even assisted victims.

According to the Prosecutor, the **main areas where the crimes allegedly occurred** include:

- (i) ethnic Georgian villages of the Kurta municipality located in the north of Tskhinvali;
- (ii) ethnic Georgian villages of the Eredvi municipality located in the north-east of Tskhinvali;
- (iii) ethnic Georgian villages in the Tighva municipality located in the south-east of Tskhinvali;
- (iv) villages of the Gori and municipality located in the "buffer zone".

In relation to the unlawful attacks against peacekeepers, the Prosecutor held that the Georgian peacekeeping contingent stationed at Avnevi checkpoint came under heavy shelling from South Ossetian positions. The Georgian armed forces at a later date carried out an attack against the Russian peacekeepers and peacekeeping facilities at the JPKF (Joined Peacekeeping Force) HQ based in Nizhniy Gorodok in the central part of Tskhinvali and the RUPKFB (Russian Peacekeeping Forces Battalion) headquarters located in Verkhniy Gorodok in the south-western part of Tskhinvali.

With regards to the forced displacement of the ethnic Georgian population, the Prosecutor asserts that the first 'wave' of crimes occurred from 7-12 August 2008 on the territory of South Ossetia and along the ABL, with the rest of Georgia. In addition, a second wave of forcible displacement took place from 12 August 2008 until 10 October 2008 during the period of Russian occupation

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21. ICC Pre-Trial Chamber I, 'Decision on the Prosecutor's request for authorization of an investigation', *Situation in Georgia*, 27 January 2016, ICC-01/15-12 27-01-2016.

22. ICC Prosecutor's Request for authorisation, p.5.

23. ICC Prosecutor's Request for authorisation, p.5.

24. *Ibid.*

25. ICC Prosecutor's Request for authorisation, p.8.

26. ICC Prosecutor's Request for authorisation, p.8.

of Georgian territory in areas that lay beyond the administrative boundary of South Ossetia.<sup>27</sup> According to the Prosecutor, South Ossetian forces continued to pillage and burn houses of ethnic Georgians in South Ossetia after the active hostilities ended. According to the Prosecutor, *"this campaign of intimidating the population with the aim of forcibly expelling the remaining ethnic Georgians or to prevent them from returning to their homes lasted until 10 October 2008 when the Russian armed forces officially withdrew behind the administrative boundary line between South Ossetia and the rest of Georgia."*<sup>28</sup>

In relation to **alleged crimes carried out by Georgia**, the Prosecutor stated that she examined the allegations that the Georgian armed forces carried out indiscriminate and disproportionate attacks against civilians and civilian property during their air and ground military offensive against the city of Tskhinvali.<sup>29</sup> Human Rights Watch (HRW) documented an 18 hour rocket attack allegedly carried out by Georgian armed forces on the city of Tskhinvali between 7 and 8 August 2008, during which the South Ossetian Central Republican Hospital may have been targeted.<sup>30</sup> Furthermore, HRW reported that during air and ground offensives, Georgian armed forces used weapons that lacked sufficient precision to be accurately used against military targets in close physical proximity to civilians and civilian property. Indeed, according to HRW, Georgian forces initiated the start of the war through the shelling of Tskhinvali and the surrounding villages by utilizing BM-21 "Grad," a multiple rocket launcher system capable of firing 40 rockets in 20 seconds.<sup>31</sup> Furthermore, according to this report, Georgian armed forces persisted with attempts to take Tskhinvali, despite being pushed back by heavy Russian fire and fire from South Ossetian *de facto* forces. HRW concluded that Georgian forces committed violations of the laws of war during their assault on South Ossetia. At the same time, HRW found no evidence that Georgian forces sought to deliberately target civilians, and concluded that Georgian forces demonstrated disregard for the protection of civilians during the shelling campaign, causing large-scale damage to civilian objects and property, and civilian casualties.<sup>32</sup>

However, it is unclear at this stage whether the Prosecutor will continue to investigate these attacks, given that in her Request for authorisation she states that *"the information available with regard to the nature of targets, circumstances of attacks, and scale of the damaged caused is limited at this stage. The IFFMCG, for example, found that South Ossetian forces were responsible for firing at Georgian forces from locations close to civilian areas, or for setting up defensive position or headquarters in civilian infrastructure. In response to these attacks, Georgian armed forces appear to have attacked military objectives that were located near densely populated areas in Tskhinvali and surrounding villages, causing the destruction of civilian objects."*<sup>33</sup>

In addition, the Prosecutor stated that **Russian armed forces** are alleged to have carried out indiscriminate and disproportionate attacks against civilians and civilian property with weapons that could not be accurately used against military targets in civilian areas, which resulted in civilian deaths and injuries.<sup>34</sup> Furthermore, according to the Prosecutor, aerial attacks by the Russian armed forces were carried out in Tskhinvali and Eredvi in South Ossetia and around Tkviavi and Variani in the Gori municipality<sup>35</sup> and *"[V]ictims of the attack described that they saw numerous small explosions within seconds of each other, suggesting the use of cluster munitions"*.<sup>36</sup>

Finally, the Prosecutor stated that *"the attacks on the civilian population in South Ossetia were not isolated or spontaneous acts of violence, but were committed pursuant to the policy of the **South Ossetian leadership**. This policy entailed the forcible expulsion of ethnic Georgians from the territory of South Ossetia in furtherance of the overall objective to sever any remaining links with Georgia and*

27. ICC Prosecutor's Request for authorisation, para. 58.

28. ICC Prosecutor's Request for authorisation, para. 61.

29. ICC Prosecutor's Request for authorisation, para. 191.

30. ICC Prosecutor's Request for authorisation, para. 193-194.

31. HRW, 'Up in Flames: Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia', 23 January 2009, p.22.

32. *Ibid*, p.38.

33. ICC Prosecutor's Request for authorisation, para. 195.

34. ICC Prosecutor's Request for authorisation, para. 201.

35. ICC Prosecutor's Request for authorisation, para. 202.

36. ICC Prosecutor's Request for authorisation, para. 203.

*secure full independence. Specifically, this campaign was primarily directed against the ethnic Georgian villages under Tbilisi's control in the Kurta, Eredvi and Tighva municipalities.*<sup>37</sup>

A report prepared by the World Bank, highlights that approximately 127 000 persons were displaced in Georgia, including South Ossetia and Abkhazia at the height of the conflict. In addition, **100 000 people directly or indirectly affected by the conflict** may be vulnerable and in need of assistance.<sup>38</sup>

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37. ICC Prosecutor's Request for authorisation, para. 218

38. The World Bank. "Georgia: Summary of Joint Needs Assessment Findings Prepared for the Donors' Conference of 22 October 2008".

# III - The impact of the 2008 war on victims: nine years on

## 1) Lack of national remedies for victims and the need for ICC intervention

### Lack of national remedies

Almost ten years have passed since the 2008 conflict between Georgia, South Ossetia *de facto* forces and Russia yet little has been done for the victims of the conflict, and their hopes for justice appear to be slowly fading away. Domestically, it appears that Georgia has not taken any significant steps towards prosecuting those who were responsible for forcibly displacing hundreds of Georgians and committing acts of murder and pillage. In August 2008 the Georgian government launched two preliminary investigations into alleged crimes against Georgian civilians committed in west Georgia and in South Ossetia.<sup>39</sup> The Office of the Chief Prosecutor of Georgia (OCPG) in the course of its inquiry is reported to have interviewed over 7000 witnesses, carried out on-site investigations in over 30 affected areas as well as conducted various forensic expertise.<sup>40</sup> However, according to the Georgian authorities, investigations have been met with two major obstacles, (i) the lack of access to the territory of South Ossetia, and (ii) the reported absence of cooperation from the Russian Federation.<sup>41</sup> As such, the Government of Georgia informed the ICC Prosecutor that further progress of national proceedings related to the alleged crimes that took place in 2008 are prevented by *"a fragile security situation in the occupied territories in Georgia and in the areas adjacent thereto, where violence against civilians is widespread."*<sup>42</sup>



ICC delegation on mission in Georgia, October 2017 - ©ICC-CPI

In particular, the Georgian authorities were fearful that prosecutions could result in an aggressive reaction from the occupying forces and put the safety and security of witnesses to the alleged crimes at risk. Indeed, the Georgian authorities stated that witnesses may be at risk of being detained in Tskhinvali.<sup>43</sup> As such, the ICC Prosecutor concluded *"that despite the progress made by the Georgian authorities over the years, the prospect of domestic proceedings have stalled and therefore no further steps will be taken into order to ascertain the criminal responsibility of those involved in the alleged crimes."*<sup>44</sup>

39. ICC Prosecutor's Request for authorisation, para. 283.

40. ICC Prosecutor's Request for authorisation, para. 288.

41. ICC Prosecutor's Request for authorisation, para. 290.

42. ICC Prosecutor's Request for authorisation, para. 302, quoting a letter from the Government of Georgia dated 17 March 2015.

