

HUMAN RIGHTS CENTRE

# Human Rights on the Frontline

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Annual Human Rights Report for 2008

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The Human Rights Centre (HRIDC) is a non-governmental human rights organization, without any political or religious affiliations. The purpose of HRIDC is to increase respect for human rights and fundamental freedoms in Georgia, as well as to contribute to the democratic development of the country.

HRIDC implements projects to ensure compliance with human rights laws and standards. We cooperate with international and local organizations which share our view that respect for human rights is a precondition for sustaining democracy and peace in Georgia.

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## **Introduction**

“Human Rights on the Frontline” is the continuation of the efforts of the Human Rights Centre to provide a yearly overview of the human rights situation in Georgia. Report of the year 2008 is predominated by two subjects – Parliamentary Elections and human rights violations steaming from the armed conflict between Georgia and Russia.

The August conflict was greatly pre-conditioned by the lack of the accountability of the Georgia Government and lack of participation of the Georgian society in the decision making process. In a democratic society the public participation is first of all ensured through fair and transparent elections and all the rest comes next. The Parliamentary Elections of 2008 was far from meeting the requirements of the fair and free elections. The Human Rights Centre has documented violations of the election standards that took place both in pre-election period as well as during the Election Day. These violations were not isolated but carried a systematic character and overall it was not a free expression of the will of the Georgian society. “Khurcha Incident: Deceiving First Impressions” provides an example how Government of Georgia is trying to use unacceptable ways for maintaining the power. The findings of the Human Rights Centre in relation to the incident that took place on 21 of May in the village of Khurcha contain all indications that it was planned and executed by the Georgian Government.

“Monitoring Condition of IDPs in Gori” and “Human Rights in the Conflict Zone - Six month on from the August War” provide an overview of the conditions of the internally displaced persons as well as conditions in the former buffer zone. These two chapters of the report demonstrate the unwillingness and inability of the Government to meet the basic need of it own citizens who suffered from the conflict. “Increasing Impunity and Denial of Justice” emphasizes the need for the investigation of the war crimes during the august conflict and necessity of punishment of those responsible for commission of war crimes.

Moreover, the report provides analysis of the problems of the freedom of expression and media, which continue to worsen with the tightening of power struggle of the government. It shows once again that Georgian society is deprived of a real chance to receive the information on the matters of public importance in a balance and impartial way.

Final part of the report demonstrates that the allegations of the existence of the political prisoners in the country are well grounded and that political persecutions that started in 2005-2007 continued in 2008 and is expressed in new forms.

## **The International Community on Human Rights in Georgia**

### **Introduction**

Recent developments in Georgia resulted in increased interest with respect of human rights situation. The main distress has been directed to the armed conflict of August and the quantity and conditions of Internally Displaced Persons (IDP's) deriving from this situation. Ban Ki Moon expressed his deep concern on August 14, 2008 with regards to the humanitarian impact as a result from the armed conflict, causing loss of life, wounded civilians and significant displacement of people. In addition, head of the Commission of the European Union, Javier Solana, guaranteed the Georgian government that the EU would give its full assistance to ensure that there is no resort to violence, that people can return in peace to their homes and that normal life can resume. Although main concern has been directed towards IDP's, in the last year, there has also been attention for, in general, poverty reduction and equal rights with regards to education and healthcare. Furthermore, the international community remained focused on the unstable circumstances with regards to South Ossetia and Abkhazia, which, ultimately, resulted in an armed conflict in August. This unit of the report provides overview the opinions, resolutions and reports of the international community with respect of human rights situation in Georgia starting with the United Nations (UN), Organization for Security and Co-operation in Europe (OSCE), European Union (EU), Council of Europe (CoE) and World Health Organization (WHO); going further examining Human Rights Watch (HRW), Amnesty International and the International Red Cross (IRC) with regards to their opinions and reports on the Human Rights situation. Concluding an overview will be given of the main subjects of concern.

### **International Organizations**

#### **UN**

**Security Council** - Starting with the resolutions by the Security Council (SC) of the United Nations (UN) it becomes clear that main concern in April 2008 already was focused on the alleged escalation of the conflicts between Georgia and its breakaway regions Abkhazia and South-Ossetia. In resolution 1808 the SC expresses its concern at any violation of the ceasefire and separation of forces regime in the Zone of Conflict and, furthermore, stresses the urgent need to alleviate the plight of refugees and internally displaced persons (IDP's) and the need for a perspective of life in security and dignity in particular for a new generation growing up outside Abkhazia, Georgia. In addition, the SC reaffirms the importance of the IDP's return to their homes and property and stresses that individual property rights should not be affected by the fact that owners had to flee during the conflict and that the residency rights and the identity of those owners must be respected. Moreover the SC calls upon both sides to implement the UNHCR's Strategic Directions for their return in the first instance to the Gali District.

**Secretary General** - The Secretary General to the General Assembly on the UNOMIG mission to Georgia also reaffirmed as fundamentally important the right of return for all the refugees and internally displaced persons to Abkhazia, Georgia, and encouraged the sides to focus on practical steps to improve conditions for returns, in the first instance to the Gali District. On the other

hand, attention was also focused on the safety aspect, whereas UNOMIG patrols reported in the same district criminal incidents, such as one killing, one attempted killing, one incident of arson and 10 robberies and as a result a victim of one of the robberies later died in the hospital. Furthermore, the UNOMIG human rights officers followed up on two allegations of forceful recruitment and the Mission is following up on reports of compulsory labor, possibly involving intimidation and physical assault, in the Tkvarcheli and Ochamchira Districts. In the Zugdidi sector criminal incidents reported to UNOMIG patrols during the reporting period included two homicides, five abductions and eight robberies. Moreover, concern was expressed at the treatment by the de facto authorities of the last remaining death-row inmate in Abkhazia. In addition, the Office closely monitored the detention conditions of the three ethnic Georgians apprehended on 26 February by the de facto Abkhaz State Security Services and released on 6 March. During daily visits to the detainees, none reported mistreatment while in custody. Furthermore, Lousie Arbour, the United Nations High Commissioner for Human Rights, urged the Abkhaz leadership to continue working towards sustainable rights-based solutions for internally displaced persons, with specific attention to protecting property rights. She also stressed the importance of providing education opportunities in the relevant mother tongues, and ensuring the right to freedom of movement for all local residents, including access to essential services and employment opportunities.

**UNDP** - On 27 June 2008 the United Nations Development Programme (UNDP) launched the “Georgia Human Development Report 2008: The Reforms and Beyond”. The report remarks, first of all, the rule of law, and states Georgia to be successful in removing day-to-day corruption, which seemed five years ago unattainable; however, there remains a major concern with regards to the judicial system, whereas the executive power holds an extra-legal influence with regards to the judiciary. Furthermore, the report acknowledge the remarkable economic development, however, there is general agreement that neither poverty nor extreme poverty have been notably reduced. Not only are socially vulnerable groups be unreasonably impinged upon by external shocks, also do the macroeconomic enhancements have minor impact on agriculture, which employs over half of the inhabitants of Georgia and, in addition, the vast majority of social payments are not well-targeted at those who need it most. Another facet of the report targets the educational system, where, although the effects of the changes in the educational system are overwhelmingly positive, within the existing financial restraints, the main issue is equity. Allocating funding to students wholly on the basis of test scores, favors in general the wealthier students, since they can afford schools with a higher quality and they are able to attain private tuition. This problem is exacerbated for students from ethnic minorities, for whom Georgian is a second language.

**CRC** – On 23 June 2008 the Committee on the Rights of the Child (CRC) published a report on the rights of the children in Georgia. First of all, the situation with regards to the internally displaced children should be mentioned, since the report states that although the committee welcomes the newly adopted draft action plan for the implementation of the national strategy on internally displaced persons adopted on 2 February 2007 with an increased focus on integration, the Committee remains concerned that internally displaced children in Georgia continue to face serious socio-economic deprivation, especially their limited access to housing, health services

and education, as well as the physical and psychological impact of displacement on children; and is further concerned about the potential negative impact of segregated schools for internally displaced children. In a more general view of the rights of children the judicial system was examined. According to the Committee, several aspects of the current situation must raise concern, whereas not only the government decided to lower the minimum age for criminal responsibility from 14 to 12, also no appropriate mechanism has been created to replace the in November 2006 abolished Commission of Minors and the Inspectorate of Minors, the only specialist unit dealing with prevention activities with regard to juveniles. Furthermore, there remains concern that children from minority populations experience discrimination in the enjoyment of their rights as stipulated in the Convention, in particular, concerning culture and language. Another issue of concern is raised about the absence of Comprehensive legislation to prevent sexual exploitation of children; protection and/or recovery assistance and social reintegration for children who are victims of sexual exploitation; and Data on the extent and patterns of sexual exploitation and prostitution. Moreover, the reports notes with regret that the State party has not yet ratified: the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; the International Convention on the Protection of the Rights of All Migrant Workers and their Families; the Convention on the Rights of Persons with Disabilities; and the International Convention for the Protection of all Persons from Enforced Disappearance.

**August War** - Following the outbreak of the conflict, the Secretary General expressed his concern about the humanitarian situation in the region. He mourned the victims of the hostilities and urged all parties to provide full and safe access for humanitarian organizations to the regions affected by the conflicts. On August 14 2008 the UN agencies and other humanitarian organizations see themselves restrained in entering the conflict zone in order to give immediate humanitarian assistance. Robert Watkins, The United Nations Resident Coordinator, urged all sides to the conflict to establish immediately the necessary security and administrative conditions to allow the establishment of a humanitarian corridor, as agreed in the ceasefire plan to enable the residents to depart, and allow humanitarian organizations to provide sufficient aid. The United Nations agencies began providing relief supplies to 10,000 people across the country that were displaced by the conflict. UNHCR provided tents, cans, blankets and kitchen sets to those in need, WFP supplied food to more than 3,300 displaced children, women and men and UNICEF provided hygiene kits to 4,000 families. On 23 September 2008 UNDP initiated a project in the Shida Kartli region to help local authorities respond to the crisis caused by the armed conflict in August 2008.

On 12 August 2008 Georgia filed an Application instituting proceedings against the Russian Federation for violation of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). On 14 August 2008 Georgia, referring to Article 41 of the Statute of the Court and to Articles 73, 74 and 75 of the Rules of Court, submitted a Request for the indication of provisional measures in order to preserve its rights under CERD “to protect its citizens against violent discriminatory acts by Russian armed forces, acting in concert with separatist militia and foreign mercenaries”. On 25 August 2008 Georgia, referring to “the rapidly changing circumstances in Abkhazia and South Ossetia”, submitted an Amended Request for the

Indication of Provisional Measures of Protection. Public hearings, in the presence of both Parties, were held from 8 to 10 September 2008. On October 15 the Court considered that, *prima facie*, it has jurisdiction under Article 22 of CERD to deal with the case and may accordingly address the Request for the indication of provisional measures submitted by Georgia. By an Order of 2 December 2008, Judge Rosalyn Higgins fixed 2 September 2009 as the time-limit for the filing of a Memorial by Georgia and 2 July 2010 as the time-limit for the filing of a Counter-Memorial by the Russian Federation.

## OSCE

**August War** – Already on July 4, the OSCE Chairman-in-Office, Finnish Foreign Minister Alexander Stubb, expressed acute distress over a recent chain of confrontations resulting in loss of life and serious injuries in the Georgian conflict areas. These incidents, and reports of heavy exchange of fire in the Zone of the Georgian Ossetian conflict, are worrying signs of growing tension, he said. Following the outbreak of fighting after August 7, he stated, on August 19, that “international monitoring of the agreed ceasefire and of the humanitarian situation is urgently needed.” In addition, on September 15 the Head of the OSCE Mission to Georgia, Ambassador Terhi Hakala, instructed Russian President Medvedev to respect fundamental Human Rights: “I emphasized the need to protect the civilian population in war-affected areas and the need for humanitarian aid to be delivered as soon as possible.”

Following, the OSCE has worked intensively to contribute to reducing tension between the parties; to easing the humanitarian crisis; and to setting the conditions on the ground conducive to further political dialogue aimed at achieving a longer-term solution to the conflict.

## European Union

**Commission** – In April 2008 the European Commission launched its findings with regards to the neighborhood policy and Georgia in 2007. According to the report good progress had been achieved on the reform of the criminal justice sector and in the fight against corruption. New legislation was enacted in the areas of democracy, the functioning of state and local administrative bodies, human rights and fundamental freedoms, including media. However the events at the end of 2007, including the introduction of the state of emergency, demonstrated the need for a proper implementation of this legislation.

**European Parliament** – In the report of the Parliamentary Co-operation Committee EU-Georgia, on April 29-30 2008, the Committee urges the Georgian authorities to enhance their efforts as regards towards the transformation of the judiciary, in particular by guaranteeing a correct realization of instruments arranged assuring the efficient independence of judges and prosecutors. On the other hand, it did welcome the creation of the Conference of Judges, the only self-governing body entitled to elect the members of the High Council of Justice, and the introduction of other legal guarantees meant to strengthen the independence of the judiciary and the fight against corruption. Furthermore, it acknowledged Georgia's attempts in the struggle against fraud and the steps taken to better integrate the national minorities, inter alia through the implementation of the civil integration program, establishment of the Public administration institute providing training for people from minority groups. However, it also considers that

additional steps still need to be taken as regards to education, representation, use of minority languages and greater involvement of ethnic minorities in political process.

**August War** – On August 12 the European Union expressed its great anxiety concerning the victims, the suffering being endured by the people, the considerable damage caused and the increasing number of displaced persons as a cause of the outbreak of the conflict in South Ossetia. In addition, on the day before, the European Commission released €1 million in fast-track aid to help cover the urgent humanitarian needs of thousands of civilians affected by the fighting in the region of South Ossetia and beyond in Georgia. Louis Michel, European Commissioner for Development and Humanitarian Aid, said: "The European Commission is extremely concerned about the fighting and deplores the loss of lives and the human suffering it causes. We call for an immediate end of hostilities. Thousands of civilians, women and children are caught up in the fighting in and around South Ossetia. Our fast-track funding of 1 M€ is a very first contribution to meet their basic humanitarian needs. Further funds could be released as soon as the assessment of the needs will be finalized on the ground. However, emergency relief teams are only able to operate if all conflict parties respect international humanitarian law. Humanitarian access and safe passage for uprooted civilians and aid workers is crucial."

On 13 August 2008 the Council (general affairs and external relations) recalled that the Union had expressed its grave concern at recent developments in Georgia, and the open conflict that has broken out between Russia and Georgia. In addition, they stressed that military action of this kind is not a solution and that this war has caused the loss of many human lives, inflicted suffering on the population, resulted in substantial material damage and further increased the number of displaced persons and refugees.

According to the European Parliament in resolution of 3 September 2008 (P6\_TA (2008)0396) on the situation in Georgia: 'about 158 000 people were uprooted by the crisis and forced to leave their homes and must now be assisted in their efforts to return; whereas the presence of cluster munitions, unexploded ordnance and landmines, as well as the Russian warnings and the lack of cooperation, make any such return unsafe.' Furthermore, the report notes that international human rights researchers and military analysts documented the use by Russian troops of cluster munitions in Georgia, which has left thousands of items of unexploded ordnance in the conflict areas; whereas Georgia has also admitted to the use of cluster bombs in South Ossetia near the Roki tunnel. Moreover, it pointed out that any decision on the final status of South Ossetia and Abkhazia must be conditional on compliance with the basic principles of international law, including the 1975 Final Act of the Conference on Security and Cooperation in Europe (Helsinki Final Act), with regard, in particular, to the return of refugees and respect for their property and guarantees of, and respect for, minority rights. In addition, it strongly condemned the forced resettlement of Georgians from South Ossetia and Abkhazia and called on the *de facto* South Ossetian and Abkhazian authorities to guarantee the safe return of the displaced civilian population, in line with international humanitarian law.