43. ICC Prosecutor's Request for authorisation, para. 302.

44. ICC Prosecutor's Request for authorisation, para. 303.

## Need for the ICC intervention and the “gravity of crimes”

It appears that the responsibility for providing accountability for the crimes that took place in 2008 falls solely to the Prosecutor of the ICC. At present, the ICC is carrying out investigations in 11 situations.<sup>45</sup> As a result of the austerity budgets of many States Parties to the ICC, the Prosecutor has to consider whether investigations are also warranted in other countries and which cases will take priority.

According to the OTP policy paper on case selection and prioritisation issued on 15 September 2016<sup>46</sup>, one of the factors that OTP should consider when selecting the cases for the investigation is the **gravity of crime(s)**. Gravity of crime(s) as a case selection criterion refers to the Office’s strategic objective to focus its investigations and prosecutions, in principle, on the most serious crimes within a given situation that are of concern to the international community as a whole.<sup>47</sup> The assessment of gravity includes both quantitative and qualitative considerations, such as scale, nature, manner of commission, and the impact of the crimes. According to the OTP Policy Paper, the **impact of the crimes** may be assessed in light of, *inter alia*, the increased vulnerability of victims, the terror subsequently instilled, or the social, economic and environmental damage inflicted on the affected communities.<sup>48</sup>

In addition, in terms of the prioritisation of cases, the OTP will also take into consideration, *inter alia*, the **impact of investigations and prosecutions on the victims of the crimes and affected communities and impact of investigations and prosecutions on ongoing criminality**.<sup>49</sup> According to the policy, the weight to be given to each individual criterion will depend on the circumstances of each case. In addition, “a comparative assessment will be made across the selected cases, based on the same factors that guide the case selection, including scale, nature, manner of commission, and impact of the crimes”.<sup>50</sup>

## Need for the prioritisation of the Georgia situation

The outcome of interviews with victims conducted by FIDH-HRIDC mission demonstrated that there exists a significant basis for the prioritisation of the Georgia situation in light of the OTP’s case selection criteria.

In December 2015, the ICC Registry undertook consultations as per Article 15(3) of the Statute on whether victims wanted the Prosecutor to be authorised to open investigations in Georgia. The Registry received representations on behalf of approximately 6 335 victims in relation to the Situation in Georgia. Of the 6 335 victim representations received, **99%** responded that they wanted the Prosecutor to investigate the violence associated with the August 2008 conflict in the Situation in Georgia. The Registry noted that this number included all of the South Ossetian victims as well as the vast majority of Georgian victims. The 51 Georgian victims (**1%**) who said they did not want the Prosecutor to be authorized to open an investigation cited security concerns, reluctance to revisit traumatic events, and doubt as to the likelihood of the Court process resulting in a personal benefit as the reasons why they were opposed to the Court intervention.<sup>51</sup>

A large number of victims consulted by FIDH-HRIDC mission continued to express strong views that the ICC would be able to assist them in bringing stability and security to the region through the prosecution of those responsible for the 2008 conflict. Understandably, a sizable number of victims who were interviewed relayed frustration at the lack of accountability for the harm that they had suffered. Indeed, many told the FIDH-HRIDC delegation that they continue to live

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45. The OTP is currently undertaking investigations in Georgia, Central African Republic (I and II), Mali, Côte d’Ivoire, Libya, Kenya, Darfur-Sudan, Uganda, the Democratic Republic of Congo and Burundi: <https://www.icc-cpi.int/Pages/Situations.aspx>.

46. ICC Office of the Prosecutor’s “Policy on Case Selection and Prioritisation”, 15 September 2016, available at: [https://www.icc-cpi.int/itemsDocuments/20160915\\_OTP-Policy\\_Case-Selection\\_Eng.pdf](https://www.icc-cpi.int/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf)

47. ICC OTP “Policy on Case Selection and Prioritisation”, 15 September 2016, p.12.

48. ICC OTP “Policy on Case Selection and Prioritisation”, para. 40.

49. ICC OTP, “Policy on Case Selection and Prioritisation”, para. 50.

50. ICC OTP, “Policy on Case Selection and Prioritisation”, part A, para. 50.

51. ICC VPRS, ‘Report on the Victims’ Representations Received Pursuant to Article 15 (3) of the Rome Statute’, 4 December 2015, para. 21, ICC-01/15-11 04-12-2015 1/19.

in insecure and unpredictable conditions, with one NGO representative affirming this view and stating that “you can fall asleep in Georgia and wake up in South Ossetia.” Others told the FIDH-HRIDC delegation that their livelihoods had been severely affected as a result of the conflict, and many lived in vulnerable conditions.

## 2) Increased vulnerability of victims

The slow and steady build-up to the 2008 conflict in the villages near South Ossetia and Gori meant that most of the younger men, women and children, had already left the villages at the time of the conflict and sought safety in other parts of Georgia. The **population that remained in the conflict-affected villages were mostly elderly** and had chosen to stay back in order to keep an eye on their homes and livestock. South Ossetian relatives of two victims met by the FIDH-HRIDC delegation remained in Abisi village as they thought that the South Ossetian militias would not harm them or burn their homes. One elderly victim who was in Karaleti village at the time of the conflict stated that she and her husband “had seven cows, and could not easily leave the village, and leave everything behind.”<sup>52</sup> Her husband was killed by several South Ossetian men as he went to buy cigarettes.



Bullet-holes left in a wall of a street in Karaleti village, Georgia, where the husband of a victim interviewed by FIDH-HRIDC was killed in 2008. Photos taken on 27 June 2017 - ©FIDH-HRIDC

She stated that he bled to death in her arms as a result of being shot in the hip. Further to this, as only she and her elderly mother-in-law remained in the house, they were unable to bury her husband for four days as they had no one to help them. Finally, they managed to gather some of the other elderly people in the village and buried her husband in the garden without a coffin as his body had begun to rapidly decompose in the summer heat.

B.M in **Tkviavi** village, whom FIDH-HRIDC met on 27 June 2017, stated that his elderly parents and uncle remained in the village at the time of the conflict. He recounted how his mother informed him about how allegedly South Ossetian looters broke into their home, and even fired a rocket towards their gate.



B.M in front of the gate of his house in Tkviavi village, Georgia, still bearing the marks of the 2008 war. Photo taken on 27 June 2017 - ©FIDH-HRIDC

52. Interview with female victim, Z.B, aged 65 years old, Karaleti village, 27 June 2017.

Both his uncle and father were shot and killed during the incident. The interviewee told FIDH-HRIDC that after the events of 2008, his mother suffered from depression and other psychological problems. She remained permanently unwell until she passed away. After the event, he told FIDH-HRIDC that his mother was “a walking shell of a person, who simply existed, but was not living.” As a result of this tragedy, the interviewee himself has acute stress related heart problems and stated that “everybody was badly affected by this tragedy, and the pain they feel is one that can never be cured.”

FIDH-HRIDC also met with M.C, an 82 year-old female victim on 27 June 2017, in **Tkviavi** village who still lives in extremely vulnerable conditions. In August 2008, she and her son remained in the village when three Ossetian men came to their house and demanded that they hand over their tractor. When her son informed them that the tractor did not work, she states that they became extremely angry, and began to threaten her son with a big dagger, and hit him hard in the chest with the end of rifle butt. Her son succumbed to his injuries shortly thereafter. M.C told she remained alone in the house until the end of August, and neighbours were kind enough to share some of their food with her. Since her son's death, her standard of living is very poor, and her situation has greatly deteriorated since 2008. One of the problems is that their family has increased in number, and they simply do not have the room to accommodate everyone, and so she sleeps on the floor, adding that when it rains the place she sleeps in is flooded with water. M.C stated that there are a lot of days where she goes hungry because there is simply not enough food. In addition, she does not have enough money to buy medicines. M.C stated that her son who passed away used to support her financially.

Other victims met with in **Avlevi** village were also advanced in age and also reported that most of those who remained in the village in 2008 were the elderly who were unable to leave, or preferred to stay to try and protect their properties. D.T recounted how her father-in-law was shot during the conflict. She stated that her father-in-law was elderly and deaf and did not hear soldiers shouting instructions at him. Thinking that he was deliberately disobeying them, the soldiers shot the old man, killing him instantly. The interviewee was not sure of the identity of the assailants as she had fled the village at that time, but stated that neighbours informed her that they were probably “North Caucasian” (some of the military units Russian Federation had sent to Georgia in 2008 were from Russian North-Caucasus republics and therefore were facially identifiable).<sup>53</sup>

D.K, a 66-year-old woman, also from Avlevi village recounted how she chose to remain in the village in August 2008 and witnessed her house being looted and then torched to the ground by ‘looters’.<sup>54</sup> In addition, she stated that she had two cows, and two calves, all were stolen by the looters. The interviewee stated that she interacted with the looters and begged them to leave her cows, as she had already lost everything. The victim states that they spoke South Ossetian and Russian, and one man turned to her and said “do you want me to kill you as well?”. The victim stated that at this point she fainted with fear, and woke to find herself alone, and her cows had been stolen. At the time, she stated that she slept at her neighbours' house, or in the burned shells of other houses. It was the summer, so she often also slept outside in the yard. She remained extremely fearful because the looters would come back often, until the moment she identified as Russian military taking control of the village. All the food that she had was burned and until the end of September she lived on whatever fruit and vegetables that she could find in the garden. The victim was visibly affected and stated that she did not want to “recall this tragedy”, as she was starving and almost all alone in the neighbourhood.