### **Council of Europe**

**Committee of Ministers** - On August 9 Carl Bildt, Chairman of the Committee of Ministers of the Council of Europe made a statement on the situation in Georgia: "I urge the Russian

Federation, Georgia and the separatist South Ossetian and Abkhaz administrations to immediately enter into a cease-fire, in order to stop hostilities. I call upon the parties to agree to direct talks and to cooperate in international efforts in order to achieve a cease-fire. The suffering of the civilian population must be put to an immediate end. On August 11 he reaffirmed this statement by stressing that he strongly supports the efforts of the UN, the EU and OSCE to end the violence and resolve the conflict. It is of the utmost importance that humanitarian organisations are given total access to the conflict area. The suffering of the civilian population must stop, as must the loss of even more lives also in this region of Europe.”

**Parliamentary Assembly** - On August 11 the President of the Parliamentary Assembly of the Council of Europe (PACE), Lluís Maria de Puig, uttered profound distress regarding the large-scale military operations taking place between two Council of Europe member states, Georgia and Russia. He condemned the large numbers of fatalities that resulted from the recent clashes and expressed concern about Russian military action which far exceeded Russia's responsibilities under its peacekeeping mandate. On August 23 Mr Van den Brande, co-rapporteur of the PACE for the monitoring of obligations and commitments by Russia remarked after his visit to Moscow and North Ossetia that “Russia and Georgia are member states of the Council of Europe and they must abide by the principles the Organisation stands for: respect of human rights, humanitarian law and rule of law must be ensured by all means”. He was shocked by the stories of the refugees about ‘the massive and indiscriminate shelling and bombing of Tskhinvali and the destruction of residential areas’. Furthermore, PACE President Lluís Maria de Puig, said on September 29 that “the Council of Europe must spare no criticism and must condemn all that it considers to be a violation of its principles and values with the utmost firmness”.

According to resolution 1633 on the August conflict adopted by the Assembly on 2 October 2008 (35th Sitting): “The Assembly is concerned about the human rights and humanitarian law violations committed by both sides in the context of the war, such as the intentional or avoidable killing or wounding of civilians, as well as destruction of property. In particular, the use of indiscriminate force and weapons by both Georgian and Russian troops in civilian areas can be considered as war crimes that need to be fully investigated.’ Furthermore it stresses that ‘The Assembly is especially concerned about credible reports of acts of ethnic cleansing committed in ethnic Georgian villages in South Ossetia and the “buffer zone” by irregular militia and gangs which the Russian troops failed to stop.”

**High Commissioner on Human Rights** - Commissioner Thomas Hammarberg and his delegation visited Vladikavkaz, Tskhinvali, Gori, Tbilisi and Moscow from 22 to 29 August 2008 in order to assess the human rights situation in the areas affected by the South Ossetia conflict. The Commissioner concluded that a very large number of people had been victimised. More than half of the population in South Ossetia fled and lawlessness spread in the ‘buffer zone’ controlled by Russia between Tskhinvali and Karaleti and forced many to leave even from there. He stressed that the programs of UNHCR, UNICEF, ICRC and other agencies should be supported and the OSCE be given authority and resources to expand its mission. Apart from cease-fire observers and police presence, there is a need for specialised human rights monitors who must also operate in coordination with the domestic ombudsmen. The protection of minorities must be a key priority and positive inter-community relations must be encouraged.

The Commissioner presented, on September 30, six principles for urgent protection of human rights and humanitarian security:

- 1) The right to return of those who fled or were displaced must be guaranteed.
- 2) Those who fled or were displaced must be ensured adequate living conditions until they can return home.
- 3) The whole area affected by the warfare must be demined.
- 4) Physical assault, torching of houses and looting must be totally stopped and persons responsible for such crimes apprehended and held responsible.
- 5) Prisoners of War, other detainees and persons stranded in unsafe situations must be protected and rescued through continued humanitarian efforts.
- 6) International presence and assistance are needed in the area affected by the conflict.

By mid-November, 85 percent of all persons displaced from the previous “buffer zone” returned to their homes. The great majority of those who fled to Russia have returned; however, ethnic Georgians who fled southwards have not been able to move back. The Commissioner discussed the principle of the right to return with the *de facto* authorities in Tskhinvali. The *de facto* authorities indicated that they accepted and would respect this principle, provided that those who wished to return fulfilled certain criteria. These were non-participation in the hostilities and becoming a citizen of South Ossetia. This policy has to be reviewed and brought in line with the European Convention on Human Rights.

### **World Health Organization**

The World Health Organization (WHO) instantly reacted by releasing a press release on the severe situation in Georgia on 18 August 2008, by describing the casualties. The conflict in Georgia led to both internal and external displacement of large numbers of people and due to problems for humanitarian organizations in accessing part of the affected area, in particular South Ossetia, and the rapid manner in which this crisis is unfolding, precise data regarding the number of people who were displaced and where they are located were at the time hard to establish. This conflict had greatly impacted the civilian population and put great strain on the capacities of the Government and humanitarian organizations to respond. Georgia was already a country with some 220,000 displaced persons from previous conflicts in the regions of South Ossetia and Abkhazia.

Although there have been, and continue to be, difficulties in assessing humanitarian needs, priorities during this acute phase of the emergency are identified as food; health and nutrition; protection; shelter and non-food items; water, sanitation and hygiene, and logistics and telecommunications.

## **International Criminal Court**

The International Criminal Court (ICC) is analyzing information related to alleged crimes committed in Georgia during the August conflict according to Prosecutor Luis Moreno Ocampo. His Office is analyzing information alleging attacks on civilians in Georgia, which is a State Party to the Rome Statute that established the Court. "My Office considers carefully all information relating to alleged crimes within its jurisdiction – war crimes, crimes against humanity and genocide – committed on the territory of States Parties or by nationals of States Parties, regardless of the individuals or groups alleged to have committed the crimes," Ocampo stated.

## **International Non-Governmental Organizations**

### **Human Rights Watch**

"The war over South Ossetia lasted only one week, but will have devastating consequences for civilians for generations to come." said Rachel Denber, Europe and Central Asia director at Human Rights Watch. "Up in Flames: Humanitarian Law Violations in the Conflict Over South Ossetia," is a 200-page report (<http://www.hrw.org/en/reports/2009/01/22/flames>), that details indiscriminate and disproportionate attacks by both Georgian and Russian forces, and the South Ossetian forces campaign of deliberate and systematic destruction of certain ethnic Georgian villages in South Ossetia.

Human Rights Watch found that, in a number of instances in South Ossetia and in undisputed Georgian territory, Russian forces used indiscriminate aerial, artillery, and tank fire strikes, killing and wounding many civilians, furthermore they documented a number of cases in which Russian forces occupying Gori district in Georgia opened fire on civilian vehicles, killing or wounding civilians. "Instead of protecting civilians, Russian forces allowed South Ossetian forces who followed in their path to engage in wanton and wide scale pillage and burning of Georgian homes and to kill, beat, rape, and threaten civilians," said Denber. "Such deliberate attacks are war crimes, and if committed as part of a widespread or systematic pattern, they may be prosecuted as a crime against humanity." Furthermore, the report details how South Ossetian forces, at times together with Russian forces, arbitrarily detained at least 159 ethnic Georgians. South Ossetian forces killed at least one detainee and subjected nearly all of them to inhuman and degrading treatment and detention conditions. They also tortured at least four Georgian prisoners of war and executed at least three. Georgian forces beat and ill-treated at least five of the 32 Ossetians detained in August in the context of the armed conflict.

In addition, both Russian and Georgian forces used cluster munitions, causing civilian deaths and putting more civilians at risk by leaving behind unstable "minefields" of unexploded bombs. Cluster munitions are banned under the Convention on Cluster Munitions, which neither Georgia nor Russia has signed. "The use of Grad rockets - which are indiscriminate when used in areas populated by civilians - shows that Georgian forces attacked South Ossetia with blatant disregard to the safety of civilians," said Denber.

More than 20,000 ethnic Georgians who fled the conflict in South Ossetia remain displaced. Ethnic Georgians in the in Akhlagori district - a remote area in the east of South Ossetia, currently occupied by Russian forces - face threats and harassment by militias and anxiety about a possible closure of the district's administrative border with the rest of Georgia. Both factors have caused great numbers of people to leave their homes for undisputed Georgian territory.

### **Amnesty International**

The AI report – ‘Civilians in the line of fire’ by Amnesty International (EUR 04/006/2008) stated that both international human rights law and international humanitarian law apply to the conflict between Georgia and the Russian Federation. The four Geneva Conventions of 1949 and their two Additional Protocols of 1977, to which both Georgia and the Russian Federation are party, are among the principal instruments of international humanitarian law.

The specific obligations laid out in international humanitarian law include:

- the ensuring of adequate precautions to spare civilians and civilian infrastructure during attacks
- the prohibition on indiscriminate and disproportionate attacks
- the prohibition of the use of weapons that are by nature indiscriminate or which cause superfluous injury or unnecessary suffering
- the prohibition of wilful killing and causing serious injury
- the prohibition of the forced displacement of civilians except for reasons of ensuring their own safety or for imperative military reasons
- the prohibition of pillaging; and the prohibition of the destruction of property not justified by military necessity.

There are strong indications that all of these standards were violated during the Georgia-Russia conflict.

Not only were cluster bombs used by both Russian and Georgian forces, there are also many other reports of Russian forces looking on while South Ossetian forces, militia groups and armed individuals looted and destroyed Georgian villages and threatened and abused the residents remaining there. As the occupying power, the Russian army had a duty to ensure the protection of civilians and civilian property in areas under their control. The advancing Russian army was accompanied by both regular South Ossetian forces and an array of paramilitary groups, who committed serious abuses against ethnic Georgians in South Ossetia and adjacent “buffer zones” under effective Russian control. Eyewitnesses reported unlawful killings, beatings, threats, arson and looting perpetrated by armed groups associated with the South Ossetian side and acting with the apparent acquiescence of Russian armed forces.

Furthermore the IDP’s, where at its height the conflict displaced almost 200,000 people, including approximately 130,000 in Georgia, 30,000 within South Ossetia and 35,000 from South to North Ossetia in the Russian Federation. In Georgia as of late October about 24,000 people, displaced from South Ossetia itself, were thought to be facing long-term displacement. Some 10,000 people had also not been able to return to their homes in the former “buffer zone” due to ongoing security concerns or damaged homes. This new wave of displacement

compounds the longer-term problem of the approximately 220,000 people internally displaced as a result of the conflicts of the early 1990s.

### **International Red Cross**

‘I was looking for the daughter of an old, bedridden woman from a village outside Tskhinvali. I found the daughter in Tbilisi but she thought that her mother had died. When I spoke to her and told her that we thought we had found her mother, she asked me all sorts of questions. She couldn’t believe it was really her, but it was. When we reunited them here at the delegation, I will never forget the look of joy on the daughter’s face.’ Nino Berianidze, international humanitarian jurist of the International Red Cross (ICRC), about her work reuniting families who were broken up during the August war because they had to flee.

Direct assistance programs have faded out currently for displaced people and the extremely poor; however, the ICRC kept an emergency-response capacity and seeks to encourage the authorities to find long-term solutions for vulnerable population groups. The ICRC made regular visits to prisons throughout the country to monitor the treatment and conditions of detainees. It also continued to help the Georgian and Abkhaz authorities shed light on the fate of some 2,000 people missing since the armed conflict.

## **Parliamentary Elections – Unprecedented Brutality and Election Fraud**

### **Introduction**

When it was announced that Parliamentary Elections were scheduled to be held in the spring of 2008, the Human Rights Centre focused its resources and professional expertise on observing a full range of activities and processes related to the Georgian Parliamentary Elections. The new parliament will now consist of 150 members, 75 elected from list of political parties, and 75 as single mandate constituencies. These changes came about because of amendments in the electoral system, which followed other changes in the Georgian Constitution and the Unified Election Code.

The Centre's objectives in this following the election process were: first to determine how closely Georgia's electoral process adhered to accepted international standards, especially in several problematic Georgian regions where election violations had occurred in the January 2008 snap-presidential elections; secondly, to increase the overall degree of public awareness about political processes taking place in Georgia; thirdly, to assist in making the political process in Georgia more transparent, not only for citizens but for international stakeholders as well.

The comprehensive goal in our concerted efforts has been to assist in the consolidation of the democracy that is unfolding or not, within Georgia. We are also assisting in bringing about open and transparent elections, and to further educate the wider public in terms of the developmental stage of fledgling Georgian democracy, especially since the national media is not been able or willing to provide sufficient and balanced coverage to these problems.

The Human Rights Centre's election reports is divided into two parts. The first section of the report deals with the findings from the Human Rights Centre during the pre-election campaign. The second part reflects the Centre's experience and observations over the unfortunate events that took place on Election Day.

### **Pre-Election Campaign**

Members of the Human Rights Centre network have been actively involved in the monitoring of the pre-election campaign. The staff has been especially focused on the level of adherence to election procedures by various actors who were involved in the pre-election campaign. We wanted to see how closely the process conformed to procedures and guidelines of the Central Election Commission (CEC) and based on enabling Georgian legislation. Various election-related violations observed during the pre-election campaign can be classified in the following six different categories:

- ✓ Direct and indirect threats to members of local and district election commissions;
- ✓ Direct and indirect threats towards voters;
- ✓ Bribing of voters;
- ✓ Preventing opposition leaders from meeting with voters

- ✓ Active use of administrative resources by the ruling National Movement party
- ✓ Irregularities related to the voter's lists

### **Election Day**

The Human Rights Centre has allocated following number of observers on May 21:

- ✓ Tbilisi: 5 mobile observers
- ✓ Kakheti Region: 22 observers (several of them were mobile)
- ✓ Samegrelo Region: 53 observers (several of them were mobile)
- ✓ Shida Qartli Region: 9 mobile observers
- ✓ Batumi: 6 observers
- ✓ Akhaltsikhe: 1 mobile observer

The Human Rights Centre together with the Coalition for Democracy held three press-conferences on May 21. Conferences were held at 12:00, 15:00 18:00 and 21:00 o'clock. Only last press conference that was held at the entrance of Central Election Commission (CEC) received adequate news coverage.

### **Election Day Findings**

The Human Rights Centre observed fundamental violations of election procedure in the majority the polling stations observed on May 21. Those responsible for those violations were either members of the local or district election commissions or persons with unknown identity. The situation had been tense since morning, with observers of the Centre not being allowed to enter polling stations, despite having accreditation badges officially issued by the Central Election Commission. Even those observers who were admitted to the polling stations were effectively prevented from being able carry out their mandate by members of election commissions.

### **Facts of Brutality**

By noon the situation became tenser. Several observers reported to have been subjected to verbal abuse. Soon after, facts on physical abuse of the Centre's observers were reported. Mr. Ucha Nanuashvili, the Executive Director of the Human Rights Centre was a victim of physical violence while he attempted to document acts of violence and intimidation at several polling stations in the Kakheti region of East Georgia.