Remains of a house burned in 2008 in Gugutiantkari village, Georgia. Photo taken on 29 June 2017 - ©FIDH-HRIDC

53. Interview with D.T, Avlevi village, 28 June 2017.

54. Interview with D.K, Avlevi village, 28 June 2017.

The FIDH-HRIDC delegation collected similar narratives from victims interviewed in **Tseronisi**, whose elderly relatives also remained behind and had to fend for themselves once their homes had been looted and burned, often sleeping outside. One interviewee stated that his elderly mother contracted pneumonia as a result of being forced to sleep outside once their house had been burned.<sup>55</sup> Another 80-year old man recalled how he had a heart attack after seeing that his house had been burned to the ground.<sup>56</sup> Similarly, one interviewee recalled how he remained in his native **Ditsi** village at the time of the conflict, hesitating to leave, and when he finally decided to leave the village, there was no transport available to take him to Tbilisi. He stated that in the village there were about eight people who stayed behind, including five elderly women.<sup>57</sup>

As the stories above illustrate, most of those who remained behind in the villages once the conflict began were particularly vulnerable elderly people whose living conditions only worsened more than nine years after the conflict. Many will have passed away, whilst others continue to hope that they will live to see justice in their lifetimes. Furthermore, many of those who FIDH-HRIDC spoke to complained of physical ailments, psychological trauma and a lack of medical assistance. For instance, studies undertaken by the London School of Hygiene and Tropical Science found that many conflict-affected persons living in Georgia are still suffering mental health problems years after the conflict and indicated a high level of Somatic Distress (SD) amongst the civilian population affected by the conflict.<sup>58</sup> In addition, it is likely that, should the Georgia investigation proceed to trial at the ICC, many of these crime-based witnesses may have difficulty recalling the details of the events that took place given that the events took place almost 10 years ago.

For these reasons, FIDH-HRIDC urge the OTP to take the advanced age of many of the victims into consideration as it makes its assessment of the impact of crimes on the affected communities in this situation. For the reasons highlighted above, it is incumbent upon the OTP to act swiftly in order to ensure that victims are able to participate and see justice in their lifetimes.

### 3) Life in fear and insecurity

Even though the conflict in 2008 lasted only for a few days, its impact continues to affect the lives of thousands of people still today. The ABL between South Ossetia region and Georgia proper continues to hinder the freedom of movement of people living close to the ABL. Since April 2009, border guards serving under the Russian Security Forces (“FSB”) have been in total control of the ABL demarcating Abkhazia and South Ossetia<sup>59</sup>. For instance, in June 2013, relations between Georgia and Russia worsened over its demarcation of the ABL separating Georgian-controlled areas from South Ossetia. Georgia claimed that Russia was ‘annexing’ territory by again and again installing fences deeper into areas previously under Georgian control. Russia-controlled ‘border guards’ also detained Georgian citizens near the ABL. Georgia’s Minister of Foreign Affairs expressed concern, delivering a protest note to Russia through Switzerland. In late February 2014, Georgian President Giorgi Margvelashvili said that Russia’s ‘completely senseless’ erecting of barbed-wire fences across breakaway South Ossetia’s administrative boundary line sought to ‘maintain ... conflict’ and keep divided communities further apart.<sup>60</sup>

According to the Public Defender’s (Ombudsman) of Georgia report on the Human Rights Situation of the Conflict Affected Population in Georgia, the year 2016 was particularly difficult for conflict-affected communities as it was marked by a series of murders, detentions and disappearances.<sup>61</sup>

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55. Interview with T.C, Tseronisi village, 28 June 2017.

56. Interview with D.C, Tseronisi village, 28 June 2017.

57. Interview with R.D, Ditsi village, 29 June 2017.

58. See: R.M Cormellas, N.Makhashvili, I.Chikovani, V.Patel, M. McKee, J.Bisson and B.Roberts, ‘Patterns of somatic stress among conflict-affected persons in the Republic of Georgia’, *J. Psychosom Res.* 2015 May; 78(5): 466-71, available at: <https://www.ncbi.nlm.nih.gov/pubmed/25676335> and L. Saxon, M.Makshashvili, I.Chikovani, M. Seguin, M. McKee, V. Patel, J.Bisson and B.Roberts, ‘Coping Strategies and mental health outcomes of conflict-affected persons in Republic of Georgia’, *Epidemiol Psychiatr Sci*, 2017 June; 26(3); 276-286, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5419062/>

59. Address of the Press Service of Federal Security Service Border Division to Citizens of the Republic of South Ossetia, available in Russian at: <http://cominf.org/node/1166486597>

60. ‘President Condemns “Borderization”’, *Civil Georgia*, Tbilisi, 26 February 2014, available at: <http://www.civil.ge/eng/article.php?id=26981>

61. Public Defender (Ombudsman) of Georgia Report, ‘Human Rights Situation of the Conflict Affected Population in Georgia’, 2016, p. 34.

For instance, the Ombudsman highlights the disappearance of N.S on 28 May 2016 from the village of Kordi, in Gori Municipality<sup>62</sup> who was last seen near the ABL. Since then, N.S. has been missing without a trace. These issues have been repeatedly raised at meetings of the Incident Prevention and Response Mechanism<sup>63</sup>. However, according to the Ombudsman, a lack of cooperation has hampered effective action and the apprehension of perpetrators.<sup>64</sup> According to statistics recorded by the State Security Agency of Georgia, 327 people were detained, including 21 minors and 32 women in 2016 on the ABL between both South Ossetia and Abkhazia. 5-10% of the total number refers to the detention of persons near Abkhazia, while the whole remaining percentage reflects the illegal detention of persons near the conflict area close to South Ossetia.<sup>65</sup>

However, the Ombudsman notes that these statistics are incomplete due to the inability of the Georgian central authorities to document each and every case of detention, and resultantly the figures may be much greater than those recorded.<sup>66</sup> Furthermore, some detainees are released after a ransom and are not recorded at all.

Detentions have been still recorded throughout the year of 2017. For example, four ethnic Georgians were reported to be detained in May 2017 by Russia-controlled border guards on the territory of **Khashuri Municipality**. The incident took place in the villages of Tsaghveli and Brolosani, where the residents were collecting harvest.

They were unexpectedly captured for alleged illegal crossing of the ABL. The kidnapped individuals deny they had crossed the ABL and were released from their detention in the occupied regional capital city Tskhinvali after paying a fee of 2 000 rubles (about 90 GEL or \$35).<sup>67</sup> Furthermore, in April 2017, a Georgian citizen was reported to be captured by Russian troops while herding near his native village in the latest of the series of kidnappings near Tskhinvali.

Eldar Gundishvili, 68, was kidnapped near the Gori Municipality village of Adzvi, in central Georgia in 2016, while herding along with a group of young locals in an open field. Locals and family members said the group was confronted by the Russian troops near the ABL separating Georgia from the occupied region. The younger herders managed to escape capture, however Gundishvili was taken by the occupying forces and reportedly taken to a temporary detention cell of the Tskhinvali city prison in the regional capital.<sup>68</sup> The 68-year old man experiences health issues, while his family lives in socially underprivileged conditions in Adzvi. Gundishvili's wife told reporters the family resided in a house "two to three hundred metres" away from occupying forces.

Giorgi Giunashvili, native of village Disevi in Tskhinvali district of South Ossetia, was arrested on 8 June 2016 on charges of "subversive and terrorist activities" and "illegal crossing of border". Later the *de facto* law enforcement of South Ossetia additionally charged Giunashvili with involvement in "illegal armed formation" and sentenced him to 20 years in prison. On 3 February 2017<sup>69</sup>, the sentence was upheld in the *de facto* Supreme Court. According to reports in the Georgian media, Giunashvili's case was raised in the framework of the EUMM Hotline<sup>70</sup> talks aiming to secure his release that eventually took place on 26 November 2017. However, Giunashvili was not released directly to the Georgian authorities. Instead, Tskhinvali transferred him to the *de facto* Abkhazian authorities, who released

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62. FIDH-HRIDC had the opportunity to meet with N.S's mother, whose account is provided in Case Study 2.

63. The Incident Prevention and Response Mechanism is facilitated by the EU Monitoring Mission and OSCE. Under an agreement reached at the Geneva Discussions in February 2009, regular meetings under the Incident Prevention and Response Mechanism (IPRM) take place between the parties to the conflict. Participants from the EUMM, UN, OSCE, Georgia, Russia, , as well as from *de facto* authorities of Abkhazia and South Ossetia have taken the opportunity to discuss and resolve specific incidents and issues.