Mr. Nanuashvili had been observing Sagarejo Polling district villages: Iormuganlo, Upper and Lower Lambalo, Tulari and Qesalo. Persons of unknown identity have destroyed the video camera of the Human Rights Centre to prevent dissemination of the footage demonstrating chaos and brutalities taking place in most of the polling stations. A crowd of people tried to stop HRIDC's car that Mr. Nanuashvili was driving from leaving the village Lambalo by blocking the road.

Lagodekhi's 15<sup>th</sup> election district, Kabali's 18<sup>th</sup> polling station the Chair of the Commission Adalat Sardarov and its members physically offended Mr. Gela Mtvlishvili observer of "The Human Rights Centre" who wanted to write a complaint on the fact that election ballots were taken outside the polling station.

In addition, the Chair of the Commission was found having 12 summary protocols, all of them filled in advance. After Mr. Mtvlishvil detected this violation, head of commission hit observer with a chair to his head.

High tensions were observed in Upper Lambalo's 36<sup>th</sup> polling station. Poll workers reported various commission member carrying several hundreds identity cards. Gangs of unidentified youth were constantly involved in a range of provocations, including verbal arguments. Several people were beaten by these gangs of youth.

Nugzar Abulashvili and Guram Kakalashvili, the majoritarian candidates of Lagodekhi and Signaghi region, were noted moving from polling station to polling station in the company of a troop of approximately ten people. It was reported that some of the individuals with them had just recently been released from prison. They had entered polling stations terrified commission members as well as election observers. In Signaghi, on Sakobo's polling station, Nugzar Abulashvili with the help of police officers, twisted Nodar Kutibashvili's (United Opposition commission member) hand behind his back and with the application of physical force, expelled him from the polling station. And, in the case of his return, i.e., that if Nodar Kutibashvili would make any attempt to return, and then he would be killed.

At 14:00 about ten drunken men aggressively entered the upper Lambalo's 47th polling station and stuffed several ballots into the ballot box. There are 1069 voters on this district (11 on the special list). At 12 o'clock only 23 voters had voted, at by 1 PM - 24. By 2:00 PM those who had intruded into the polling station had stuffed faked ballots into the box. Concurrent to this incident, several people were severely beaten, which included - Sandro Gagniashvili (Republican Party), Mamuka Masurashvili (Labour Party), and Mamunka Masimov, the Head of the Commission, were active participants in what appeared to have been some close quarters contact fighting. There were some police at the polling station, they too were caught up in the fighting and some suffered injuries.

As a result of the extremely difficult and dangerous situation, the decision was made by the Human Rights Centre to pull its observers out from most of the polling stations in the Kakheti Region by 14:00, which was done as a safety precaution, as it was deemed that its observers personal safety could not be guaranteed.

### **Physically Assaulted Journalists**

The Human Rights Centre observed the same kinds of incidents in the Samegrelo Region. Ms. Nana Pajava, an observer of the Human Rights Centre and acting journalist has become the

subject of both verbal and physical abuse, and especially from Mr. Gela Tofuria and Mr. Kakha Kuprava, both representatives of the National Movement. Upon arriving at the polling station No 22 in the Abasha District No 63, Ms. Pajava found out that the station had been closed. After entering the station she tried to find out what had just happened and questioned the local chairperson, who refused to share any information. At this time the above-mentioned National Movement representatives intervened, and as described, their presence resulted in the “undemocratic use” of physical and verbal abuse against the observer representing the Human Rights Centre.

## **Conclusion**

The Human Rights Centre affirms that the lack of any genuine political resolve within the Government of Georgia (GoG), to truly organize genuine democratic elections, has resulted in widespread and systematic election fraud. As a result, the sitting parliament was not actually elected by the people. The GoG has clearly demonstrated its willingness to resort to acts of violence, and even possibly to engage in politically-motivated acts of terror on a small scale. This election marked the first time that the level of violence was so elevated that local election monitors were forced to be removed from the polling stations they had been assigned to monitor. The examples outlined in this report also demonstrate how governmental resources tainted all illegal aspects of the parliamentary elections of May 21, 2008.

The current tragedy of Georgian elections can be seen in the downfall of the evolution of the country’s democratic processes and institutions. A country that had been known for its initial reforms following the Rose Revolution and heralded throughout the world as a beacon of democracy has reverted to the political status of an evolving third world single party rule. The specific instances described in this full report have befallen observers of many civil society organizations, including observers of our Human Rights Centre. This political related violence started before the elections, reached a peak on Election Day, and still continues with beatings, threats, and other punitive measures in the uncertain and agitated post election period.

TV and radio stations are still under pressure. Imedi Radio, for instance, has been reorganized in such a manner that it is no longer a voice in the wilderness of injustice. Governmental control over media outlets has been almost completed. In many instances, self-censorship over many media outlets has become the standard. The November 7, 2007 raiding of the Imedi TV has been well-documented, and this set a process in motion of fear and intimidation that further restricts citizens and civil society from being able to exercise freedom of speech and participate in the political process.

Private TV companies, such as “Rustavi 2” and “Mze”, have consistently carried what is best described as biased coverage of political events. However, it is a positive sign that the newly installed administration of Georgian Public Broadcasting has attempted to create an environment of neutral news coverage. On the whole, the opposition political parties were not given the same

opportunities to communicate their political messages on the same level as the ruling National Party.

The cost of advertising was increased in the pre-election period, and this too may be rooted in political expediency on the part of the current Georgian Government.

In retrospect, it now appears that the presence of international observers had little if any impact on the holding of free and fair elections. The majority of instances when blatant election violations occurred, which included instances of violence, international observers were out of range. The presence of foreign observers had little impact on the overall situation; any semblance of democracy deteriorated upon the departure of foreign observers from the polling stations.

Nonetheless, some of the most blatant crimes against Georgian citizens were noted in the pre-election campaign period. People were threatened with job losses, being jailed, or being told that their family members would have problems. Authorities operated with a sense of complete impunity. School teachers were a group particularly repressed with threats. They were expected to show complete support for the ruling party, and its slate of candidates.

The rigged Parliamentary Elections of 2008 have effectively placed shackles on peaceful assembly and/or being able to exercise any semblance of free speech. Moreover, not only the ruling party abused administrative resources, but participation of the opposition political parties in the formation and decision-making within election administrations was severely minimized. In some instances, threats and even physical force were used to further reduce the contributions that a wide range of political parties and stakeholders might have on elections and operational procedures.

The government has once again failed to produce reliable voter lists, and the flawed lists often included those who were dead. In some instances, citizens who did not have pro-government views were removed from the voting lists without any explanations. Often voters were told to not bother to even show up on Election Day, as to do so would create problems for them.

There have been also serious allegations that several thousand ID cards without indication of any registration address had been printed just prior to the elections. These IDs were meant to be used for the “Merry-Go-Round” carousel form of voting as well as other innovative methods of election fraud. However, The Human Rights Centre has no evidence to substantiate this claim at this time; however, our observers witnessed representatives of the “National Movement” carrying hundreds of ID cards on Election Day, which raises serious questions on why the cards were needed in the first place, and casts additional doubt on the source of the IDs.

Regrettably, the Human Rights Centre could not monitor the final and often most controversial stage of elections—counting, because of the increasingly unsafe situation in many of the polling

stations. Several observers including Nana Pajava (in Zugdidi) and Gela Mtvlishvili (in Kakheti) were victims of physical violence and had their cameras broken.

Assaulted observers applied to the prosecutor's offices in the districts where they were attacked and demanded that criminal cases be opened. However, since those criminally responsible for the instances of violence were representatives of the "National Movement" – there is little hope that the perpetrators will be held legally accountable, and the observers may again be victims if they push for their rights to be protected under the law.