64. Public Defender (Ombudsman) of Georgia Report, 'Human Rights Situation of the Conflict Affected Population in Georgia', 2016, p. 41.

65. Special Report of the Public Defender of Georgia on the Rights of Conflict Affected Population, 8 June 2017, p.42, available at: <http://www.ombudsman.ge/en/reports/specialuri-angarishebi/special-report-of-the-public-defender-of-georgia-on-the-rights-of-conflict-affected-population.page>

66. *Ibid.*

67. 'Georgian citizens released after capture by occupying forces', 16 May 2017, available at: <http://agenda.ge/news/79547/eng>

68. 'Georgian kidnapped by Russian troops near occupied Tskhinvali', 26 April 2017, <http://agenda.ge/news/78435/eng>

69. 'Tskhinvali Sentences Georgian Citizen to 20 Years in Prison', 8 February 2017, available at: <http://www.civil.ge/eng/article.php?id=29840>

70. See '80th Prevention and Response Mechanism meeting takes place in Ergneti', 7 September 2017. <http://www.osce.org/chairmanship/338646>

him allegedly in exchange for an unidentified prisoner freed by Tbilisi.<sup>71</sup> At the time of writing of the present report, the Georgian authorities had not confirmed the release of any prisoner in exchange for Giunashvili. The Public Defender of Georgia drew the attention to the continuing arbitrary arrests by the de facto authorities in his statement made on the occasion of Giunashvili's release.<sup>72</sup>

Similarly, the **abduction and illegal detention** of local residents is frequent in the borderline villages of **Avlevi** and **Dvani**.<sup>73</sup> Many of those interviewed by FIDH-HRIDC expressed fears that they too would be detained and worried that the ABL would continue to encroach further and further into Georgian territory. Two persons who were interviewed in Avlevi<sup>74</sup> stated that a few days prior to the interview, their neighbours were pasturing cows and were almost caught by the 'authorities.' They informed the mission that they have to be very careful when pasturing their animals, and usually try to do it in small groups in case they are confronted with Russian soldiers. They further stated that when the Russian army conducts military exercises, they often hear gunshots which are disconcerting and intimidating.

T.C. who was interviewed in **Tseronisi** village, stated that he and his family feel **uncertain of the future and worry that there may be another war again**, especially as the ABL is constantly changing.<sup>75</sup> Furthermore, the interviewee stated that their **right to movement** is severely restricted, and they cannot cross the wire fence of the ABL. Z.Z, a victim of the 2008 conflict whose house was looted and family forcibly displaced and whose family returned to Tseronisi after the conflict ended, reported to the FIDH-HRIDC that in the summer of 2015, there were **no 'tablets' or 'markers'** marking the ABL. He was pasturing his cows<sup>76</sup> when seven Russian soldiers arrested him and his 14 year-old son, and took them to Dzvileti military base. He stated that his son was released immediately because he was underage, and was taken by car to a safe place, and told to walk back to Georgian territory. The interviewee was taken to Tskhinvali Detention Centre, where he spent three days. His wife's parents live in Tskhinvali, and therefore were able to pay the **fine** of 500 GEL. While he was at the detention unit, he stated that there were six other Georgians who had also been arrested, two of whom had spent one month in the detention centre, because they had no relatives in Tskhinvali who could assist in their release. In this way, he stated that it is often the case that people have the money to pay the fine, but no means to get the money to the *de facto* authorities at the Tskhinvali Detention centre. The interviewee stated that he was very afraid, and even more so since his son was with him while they "had been captured by the enemies". He told FIDH-HRIDC that the Russian soldiers pushed his son to the ground when they first came across him, and handcuffed him. Furthermore, he stated that he signed documents at the detention centre, and did not understand what he had signed, despite having a translator present.

Other victims of the 2008 conflict interviewed during the mission expressed similar views regarding their **insecurity and fears related to the ABL**. One victim in **Abisi** stated that he "wanted a solution to the problem of **continually changing borders**" because at present they do not feel secure. The interviewee stated that inter-state meetings have taken place in Geneva, "but the police and military cannot do anything about the 10 hectares that were taken in Avlevi village."<sup>77</sup> Another interviewee in **Ditsi** told about how his son was detained and taken to Eredvi Military Base as he was trying to obtain water for irrigation. His son was treated well, but was fined and released on the same day.<sup>78</sup>

The situation appeared to be equally dire in **Dvani**, where interviewees informed the delegation that on top of a hill in the village lies the village **chapel and cemetery**. The chapel was built in the 17th century and the cemetery is common to both Georgians and Ossetians. After the conflict a fence was built around the cemetery in a zig zag shape so that the cemetery would stay on the Georgian side. The interviewees stated that whenever they want to bury someone they have to inform the Georgian authorities who have to inform the "other side" and they also have to take a police escort. They stated that there have been cases where people have been arrested for wanting to visit the **graves of relatives**

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71. See news report on 'Georgian Prisoner Allegedly Exchanged' in "The Weekly Tripwire – Issue 17", 29 November 2017, available at: <http://www.civil.ge/eng/article.php?id=30679>

72. "Public Defender's Statement on Release of Giorgi Giunashvili from Tskhinvali Prison", 27 November 2017, available at: <http://ombudsman.ge/en/news/public-defenders-statement-on-release-of-giorgi-giunashvili-from-tskhinvali-prison.page>

73. See for example "Two kidnapped from Dvani village", 31 October 2015: <http://www.interpressnews.ge/en/conflicts/73451-two-kidnapped-from-dvani-village.html?ar=A>

74. Interview with D.L and R.T, Avlevi village, 28 June 2017.

75. Interview with T.C and T.K, Tseronisi village, 28 June 2017.

76. At present, there is a marker, which happens to be deeper in Georgian territory.

77. Interview with K.K, Abisi village, 28 June 2017.

78. Interview with D.M, Ditsi village, 29 June 2017.



Sign placed by the South-Ossetian authorities to mark the Administrative Boundary Line (ABL), Gugutiantkari village, Georgia. Photo taken on 29 June 2017. ©FIDH-HRIDC

and have been fined. As such, they reported not being able to bury their dead or visit graves in peace without fear of arrest. When they are arrested, a family member will approach the fence - they usually change the money into roubles which they give to the guards on the other side. Once this transaction is carried out, the person in Tskhinvali detention centre is then released. The Georgian police then take custody of the person and send him home. They added that the *de facto* South-Ossetian authorities like to arrest people on the weekend so that they have to stay until Monday.<sup>79</sup>

Another victim of the 2008 conflict in Dvani stated that they live in a **“frozen conflict”** and that peace that they have now is fragile, stating that the changing borders mean that at some point it is likely that “things will explode again.” She went on to state that the village is in a perilous position because they are “surrounded on all three sides by South Ossetians and are under constant surveillance.” A victim from Mereti whose father died during the conflict stated that her father was buried in Ateni village after the conflict because “who knows, one day the borders will change and I will not be able to go to Mereti, so I prefer my loved ones to be buried near me.”<sup>80</sup>

Therefore, those living near the ABL continue to live in fear of being detained by the Ossetian *de facto* authorities as a result of the **“creeping” borders**<sup>81</sup> set by Russian troops who set up barbed-wire fences, signs, or other markers to occupy Georgian land in small enough increments. FIDH-HRIDC witnessed how the wire fence of the ABL in Gugutiantkari had literally cut a house in half, with one half in Georgia, and the other in so-called South Ossetian territory.<sup>82</sup> The issue of ‘creeping borders’ is not only cutting across homes, but also cutting across communities who used to live side by side. As mentioned earlier, as part of its case selection strategy, the OTP will also take into consideration, *inter alia*, the impact of investigations and prosecutions on the victims of the crimes and affected communities and impact of investigations and prosecutions on **ongoing criminality**.<sup>83</sup>



A victim interviewed by FIDH-HRIDC in Dvani village, Georgia. Photo taken on 30 June 2017. ©FIDH-HRIDC

79. Interview with T.G and T.A, Dvani village, 30 June 2017.

80. Interview in Gori with K.J, from Mereti, 1 July 2017.

81. The ABL is often referred to as a ‘creeping’ border due to its fluidity.

82. See also ‘Returning home to find your house in a ‘different country’’, report by CNN news, 10 January 2017, available at: <http://edition.cnn.com/2017/01/09/europe/georgia-south-ossetia-russia-border/index.html>

83. ICC OTP “Policy on Case Selection and Prioritisation”, para. 50.

#### 4) Social, economic and environmental damage inflicted on the affected communities

##### Breaking of community ties hampering future reconciliation

Communities living near the ABL continue to suffer from social harm as a result of the 2008 conflict. For instance, the imposition of the ABL means that many South Ossetian and ethnic Georgian families and communities who used to interact and work together, and even celebrated weddings and funerals together, no longer do so. This clearly has longer-term repercussions on reconciliation between the two communities.