Despite all experienced difficulties, observers of the Human Rights Centre did manage to document many of the irregularities and fraud that openly transpired on Election Day. Several examples of illegal acts include: verbal and physical abuse of observers, opposition PEC precinct members, and voters; ballot box stuffing, the use of pre-marked ballots; an absence of ink marking, which was in addition accompanied with "Merry Go Round" carousel violations; and, across the board refusal of election commissions to accept and register complaints, etc.

The Human Rights Centre fully shares the findings of the Norwegian Helsinki Committee representatives on the Khurcha incident. Evidence available to the Human Rights Centre is sufficient to conclude that the Khurcha incident was a staged pre-planned event by the Georgian Government. Its intention was to draw public attention away from the election fraud, and to further its plans in the military sphere. We are also supporting the need for an independent investigation of the incident.

Georgian society, after repeatedly witnessing falsified elections over the last decade, has lost confidence in its institutions and this can have far-reaching consequences on the political orientation of the country as a whole. The lack in trust in the democratic election process in the ability of state institutions to assure political impartiality is a problem that will be hard to reverse. Disappointingly, the international community has failed to provide a realistic assessment of the elections since 2003, which has contributed to the marginalization of an already weak political opposition.

Existence of a representative legislature, elected through free and transparent elections is a basis of a democratic society. Democratic elections are at the core of democratic state building and a civil society. This right has been regularly infringed upon in Georgia, and the cases described in this report are not isolated and not regionally specific, either. Georgian society cannot bear the cost of any more rigged elections and governments that are unelected.

Officially, the US State Department hailed the May 21 parliamentary elections a great success and as one more step for Georgia on the Road to Democracy. However, in spite of all the complimentary press, it is not really realistic to speak of the results. It is alarmingly obvious that the new 150-member Georgian Parliament has been stacked in the favor of the majority ruling National Party. The old status quo is thus maintained, and Georgians are in many respects less free now than anytime in the last 15 years.

Georgian elections were well-funded. However, what escapes critical attention is how the powers of the state [police] were used to secure the outcomes. Police could be seen both inside and outside of the polling stations on Election Day, regardless of the written law; they acted brazenly with a sense of guaranteed impunity.

Police were parked in cars outside, standing in the doorways and often armed. If the sheer presence of police outside polls was not intimidating enough, there was the matter of police and Special Forces who were seen inside polling stations, which is considered by both local and international observers as a breach of election laws, and blatant voter intimidation.

There are also serious allegations of how criminal elements were used to intimidate voters and make sure that the results would show a clear-cut win for those candidates of the ruling National Movement Party. This was done in combination with a tediously executed plan of purging many voters from the election lists, especially those whose political loyalty which did not coincide with the political orientation of the ruling Majority party of president-elect Mikheil Saakashvili.

There is little doubt in the minds of most local observers that the May 21, 2008 parliamentary elections were rigged. The 2004 parliamentary elections were held under OSCE recommendations, but in 2008 they were totally ignored and with a sense of complete disregard for the letter of the law. This represents a great step backwards on the road to democracy.

Now is the time to correct the mistakes made, and to punish those violators and to correct the procedures that have allowed an election to be stolen from the Georgian people. It is because of a combination of unqualified support for a current unelected government and the willingness for some to look the other way for the sake of political expediency has Georgia found itself in nearly a crisis situation.

Under such conditions, it is clear that it is easier for a government to violate some of the most basic of human rights – the right to vote – and now the level of public mistrust towards international institutions and the Georgian government has fallen so much.

### **Recommendations**

- Those responsible for election related violations should be investigated and held accountable to the fullest extent of the law, including those who may have been involved at the highest level, including within national political parties, police, security agencies and the Central Election Commission;
- There should be an independent outside investigation of parliamentary elections; and a special independent commission be established to hear claims of violations, and to prepare investigative case materials that can then be provided to the criminal justice system for prosecution.

- There should be an independent investigation of the “systemic corruption” that has allowed such widespread fraud to take place;
- An independent international investigation should be made of the Khurcha Shooting and Mortar Incident, with representatives of the European Union, United Nations, the Organization for Security and Cooperation in Europe, and Russian peacekeepers.
- The results of the snap May 21, 2008 snap-parliamentary elections should be declared null and void; new elections should be scheduled in the nearest future, with the help of “active” international observers, who will not only serve as observers but equal stakeholders in guaranteeing that free and fair elections be held;
- There needs to be a total overhaul of Georgian Election laws that will reform the structure and nature of election procedures, and that firewalls be installed that will further guarantee free and fair elections, including backup forms of voting, including electronic voting (that will provide checks and balances).
- Police and governmental representatives should be barred from polling stations, not allowed to congregate in close proximity.
- The CEC should be completely reorganized and that it will be controlled by representatives of NGOs, civil society and international organizations – it needs to operate independently of governmental oversight – as an independent entity under public law;
- The structure of the reformed CEC should include political representation on a proportional basis, organized in such a way that the majority are not from the National Party or any other political block, so as to provide fair advantages in decision-making and policy formation, [which appears to have been the disproportionate case] of the recent reorganization of the Board of Trustees for Georgian Public Broadcasting,
- It is also essential that all such commissions and meetings be opened to the public and that all proceedings be aired live – or order to assure the greatest degree of transparency possible, no closed-door meetings would be allowed.

Finally, in light of the flawed and invalid Parliamentary Elections and result of 2008, Georgian civil society needs to be more active and focused when it comes to monitoring the observance of the standards set by international practice and under acting Georgian election legislation. It will take many years and a concerted effort by many stakeholders to restore public confidence in democratic-election procedures in Georgia.

We hope the details and facts and case studies contained within this report make it clear and transparent to all people, both within and outside of Georgia, that much work is needed before Georgia will be able to tout democracy as a reality.

### **Khurcha Incident: Deceiving First Impressions**

The election period in Georgia was marred by media reports and speculations of external threats and aggression. During the Parliamentary elections of May 2008 two versions emerged. The version of international election monitors speaks of a problematic, yet mostly fair electoral process. However, the version of domestic election monitors speaks of violence, widespread voter fraud, and intimidation.

One incident stands out. On Parliamentary Election Day, 21 May 2008, Georgian media aired dramatic footage of an incident in the demilitarised zone bordering the separatist region of Abkhazia. Two buses and a group of voters were attacked with grenades in the village of Khurcha. According to the Georgian government, the attack was perpetrated by Abkhaz gunmen working in conjunction with Russian forces purportedly deployed as peacekeepers in the demilitarised zone.

As reported on Georgian State TV and Rustavi2, proxy forces of the Russian backed separatist regime of Abkhazia opened fire on two buses that were carrying voters wanting to participate in the Georgian Parliamentary Elections.

The story was immediately picked-up by local and international news and proved to be the major headline of the day, so much so that it overshadowed the highly controversial Election Day coverage. In short, two buses carrying ethnic Georgians from the Abkhaz side were hit by grenades.

Some otherwise trustworthy media reports outlined that - "...locals wanted to vote but the de facto authorities' nixed access to Georgian polling stations on the territory it controlled and blocked the bridge to the neighboring Georgian controlled region of Mingrelia. Georgian authorities offered those from the Gali region of Abkhazia the next best solution: If they could reach the Georgian-administered village of Khurcha on foot, buses would transport them to a special polling station established in Zugdidi, the main town of Mingrelia".<sup>1</sup>

### **Government of Georgia Statement on Khurcha Incident - May 21, 2008**

Georgia Update, Service of Georgian Government

"The Government of Georgia strongly condemns the unprovoked violent attack that took place today on peaceful citizens of Georgia seeking to exert their right to vote in Georgia's Parliamentary elections.

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<sup>1</sup> Turkish Daily News, May 31, and Georgian 24 Saati (24 Hours) May 26, 2008

Today's attack against citizens from the village of Nabakevi, located in the separatist -controlled Gali district, took place as they were seeking to reach polling stations located in the city of Zugdidi, in the Samegrelo region.