These problems were echoed by many of the victims that were interviewed by FIDH-HRIDC.

T.C from Tseronisi stated that his grandmother is ethnic Ossetian and the community in Tseronisi was on good terms with their South Ossetian counterparts. He stated that in fact Georgians and ethnic Ossetians used to inter-marry and that “our relationship should not have resulted in conflict.”<sup>84</sup> Similarly, T.C further stated that prior to 2008, he often used to buy products in Znauri district and there was significant commerce between ethnic Ossetians and Georgians.



Signs of Tseronisi and Avlevi villages, Georgia. Photo taken on 28 June 2017 - ©FIDH-HRIDC

D.T and R.T from Avlevi, felt that **relations between the two communities were now difficult**. For instance, D.T stated that her son was the godfather to relatives who now live in South Ossetia, and was rebuked for calling someone from the “enemy community.”<sup>85</sup> Znauri municipality, in South Ossetia is approximately 2 kilometres away from the village, and D.T told that they used to sell their products there. Furthermore she states that her godmother lives in Znauri municipality, and she was also rebuked for trying to maintain contact with her godmother. Additionally, D.T stated that the godfather of all three of her children lives across the ABL, and in the Georgian tradition, the role of a godfather is often closer than that of a blood relative. Both sides are restricted from communicating with each other.

The interviewees stated that they have connections with people from Znauri town, and in general lived peacefully with one another. Furthermore, there were also marriages between the two communities, and for example, R.T stated that his daughter-in-law is South Ossetian. He held that the war did not affect his relations with these relatives. However, he stated that mixed families are impossible now because there is no contact and communication between the two communities and said that “[i]t is impossible to fall in love without communication!” Thus, it is safe to say that contact between Ossetians and Georgians is minimal at best, leaving South Ossetia totally isolated from the rest of Georgia. This has serious implications for the future of reconciliation between the two communities.

84. Interview with T.C in Tseronisi, 28 June 2017.

85. Interview with D.T and R.T, Tseronisi village, 28 June 2017.

## No access to farm land affecting livelihoods

The 'creeping border' and the imposition of the ABL after the 2008 war has had a significantly harmful impact on the majority of the villagers close to the ABL most of whom are farmers. Many lost land after 2008, others are not able to trade in South Ossetia region and Russia as they used to do so, hampering their livelihoods.

For example, D.T from **Avlevi** stated that prior to 2008 they had a much better standard of living. The interviewee informed the mission that she can no longer sell her products in Tskhinvali or Znauri, and prior to that she used to shop in Znauri because goods were cheaper there than in Gori. Furthermore, she stated that she was scared of being abducted, and cannot access her land across the ABL. D.T suffers from digestive problems, a heart condition, nervousness, especially when she hears loud noises, such as the military training exercises. She attributes these problems to the 2008 conflict.

V.M from **Ditsi**<sup>86</sup> stated that they are a family of farmers, and they used to sell their fruit and vegetables in Kareleti and Tbilisi. Furthermore, they also used to sell their produce in Russia by hiring South Ossetian drivers to transport the products there. They have 8 hectares of land, which they still have access to. However, they are no longer able to sell their produce in Russia. The interviewee told the mission that prior to 2008, they had higher profits and sold a lot of apples in Russia. V.M did say that he lives in permanent fear regarding the ABL as it is now 500 meters from his village and is unsure about what the future will bring.

The Ombudsman notes that since the war, 60 families out of 138 residing in the village have lost access to their farmland. In places where access to farmland and irrigation water is not problematic, local communities complain about **high costs of farming and about difficulties related to selling produce.**<sup>87</sup>

D.G, M.G and B.G from **Gugutiantkari**<sup>88</sup> had a 800sqm plot of land which is now on the other side of the occupation line. They now live in Gori as their house was completely destroyed as a result of the conflict. They stated that if they had enough money they would have preferred to reconstruct their old house and live in Gugutiantkari. Prior to the conflict the family used to cultivate their land across the ABL and sold fruit and vegetables for a living. Now, once a week or fortnight they travel to the garden on their burned property in order to grow some fruit and vegetables for their personal consumption. However, they cannot irrigate the land as they have to wait for a new system to be put in place. They told FIDH-HRIDC mission that in the past they used to make three tonnes of wine and lived on this income, however now they have nothing: "[N]ow I can't do anything- my life's work has been destroyed."

In **Dvani**, G.K<sup>89</sup> stated that it is still dangerous to live in the village, and only this morning he heard military drills and gunshots. He said Russian troops are deployed 2km away, and the fence is only 500m away. He added that everyone who managed to leave the village did so; however he did not want to "leave [his] country so that [he] can become a refugee in another country." The victim stated that he owned one hectare of land which was a fruit plot where he harvested 7-8 tonnes of apples in 2010. However, this plot was lost in 2010 as a result of the further encroachment of the ABL. He told FIDH-HRIDC that on 21 September 2010 Russian soldiers came and began to set up a fence, telling him that the land was now South Ossetian property. Now, all G.K is left with is 230sqm of land from where he is able to feed his family. G.K told FIDH-HRIDC that even if he had enough money to reconstruct a new house after his was burned during the conflict, he has fears that hostilities would reignite and his house would be destroyed again.

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86. Interview with V.M, Ditsi village, 29 June 2017.

87. As highlighted by the Ombudsman, "the right to property is enshrined in Article 21 of the Constitution of Georgia and guaranteed by Article 1 of the first optional protocol to the European Convention on Human Rights. In addition, the right to adequate housing is recognized by a number of international conventions including the International Covenant on Economic, Social and Cultural Rights (Article 11). Importantly, the lack of available resources does not exempt the state from its obligation to protect the rights of its citizens to adequate housing guaranteed by the International Covenant on Economic, Social and Cultural Rights.", in Public Defender (Ombudsman) of Georgia Report, 'Human Rights Situation of the Conflict Affected Population in Georgia', 2016, p.35.

88. Interview with D.G, M.G and B.G from Gugutiantkari in Gori, 29 June 2017.

89. Interview with G.K, Dvani village, 30 June 2017.



Remains of a house burned in 2008 in Dvani village, Georgia. Photo taken on 30 June 2017 - ©FIDH-HRIDC

### **ABL hampering irrigation systems**

Although a number of infrastructural programmes have been implemented by the Georgian government in recent years, serious problems remain. For example, new **irrigation systems** are insufficient for some local residents to irrigate their agricultural lands.<sup>90</sup>

In addition to hindering access to agricultural land, the ABL hampered the irrigation systems of farmland on the Georgian side of the ABL, greatly affecting crop production and as a consequence the livelihoods of local farmers. According to the Ombudsman of Georgia, all save for one out of 15 municipality villages along the ABL suffer from lack of access to irrigation water.<sup>91</sup>

T.G and T.A from **Dvani**<sup>92</sup> recounted that they owned a 800sqm plot of land which was lost in 2010 after Russian soldiers moved the fence demarcation further into Georgian territory. Prior to 2008 they grew fruit trees on this plot, but after the conflict the trees perished as a result of lack of irrigation water. Thus, since 2008 they had been planting beans on the land and were able to obtain a decent income. However, now, even that source of income has been lost as a result of the creeping border. In addition, they added that the closest neighbouring village is Muguti and they used to have very close relations with each other, attending weddings and funerals. However, they stated that they have lost contact with this community since 2008.

### **Infrastructural hurdles**

**Poor road infrastructure** makes transportation problematic. Moreover, in March 2016, Russian soldiers allegedly started implementing road works in the vicinity of the village of Jariasheni, in Gori municipality. Local residents informed the Ombudsman that the road cuts off 30-40 hectares of farmland, leaving 32 households with little or no access to their land, with the ABL being moved forward 70 meters into Georgian controlled territory.<sup>93</sup>

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90. Qartli.ge video on roads, drinking water and tractors in Dvani, 30 March 2016 (in Georgian): <https://www.youtube.com/watch?v=6CswGq-8Ru0>

91. Special Report of the Public Defender of Georgia on the Rights of Conflict Affected Population, 8 June 2017, p.35.

92. Interview with T.G and T.A, Dvani, 30 June 2017.

93. Special Report of the Public Defender of Georgia on the Rights of Conflict Affected Population, 8 June 2017, p.37.

Borderline village **Zardiaantkari** once has been described as a “micro-portrayal of Georgian-Ossetian conflict.”<sup>94</sup> As of January 2016, approximately 18 Georgian and 6 Ossetian families lived in the village. Although Georgian Government regained control over the village in 2012<sup>95</sup>, most of the local residents are still unable to return to their homes and are instead living in shelters in various regions, with relatives or in Gori kindergarten as late as 2015.<sup>96</sup> They refuse to return to the village due to the absence of basic living conditions and fear of renewed hostilities. Only minor works were carried out in the village in order to alleviate the consequences of the 2008 war, whilst most of the houses require major repairs. Lack of water is also a huge problem in the village. Furthermore, due to the absence of irrigation water, people cannot engage in agriculture, and pastures are inaccessible.<sup>97</sup>

According to the Ombudsman, nine years after the war, the Office is still regularly approached by citizens who have appealed to the authorities, in vain, for **compensation** or for help **rehabilitating residential buildings** damaged by military actions.<sup>98</sup> In addition, individuals still residing in damaged houses face risks of becoming homeless. This particularly affects individuals residing in the village Zardiaantkari, Gori municipality and village of Khurcha in Zugdidi municipality.

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94. “The Region of Shida Kartli: Zardiaantkari Village – January 2016”, in Caucasus Edition: Journal of Conflict Transformation, 15 January 2016; <http://caucasusedition.net/monthly-review/shida-kartli-january-2016/>

95. Russian forces left the territory after 10 October 2008 and Zardiaantkari became a buffer zone. It was only in spring 2012 that Georgian police started intensive patrolling in these villages, with the aim to secure the area.

96. Public Defender of Georgia, Annual Human Rights Report 2015, p. 663, available at: <http://ombudsman.ge/uploads/other/3/3892.pdf>

97. “The Region of Shida Kartli: Zardiaantkari Village – January 2016”, in Caucasus Edition: Journal of Conflict Transformation, 15 January 2016; <http://caucasusedition.net/monthly-review/shida-kartli-january-2016/>. See also Human Rights House, “Life in the villages of conflict affected area”, 2 October 2014: <http://humanrightshouse.org/Articles/20476.html>

98. Special Report of the Public Defender of Georgia on the Rights of Conflict Affected Population, 8 June 2017.

## IV - Case Studies

### Case 1: IDPs nine years on (Berbuki IDP Camp)

FIDH-HRIDC met with G.G and K.S, husband and wife, in their home at the Berbuki IDP-camp on 26 June 2017. The couple recounted that in August 2008 they were living in the village of Tamarasheni, in South Ossetia. According to them, in early August 2008, tensions in the area began to rise and they left the area in fear of their lives. They stated that their house in Tamarasheni was looted and set on fire. The couple relayed how neighbours informed them that their house had been destroyed by Russian soldiers allegedly one month after they left. G.G took refuge in a relative's house in Akalsheni, a village near Gori, whilst his wife travelled further to Tbilisi with their children. In Tbilisi she stayed at a temporary facility in a kindergarten set up for IDPs fleeing the conflict areas. The interviewee stated that she remained at the kindergarten until December 2008.

G. G narrated that on 9 August 2008 Gori (Kombinati settlement) was bombed by the Russians, and his aunt's home in Gori was bombed, killing his aunt, his mother, sister-in-law, 13-year-old grandchild of the aunt. He was informed of the event by a nephew who stated that his aunt's house had been "bombed and destroyed" as a result of Russian aerial bomb attacks. The interviewee stated that he immediately left for Gori, and when he arrived was only able to identify parts of his mother's body in the morgue, which had been blown apart during the bombing. He stated that his other three relatives were burnt beyond recognition. The interviewee added that he believes that the reason why his aunt's house was bombed was because it was near a Public School in Gori<sup>99</sup>, where a number of Georgian military reservists were located.

In terms of the impact that these crimes have had on the interviewees, both interviewees stated that they are greatly distressed that they cannot return to Tamarasheni as no one Georgian is allowed into the village after the 2008 conflict. They stated that "there is nothing left there now" of what used to be their home. Furthermore, they believe that their possessions were looted prior to their house being burned. They further stated that "only persons having Russian identification are allowed to live in the village now". They also expressed fear of going back to Tamarasheni due to the presence of "Russian soldiers". At the same time, they also stated that if it was possible, they would be ready to go back and rebuild their lives in Tamarasheni, despite all their property looted or destroyed. Their son, deceased prior to the 2008 conflict, is buried in a cemetery in Tamarasheni, and G.G deplored: "I would like to go there and live next to the grave of my son if I could, even if its in the cemetery." They also stated that it is highly upsetting for them to be unable to visit their son's grave on occasions such as Easter where Orthodox Christians traditionally carry out ceremonies and visit the graves of their deceased. When asked whether it is possible to go to Tamarasheni to visit the cemetery at least, the male interviewee stated that they would only be allowed to visit their son's grave with cooperation from Russian soldiers. The interviewee noted that many people had been arrested for collecting herbs near the border area, and they too would be arrested if they attempted to visit their son's grave.

Currently, the couple lives in a small two-bedroom cottage in Berbuki IDP camp. It must be noted that these houses were built as a temporary solution and were not equipped to be used as long-term housing. For instance, in this case the toilet is located outside and G.G and K.S do not have a bathroom. When the mission team visited the home, it was apparent that the couple were living in extremely cramped conditions, and noted at least 5-6 children, including two new-borns in the house, along with livestock and pets in the "porch" area of the cottage and a small yard which had been cultivated. The couple states that they have seven grandchildren and three children, and also have to take care of their nephew whose mother died in the bombing in Gori, and who was recently orphaned as a result of his father's death in 2016. Prior to the August 2008 conflict, they "had everything", a garden, their own home, two cars, land for cultivation, cows, and were able to maintain a decent standard of living. They made a good income from farming and would sell their produce in Tskhinvali. At present, they only possess a small piece of land which they cultivate for their own personal consumption and not for profit.

The couple relayed that they have received very little help from the Georgian authorities. No compensation was provided neither for the loss of their home, nor for their land in Tamarasheni, except the small cottage in Berbuki IDP camp where they are currently living and they also received "a table, two chairs and a set of 4 plates". They both receive 45 GEL in allowances from the Government of Georgia. One of their sons has a job in Gori, however, it is transient work. G.G's brother, whose wife was also killed in the bombing along with their mother, received 20,000 GEL for the death of his wife and his mother.

99. No 7 Public School in Gori.

The couple stated that for them justice would mean being able to go back to Tamarasheni and live there as they once used to. Furthermore, they also stated that justice would also encompass being able to have a basic standard of living.

## Case 2: Missing without a trace (Kordi village)

FIDH-HRIDC mission met with I.B and G.S, wife and husband, on 29 June 2017 in the village of Kordi. I.B stated that during the war, her husband and mother-in-law remained in the village, whilst she and her daughter-in-law fled to Tbilisi because of the constant ‘bombings’ and exchange of fire between belligerents. Russian soldiers had taken over the village and would often seek food from the villagers, but were generally respectful towards the local population. Although, I.B mentioned an incident between her husband and some of the Russian soldiers; she told FIDH-HRIDC that because it was a stressful time, her husband did not get a chance to shave and had consequently grown a beard. One day during this time, her husband came across some Russian soldiers<sup>100</sup> across the street who made him kneel down on his knees and ordered him to shave then and there because they said that they could not recognise him. She stated that he did so as instructed and shaved his beard on the street.



Near the house of I.B, interviewed by FIDH-HRIDC, in Kordi village, Georgia.  
Photo taken on 29 June 2017 - ©FIDH-HRIDC

I.B returned to the village at the end of September 2008 when Russian and Georgian troops were jointly deployed in Karaleti village. I.B stated that they have a plot of land which is not in occupied territory, however, water flows from the side of South Ossetia, and resultantly a lot of water kept flooding their plot. The plot of land is very close to the ABL.

The interviewee told FIDH-HRIDC with much difficulty, that her 26 year old son (N.S.) disappeared on 28 May 2016 and has not been heard of since. At the time they had planted a large amount of tomatoes, and her son was worried that too much water flowing from the South Ossetian side would ruin the tomato crop. On the night when he disappeared, around 8-8.30pm, he told her that he was going to the plot of land to see if he could try to change the direction of the water flow, and would return home soon to watch a football match. Roughly an hour later she called her neighbour, yet no one had seen her son. Thus, she and some friends set out to search for him, but he had disappeared without a trace, leaving her with no choice but to call the police. According to I.B, the police later informed her that people who live near the fence heard two gunshots that evening. The next day in the morning she stated that they found a torn rope at the top of the fence, however no bullet shells were found. She reported that there was some mud on the fence and speculates that perhaps her son was captured and tried to escape, but was shot at by the *de facto* South Ossetian authorities.

I.B ended the interview by stating that she would be relieved to hear that her son has been imprisoned, as she would prefer “him to be found as a criminal than not at all.”

100. I.B stated that the ethnicity of the soldiers was mixed, and that they were both Russian and Chechnyan. However, she said that those who insulted her husband were Russian.

## V - Hopes for Justice: the impact of ICC proceedings on victims of the 2008 war

The majority of victims interviewed by FIDH-HRIDC expressed hope that there would be justice for the crimes that took place in 2008, and that the ICC would be able to assist in this respect. Most who still lived in borderline villages expressed fears regarding the 'creeping border' or shifting ABL. For instance, in Dvani, victims told FIDH-HRIDC that they are extremely fearful for the future because the ABL continues to move into Georgian territory, and worried that one day the Russians would make them leave. They added that the Russian military bases are on top of a hill close to the village and stated that they feel a constant surveillance, leaving them feeling constantly under threat. In terms of justice, they stated that their only wish is to live in peace and reconcile.