The separatist authorities blocked all roads across the line of control, which can only be crossed on foot. At approximately 14:40 local time, the civilians walked across the line near the village of Khurcha and reached two buses waiting for them on the government side of the line of control. As they began boarding the vehicles, they came under attack by rocket-propelled grenades and small arms fire from a group of rebels. One of the buses was blown-up by a rocket-propelled grenade. Three women were injured in the attack, one seriously. Civilians were able to flee and are now being cared for by government officials. While the exact identity of the assailants is under investigation, the fire came from the direction of a separatist checkpoint.

The attack was conducted by a well-organized group employing a range of armaments. This suggests that the assailants acted with the collusion of at least some elements of the separatist rebels.

The Government of Georgia then condemned attempts to prevent citizens of Georgia from peacefully exerting their democratic right to elect their representatives; in particular today's violent shooting incident in the zone of conflict. The Government of Georgia calls upon the de facto authorities in Sukhumi to condemn this act of violence.

The Georgian Government requests that UNOMIG conduct an immediate investigation into today's incident in order to find and punish the perpetrators."

### **Alternative Media Reports**

The rare and dramatic event occurred at the very moment when numerous TV-reporters had been brought to the village for a pre-arranged media show, effectively taking media interest away from numerous reports of electoral irregularities and violent incidents coming in from all parts of the country.

Local eye-witnesses all stated that they believed this incident was staged by the Georgian (that is, their own) side, noting in particular the fact that the passengers were brought not to the voting station in the center of town, but to the football pitch, where numerous journalists had been brought in advance. It was unclear who organized the busing, and the rapidness at which the Georgian military arrived on the scene, and considering that grenades were fired from what was apparently the Georgian side of the conflict zone, a very short distance from the football pitch.<sup>2</sup>

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<sup>2</sup> See: [url]<http://www.humanrights.ge/index.php?a=article&id=2754&lang=en>[/url]

The initial response by many observers was that the incident was indeed disturbing. Many were confused by the fact that this incident occurred in a village of the Zugdidi region, which is completely Georgian controlled. This realization compelled the question of: How could Abkhaz armed groups from the Gali region have entered a border village in Zugdidi, which is under the control of the Georgian authorities and security services, a part of Georgia that nobody doubts is Georgian controlled?

The Georgian Human Rights Centre, HRDC was doubtful of the official story, and by coincidence its representatives were in the region conducting Election Day monitoring activities. At first the blame was firmly placed in Georgian media reports on the threatening role that Russia and the Abkhaz separatists had played in the event.

The Norwegian Helsinki Committee introduced a report on the Khurcha incident two days later. The report raised disturbing questions regarding the authenticity of the official Georgian line that “separatists had actually attempted to kill innocent Georgians who wanted to participate in democratic parliamentary elections.”<sup>3</sup>

Caucasus Reporting Service Reporting Impact Caucasus dated May 20’08, which was produced for listeners to an International War and Peace Reporting (IWPR) program about the bus blast. The report was conducted by IWPR staff in Tbilisi (30-Jun-08).

The report details how, “They were passing through Khurcha, a village located right on the border line between Abkhazia and Georgia’s Samegrelo region, when both vehicles blew up. No one was killed, but several passengers were injured, two of them seriously. The Georgian government accused the authorities in the self-declared republic of Abkhazia of carrying out the attack to deter other ethnic Georgians in Gali from going to vote, and most of the country’s media followed this official line. “Georgian media provided biased coverage of the incident in Khurcha,” said Rusudan Pachkoria, a lawyer with the Legal Protection Institute based in Samegrelo.

Instead of apportioning blame, the report presented and examined information coming from various sources. One source named Shonia commented that “... Together with several colleagues, I recorded a woman who witnessed the explosion. No one else went into depth and investigated the situation”. Shonia said, “For me, it was a great boost that the editors don’t even try to restrict my freedom...” The Accent program was syndicated and broadcast by several regional radio stations which cover most of Georgia. The first-hand information and unbiased angle of the story made many listeners rethink what they had been told by the mainstream media. “The [Georgian] television stations and newspapers claimed that Abkhaz terrorists were responsible for what happened,” said Nunu Murjikneli, a regular Accent listener who lives in the city of Kutaisi in west-central Georgia. He further commented that “One only heard local officials and politicians commenting on the incident. It was only in the Accent program that I heard someone who had actually witnessed the incident.

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<sup>3</sup> [http://www.nhc.no/php/files/documents/land/Georgia/nhc\\_election\\_report\\_Georgia.pdf](http://www.nhc.no/php/files/documents/land/Georgia/nhc_election_report_Georgia.pdf)

The IWPR report gave me a clearer picture of what happened in Khurcha.” Zugdidi journalist Irakli Lagvilava, who reported from the scene himself, explained how difficult it is to get media outlets to carry on-the-spot coverage of this kind – his own material was rebuffed by a number of outlets. Irakli Machitadze, Director of Radio Dzveli Kalaki, based in Kutaisi, “Until then, no one had ever approached local people to get eyewitness accounts. I think the most important thing is that thanks to IWPR, people have now found out the truth about what happened.”<sup>4</sup>

Other reports were more emotive and replete with hyperbole. For instance freelance journalist Paul Rimple, who visited Khurcha for the purported purpose of detailing the sequence of events of the incident wrote, “The next leg of the assignment was to visit the hospital two women wounded in the attack were being treated.

“Good,” we thought. “We’ll finally talk to some witnesses.”

I had been in this hospital several years ago, although it was vastly different then. It isn’t anything like a Jacob’s ladder nightmare sequence now. Everyone was eager to show us the women, however “see” was all we could do, as one woman was being prepared for operation while the other was sedated. About all we could scribble in our notebooks was “two wounded women in bed.”

“It sure would be nice to talk to somebody that actually saw something,” we said, when suddenly, a Rustavi-2 journalist, who had filmed the entire attack sequence, arrived at the hospital entrance. She began to describe her version of the event, which changed with every question put to her. First they shot from behind the Russian post, which someone told us earlier was approximately a kilometer away. Then they shot from behind some bushes in a corridor they had set up, then, then, then. “They had everything,” she said. “Grenades, automatics, rockets.”

“Who had?” I asked.

“The Abkhaz.”

“How did you know they were Abkhaz?”

“Because their shoulder patches are different than ours.”

“Did you see them?”

“...No.”

She showed us footage from their camera, although it didn’t make things clearer. Women were hiding behind umbrellas, not to shield themselves from bullets, but from the camera. There was

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<sup>4</sup> The Accent reports are available (in Georgian) at [www.regionalreporters.net](http://www.regionalreporters.net)

smoke, there was the sound of shooting, there was a wounded woman being stuffed into a Niva; there were green bushes and hazelnut trees. It was like Nam – the enemy was out there somewhere but we couldn't see them. But moreover, we hadn't a clue as to what the hell we were doing here in the first place.<sup>5</sup>

Nana Pajava, journalist working for the Human Rights Centre has interviewed several eyewitnesses at the scene of the incident. This is what eyewitnesses told to Pajava: Shorena Toria said, “Two men came to my neighbor; I did not see their faces. I only heard how they were asking Vardisha Esartia and her daughter, who are my neighbors to go to the football pitch where two buses were parked waiting to pick them up. I found out from their conversation that they wanted to organize as many people on site as possible. The intention was to film how Georgians living in Abkhazia were coming to Khurcha in order to participate in Parliamentary elections. My neighbors went as instructed and within 5 minutes the shooting broke out, which was then followed by explosions: we were very frightened and tried to escape...”

Vardisha Esartia similarly commented, “I and my daughter told these two men that we had already been to the polling station and cast our votes. They told me, “We know that, but we are asking you to help us. We want to film the process, and there are journalists and camera persons already waiting for us.” We were not able to go to the football pitch as shooting had just broken out within a few minutes.”