In particular, G.K from Dvani<sup>101</sup> had very high expectations that the ICC would help Georgians. He had seen ICC Prosecutor, Fatou Bensouda, on television and told the mission "when I see her on TV everything becomes lighter and I feel like everything will be better." For him, justice would be the restoration of Georgia's lost territory and restoring the integrity of its borders. Furthermore, for G.K, justice would also mean getting his property back and reconciliation with the Ossetian people as well punishment for the perpetrators. N.Z from Avlevi had similar views, and felt that the Georgian government would not be able to prosecute those responsible for the war and damages caused, and the responsibility now fell on the international community.

Similarly, for others, justice would be the ability to go back to their villages and back to their lives before the war. At the same time, a number of victims consulted were understandably disillusioned with the prospect of justice, having seen no tangible progress in the last nine years. They expressed frustration at being spoken to by government officials and even NGOs with little outcome. For instance three victims from Berbuki IDP-camp, who preferred not to be named, stated that they had the opportunity to meet with the Georgian Chief Prosecutor and were extremely frustrated with the entire process. As such they stated that they had no expectations for justice and also stated that they mistrust both NGOs and the ICC "because neither have any understanding of the situation on the ground."

R.D from Ditsi<sup>102</sup> stated that he has no hope that anyone will be punished for the acts that occurred on 2008 and victims have no one to turn to for justice. He stated that for him, justice would mean the return of all Georgian territories to Georgia. All victims expressed fears regarding the future, and T.C from Tseronisi stated that in the event there is further conflict, he and his family would not know what to do as "we have nowhere else to go, this is the only house we have." He went on to say that he would "prefer to die here, than to live elsewhere." Others spoke of living in "a frozen conflict" which leaves them feeling insecure as the peace that they have is "a fragile peace."

In addition, for many of the victims spoken to, justice would also encompass being compensated for destroyed property, or lands lost after the imposition of the ABL. For those displaced from South Ossetia, compensation for their losses was also important. Z.Z from Tseronisi told FIDH-HRIDC that people in the village should be given alternative land to pasture their cows, and to cultivate. In addition, he stated that the Georgian Government should compensate people in the village for the loss of their livelihoods. T.C, also from Tseronisi, stated that for him, justice would be if IDPs who had to flee are able to return to their homes in the occupied territories. He added that there are thousands who are unable to return home, and feels that he and his family are lucky, at least in this respect. He ended the interview by expressing the hope to rebuild their relationships with the South Ossetians and the Russians so that "everyone would be able to live in peace".

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101. Interview with G.K, Dvani village, 30 June 2017.

102. Interview with R.D, Ditsi village, 29 June 2017.

## Conclusions and recommendations

As this report illustrates, the rights of 2008 conflict-affected communities to private and family life, housing and property are violated on a regular basis in 2017 due to security concerns, economic and social consequences which were heavily affecting their living and housing standards, land and property losses and restrictions imposed on local residents' ability to move freely across the ABL.

Many elderly victims suffered great indignities during the conflict, and continue to suffer from a lack of housing and other support, such as medical attention and/or psycho-social support. Fear for life is still widely present: a simple act such as fishing in a stream or harvesting fruit too close to the ABL can have deadly consequences. In addition, as has been highlighted, the installation of the fence has had a huge impact on the livelihood of those living close to the ABL, and has even prevented locals from visiting the graves of their loved ones. As such, it is also incumbent on the Georgian authorities to **investigate these ongoing violations** to their citizens liberty and security and freedom of movement and act accordingly in order to ensure the safety of those living in the conflict-affected areas.

From the consultations with both victims and Georgian civil society, FIDH-HRIDC believe that much depends on the progress of the ICC investigation in Georgia, not only for Georgians, but also for the entire region. As demonstrated in this report the prospects of reconciliation between ethnic Georgians and South Ossetians living close to the ABL appear unlikely as there is little opportunity for these communities to interact and air grievances.

Relatedly, FIDH-HRIDC believe that ICC investigations within the region would allow the truth of the events of 2008 to be known and would assist victims in healing and reconciliation. The ICC field office in Georgia, firstly announced to be set up in 2017 and during the October 2017 ICC visit to Georgia announced to commence operations in January 2018, would have an important role to play in communicating about the ICC mandate and activities and reaching out to victims and affected communities.

Although highly frustrated with the lack of accountability over the past nine years, those spoken to by FIDH-HRIDC would welcome the prospect of prosecutions of those responsible for the 2008 war, and reparations for the harm that they suffered.

**FIDH-HRIDC recommend that the Prosecutor of the ICC prioritise the situation of Georgia in line with the OTP Case Selection Strategy should sufficient evidence exist to take potential cases to trial.** Victim narratives illustrate that they have suffered from crimes such as murder, forcible displacement, destruction of property and pillage, and continue to suffer nowadays. These crimes took place in the majority of the villages close to the ABL that FIDH-HRIDC visited and conducted interviews. However, if the OTP deems this case not to be prosecutable on the basis of the evidence available, this must be communicated to victims as soon as possible.

Furthermore, many of the victims FIDH-HRIDC met with were elderly and living in truly **desperate conditions**. Some had been injured during the conflict; others were simply unable to support themselves without the assistance of family members who had perished during the conflict. Others had lost land and were now unable to support themselves or even afford to buy their medication. Therefore, FIDH-HRIDC hold that the **Government of Georgia must take the immediate needs and concerns of these people into account and provide the necessary financial assistance** so that they are able to live out the remainder of their lives in dignity. Those still living in the temporary small and poorly equipped cottages shall be decently relocated.

FIDH-HRIDC conclude that the conflict has had an indelible impact on victims. Victims continue to live in a highly vulnerable situation; all informed FIDH-HRIDC that they feel very fearful regarding the future and all also suffer from socio-economic problems as a result of the conflict. FIDH-HRIDC have met with numerous victims who have stated that the **compensation** that they were provided with is simply not enough to rebuild their homes, and many continue to live in cottages built by the Danish Refugee Council and others. Furthermore, many lost their land, homes and sources of livelihood after the imposition of the ABL in 2008. None of those who lost land in what is now termed as South Ossetia have received any compensation from the Government.

While FIDH-HRIDC understand that this land legally belongs to Georgia, the reality is that people no longer have access to this land, and therefore they must be duly compensated. In addition, those who continue to lose land as a result of the 'creeping border' must also be compensated and relocated.

In light of the above, FIDH-HRIDC propose the following recommendations:

## **To the International Criminal Court**

### **To the ICC on the field office in Georgia**

FIDH-HRIDC recommend that the ICC set up an effective and fully equipped field office in Georgia. As recently announced by the ICC, this office in Georgia is to commence operations in January 2018, with an already appointed Chief of office Dr Kaupo Kand<sup>103</sup>, and therefore, it is imperative that the required resources are allocated to the office. This is particularly important in relation to meaningful communication and outreach activities regarding the ICC's mandate, as well as complementarity and victims' participation in legal proceedings.

### **To the ICC OTP**

FIDH-HRIDC recommend that the Prosecutor of the ICC prioritise the situation of Georgia in line with the OTP Case Selection Strategy, taking into account the ongoing impact of the 2008 Russia-Georgia war on victims, should sufficient evidence exist to take potential cases to trial. The Prosecutor should tailor its communication strategy to take into account important prosecutorial developments in this situation and ensure that victims are regularly reached out to about any important development.

### **To the ICC outreach section**

Through interviews with victims and FIDH-HRIDC's interactions with civil society in Georgia, it appears that there is limited knowledge within the victim community regarding the role of the ICC, with many victims confusing the European Court of Human Rights (ECtHR) with the ICC. For this reason, it is imperative that the ICC implements a sustained outreach campaign in Georgia in order to inform the affected communities of the work of the Court.

Furthermore, FIDH-HRIDC did hear reports that the Government of Georgia has been carrying out outreach on the ICC with victims in Gori<sup>104</sup>, FIDH-HRIDC hold while this may be laudable. Indeed, the Georgian authorities are also under investigation for the potential role that they played in the 2008 hostilities, and as such outreach with affected communities should come from a more neutral source, such as civil society, and optimally the ICC outreach section.

### **To the ICC VPRS**

FIDH-HRIDC recommend that the Victims Participation and Reparations Section (VPRS) at the ICC puts in place measures so that victims are easily able to participate in proceedings should indictments be issued in the Georgia situation. This should include liaising with the OTP and mapping out where victims of any potential case are located. Furthermore, VPRS should work closely with civil society in Georgia in order to ensure that victims who are not able to participate in the cases understand why and can access the Trust Fund for Victims (TFV) for assistance.

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103. See Georgia Public Defender's press statement of 28 December 2017, "Meeting with Chief of ICC Office in Georgia", available at: <http://www.ombudsman.ge/en/news/meeting-with-chief-of-icc-office-in-georgia.page>.

104. See on the website of the Ministry of Justice of Georgia news report from 5 May 2017 about the visit in Kareli <http://www.justice.gov.ge/News/Detail?newsId=6395>; news reports from 5 May 2017 about the visit in Gori <http://www.justice.gov.ge/News/Detail?newsId=6396>; news reports from 8 May 2017 about meetings with TSU students <http://www.justice.gov.ge/News/Detail?newsId=6399>; news reports from 16 May 2017 about the information campaign of ICC delegation in Georgia <http://www.justice.gov.ge/News/Detail?newsId=6402>; news reports about the awareness raising meetings with the students of different universities: <http://www.justice.gov.ge/News/Detail?newsId=6405>; <http://www.justice.gov.ge/News/Detail?newsId=6406> (all in Georgian).

### **To the ICC Trust Fund for Victims**

The ICC Trust Fund for Victims (TFV) has two mandates: (i) to implement court-ordered reparations; and (ii) to provide physical, psychological and material support to victims and their families. The assistance mandate is provided for in Rule 98(5) of the ICC Rules of Procedure and Evidence. The assistance mandate consists of three forms of support, including physical rehabilitation, psychological rehabilitation and material support. Victims in Georgia clearly fall within the TFV's assistance mandate and therefore FIDH-HRIDC recommend that the TFV begins to take the necessary steps in order to ensure the implementation of assistance projects for the benefit of victims in Georgia.

### **To the Government of Georgia**

FIDH-HRIDC strongly recommend that adequate compensation be provided to victims who were displaced from South Ossetia for the loss of their land and destruction of their properties. Similarly, compensation must be provided to those living near the ABL who have lost farm-land as a result of the imposition of the ABL.

In addition, numerous victims spoken to complain of not receiving sufficient compensation in relation to the destruction of their properties, for instance, several victims stated that because the roofs of their homes did not collapse, they were not awarded any compensation. Therefore, it would be prudent for the Government of Georgia to re-assess some of the claims of victims living near the ABL in light of this information.

The Government of Georgia should continue to cooperate with the ICC by facilitating OTP investigations as well as ensuring that the ICC Registry can also fulfil its mandate in terms of outreach and victim participation.

Georgian authorities should also continue investigating international crimes committed during the 2008 conflict and prosecute lower level perpetrators, as the ICC will not be able to bring many cases to trial.

### **To the International Community**

FIDH-HRIDC hold that more must be done in order to resolve the problem related to the 'creeping border.' Russia continues to incrementally encroach further and further into Georgian territory. As such, more stringent measures must be undertaken in order to prevent this, save for verbal condemnation. At present the EUMM is responsible for monitoring the ABL, as well as the property rights, freedom of movement and human rights of those living in the conflict affected areas. However, the EUMM has no access to South Ossetia, which renders their efforts futile to a certain extent. As such FIDH-HRIDC call upon the international community to reinforce its pressure on Russia to prevent the so-called 'creeping border' and detention of Georgian citizens.

FIDH-HRIDC also recommend that the international community cooperate with the ICC in the framework of its investigation in the Georgia situation, as well as in the execution of potential arrest warrants.

### **To the Russian and *de facto* South Ossetian authorities**

FIDH-HRIDC call upon the Russian and *de facto* South Ossetian authorities to immediately ensure that Georgian citizens who cross over the ABL are not arbitrarily detained and fined. FIDH-HRIDC note with concern the disappearances of ethnic Georgians across the ABL, and call upon the *de facto* authorities to conduct proper investigations into these cases.

FIDH-HRIDC call upon the *de facto* Southern Ossetian authorities and the Russian authorities to stop the borderization activities that it has so far been carrying out in contravention of international law and the 6-point plan between Russia, South Ossetia and Georgia.

*De facto* Southern Ossetian and Russian authorities should also investigate international crimes committed during the 2008 conflict and prosecute perpetrators of these crimes, in complementarity with the ICC.

More generally, FIDH-HRIDC call all parties to work further on peace and justice processes, in accordance with international laws and standards. As such, international bodies, such as the EUMM should be allowed to come and assess the situation in South Ossetia, in order to carry out monitoring activities and make the necessary recommendations should this be prudent.

# Annex

## List of anonymised victims met by FIDH – HRIDC mission in June-July 2017

	<b>Date of interview</b>	<b>Place of interview</b>	<b>Sex</b>	<b>Age</b>	<b>Crimes</b>
1	26 June 2017	Berbuki IDP Settlement Camp	M	50-60	Murder (mother), pillage, destruction of property, forced displacement, persecution, appropriation of property
2	26 June 2017	Berbuki IDP Settlement Camp	F	50-60	Murder (mother-in-law), pillage, destruction of property, forced displacement, persecution, appropriation of property
3	26 June 2017	Berbuki IDP Settlement Camp	F	Unknown	Forced displacement, destruction of property, persecution, appropriation of property
4	26 June 2017	Berbuki IDP Settlement Camp	F	Unknown	Forced displacement, destruction of property, persecution, appropriation of property
5	26 June 2017	Berbuki IDP Settlement Camp	F	Unknown	Forced displacement, destruction of property, persecution, appropriation of property
6	27 June 2017	Karaleti Village	F	65	Murder (husband), persecution
7	27 June 2017	Tkviavi Village	F	Unknown	Murder (husband) , forced displacement, pillage, destruction of property, persecution
8	27 June 2017	Tkviavi Village	F	55	Murder (father)
9	27 June 2017	Tkviavi Village	M	50	Murder (father and uncle), pillage
10	27 June 2017	Tkviavi Village	F	Unknown	Murder (father-in-law and uncle), pillage
11	27 June 2017	Tkviavi Village	F	82	Murder (son), pillage, persecution
12	28 June 2017	Avlevi Village	F	50	Murder (father-in-law), forced displacement, pillage, persecution, appropriation of property
13	28 June 2017	Avlevi Village	M	52	Forced displacement, pillage, persecution, appropriation of property
14	28 June 2017	Avlevi Village	F	66	Destruction of property, pillage, persecution
15	28 June 2017	Avlevi Village	F	62	Forced displacement, destruction of property, pillage, persecution
16	28 June 2017	Tseronisi village	M	49	Forced displacement, destruction of property, pillage, persecution
17	28 June 2017	Tseronisi village	F	35	Forced displacement, destruction of property, pillage, persecution
18	28 June 2017	Tseronisi village	M	46	Forced displacement, destruction of property, pillage, persecution
19	28 June 2017	Tseronisi village	M	80	destruction of property, pillage, persecution
20	28 June 2017	Abisi village	M	38	Forced displacement, destruction of property, pillage, persecution
21	29 June 2017	Ditsi village	M	57	destruction of property, pillage, persecution
22	29 June 2017	Ditsi village	M	67	Torture, forced displacement, destruction of property, pillage, persecution
23	29 June 2017	Kordi village	F	51	Forced displacement, persecution

24	29 June 2017	Gori (victim from Gugutiantkari village)	M	44	Forced displacement, destruction of property, pillage, persecution
25	29 June 2017	Gori (victim from Gugutiantkari village)	F	65	Forced displacement, destruction of property, pillage, persecution
26	29 June 2017	Gori (victim from Gugutiantkari village)	M	70	Forced displacement, destruction of property, pillage, persecution
27	30 June 2017	Dvani village	M	63	Forced displacement, destruction of property, pillage, persecution
28	30 June 2017	Dvani village	F	52	Forced displacement, destruction of property, pillage, persecution
29	30 June 2017	Dvani village	M	53	Forced displacement, destruction of property, pillage, persecution
30	30 June 2017	Dvani village	M	62	Forced displacement, persecution
31	30 June 2017	Dvani village	M	59	Forced displacement, destruction of property, pillage, persecution
32	30 June 2017	Dvani village	F	58	Forced displacement, pillage, persecution, appropriation of land
33	30 June 2017	Dvani village	F	58	Forced displacement, destruction of property, pillage, persecution
34	31 June 2017	Gori (victim in Mereti at the time of the conflict)	F	47	Murder (father), forced displacement



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Non-governmental organization the Human Rights Center, formerly **Human Rights Information and Documentation Center (HRIDC)** was founded on December 10, 1996 in Tbilisi, Georgia. The HRIDC aims to increase respect for human rights, fundamental freedoms and facilitate peace building process in Georgia. To achieve this goal it is essential to ensure that authorities respect the rule of law and principles of transparency and separation of powers, to eliminate discrimination at all levels, increase awareness and respect for human rights among the people in Georgia. Human Rights Center is member of following international networks:

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- Human Rights House Network; [www.humanrightshouse.org](http://www.humanrightshouse.org)
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# Keep your eyes open

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The Worldwide movement for human rights acts at national, regional and international levels in support of its member and partner organisations to address human rights abuses and consolidate democratic processes. Its work is directed at States and those in power, such as armed opposition groups and multinational corporations.

Its primary beneficiaries are national human rights organisations who are members of the Movement, and through them, the victims of human rights violations. FIDH also cooperates with other local partner organisations and actors of change.

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