One of the local residents, who did not want his identity to be disclosed also commented, “We are tired of watching and participating in these shows and this looks more like a tragic comedy. We might be killed with a stray bullet but no one cares about us. Why do we need this evacuation? Whom are we escaping from? Are we escaping from our own police or from the Georgian government?! They think we do not know anything of what is going-on. Why was the dislocation place changed to the representatives of the Special Tasks Department? Why were security and police forces mobilized in close proximity to Khurcha? Why the emergency response vehicles and fire engines arrived before the actual explosion? We already understood that journalists and the government had agreed on things ahead of time but we still cannot understand who is actually giving orders and calling the shots.”

“I remember January 5, 2008 presidential elections. Neither this time nor back in January did the Abkhazians close their block posts for us. Everyone is free to move back and forth. When the shooting started in Khurcha, Abkhaz soldiers in Nabakevi ran out of their barracks half dressed; they asked us what had happened,” stated a male resident from Nabakevi, a village in Abkhazia.

People who live near Georgian-Abkhazian administrative border recall the January 5, 2008 Presidential Day Election when TV-channels broadcast recordings of a similar incident that occurred at the River Juma, reporting it as transpiring at the Enguri River.

Another interviewee noted, “We have become accustomed to so many lies, when they show something that happened in village of Odishi, which is near Zugdidi and tell that it took place in

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<sup>5</sup> Paul Rimple, “What”, Georgian Times, 30.05.2008, [http://www.georgiatoday.ge/article\\_details.php?id=5166](http://www.georgiatoday.ge/article_details.php?id=5166)

Nabakevi. They do not surprise us with anything they do, and we did not revolt when we could not find any of acquaintances among those people who allegedly crossed river Enguri, and with great difficulty, as they wanted to participate in Georgian elections.”

Many people were shocked when they saw the scenes broadcast on May 21, 2008 in the village of Khurcha. However many locals recall the conversation between Nani Kardava a victim of the crossfire and Zaal Eliava a local official as indicative of the confusing initial reporting and the truth about the nature of the alleged firefight., The conversation was carried out in Mengrelian dialect and thus was later edited out of later video footage that was broadcast on national television, which was perceived as being an especially emotional scene of the incident. The exchange was as follows:

“We heard their conversation together as the sounds of shooting could be heard. The woman was injured lying on the ground. Eliava was hiding in a trench. They talked in Mengrelian. Kardava: “Thank you Zaal, thank you! Have you brought me here for this?” Eliava: “Do not be afraid. You won’t die!” Kardava: “I am already dead, Zaal!” Another woman was filmed as well, as she was trying to protect herself from the rain of bullets with an umbrella. There was also a man who approached the injured woman and called out to her in the Mengrelian language, which is not understandable for most Georgians: “You poor thing, where were going? You poor, poor thing” – this man helped the police officers to evacuate the injured woman.<sup>6</sup>

### **The Alternative Version of the Polling Day Shooting Story**

An investigative documentary produced by Studio Reporter claimed that a shootout and explosion of two buses in the Abkhaz conflict zone on the Election Day, May 21, was apparently staged by the Georgian authorities operating in the area. The Georgian television stations reported on the Election Day that in the village of Khurcha at the Abkhaz administrative border, on the Abkhaz side, two buses exploded, which had been intended to be used for ferrying ethnic Georgians from the Gali district of breakaway Abkhazia, to the regional centre of Zugdidi inside Georgia proper in order to vote.

The Georgian Ministry of Internal Affairs said that three women were injured as a result of the incident. The national television stations also aired footage showing armed Georgian police officers carrying a woman, who had a spot of blood on her back, as well as exploded buses on fire. Shooting was heard in the footage. However, authors of the short film documentary, which was screened on June 24, 2008 in one of the Tbilisi’s movie theaters, alleged that in fact TV crews were brought to the scene in the village of Khurcha in advance, before the incident and were well prepared for recording of bus explosions.

The video footage obtained by the producers of the documentary obtained footage from the Georgian Public Broadcasting (First Channel) archive that included previously unaired footage , which reveals a steady view of two empty buses standing on the field in the village of Khurcha before the blast suggesting the cameras were pre-positioned on fixed tripods. In the documentary

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<sup>6</sup> Nana Pajava, Khurcha Incident – Will the guilty ever be punished, 10 June, 2008,

it was blatantly obvious that the cameras had been pre-positioned in anticipation of the blast. Furthermore the fixed and deliberate positioning of the cameras is evident because, despite shooting and explosions the image remained steady with the subject matter maintained well in frame, even after one of the buses received a direct hit from a grenade. To this effect the film's narrator noted, "It is obvious from the footage that the video camera had been previously placed on a tripod and waiting for the incident, which seems unnatural as gunfire is also heard in the footage. The second explosion of the bus was shot by a cameraman without any reaction at all."

Moreover, he commented, "The footage shows that the grenade was launched not far from the place, where the cameraman was standing."

The documentary also details events using computer assisted analysis to clearly illustrate that the trajectory and source of the grenades was from the Georgian area of control.

Vakhtang Komakhidze, the documentary producer placed substantial emphasis on the Khurcha incident within the larger picture of other events that took place on Election Day. Komakhidze considers that the blowing up of two buses was a staged event by Georgian forces in order to divert the attention from election irregularities.

The filmmakers also supported their contentions by interviewing some local residents of the village of Khurcha. The locals recalled that before the incident two unknown men came to the village and requested that they accompany them to the football pitch as, "people were needed for a video shoot."

Reports contradicting the official story were also presented in regional media. For instance, on May 28, 2008 the local weekly newspaper in Batumi, *Batumelebi*, ran an article about the incident expressing a similar interpretation of events. It included in-depth interviews with locals in Khurcha who, similarly to respondents in the documentary, commented how they too were asked by unknown men to participate in the video shooting.

Before an investigation could be completed Georgian authorities immediately claimed that the incident had been carried out by Abkhaz militia, who destroyed the buses with machine gun fire and rocket-propelled grenades, purportedly fired from an Abkhaz militia checkpoint in close proximity to Khurcha.

The same analysis was also reported by the news agency "Pirveli" that alleged TV crews were brought to the scene in advance by Georgian authorities and that there was ample time for them to prepare and set up their equipment before the buses were attacked.

### **Official Story Line**

Much of what was reported in the Georgia media would soon prove to be untrue. A Georgian English language newspaper, the Georgian Times,<sup>7</sup> provided a detailed report on the incident

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<sup>7</sup> Georgian Times July 4, 2008

when the United Nations Observer Mission in Georgia (UNOMIG) published a report that included the Khurcha Incident. The Georgian Times reported on the UN report, which stated that Georgian civilians were attacked from Georgian side of Abkhaz border.

UNOMIG and Russian peacekeepers were immediately informed about the incident. A German expert, member of the UNOMIG, arrived at the scene shortly thereafter. He subsequently identified the location from where the RPGs were launched. It was within a mere 5-10 meters from the administrative border from the direction of Zugdidi. Furthermore, the expert observed the traces of footsteps on the ground that crossed the administrative border in the direction of the Gali region, this further substantiates that the attackers had crossed the administrative border into the buffer zone.

“The Report of the UN Secretary General on the Situation in Abkhazia, Georgia,” dated 23 July 2008, reads as follows:

“The most serious incident in the Zugdidi area during the period occurred on 21 May, the day of the Georgian parliamentary elections, in the vicinity of the village of Khurcha located near the ceasefire line. On that occasion, heavy firing took place around a football pitch where a number of people, mainly from the Gali district, were requested to gather to be transported by bus to the town of Zugdidi in order to vote. The account of the event showed that after an initial burst of small arms fire by the would-be attackers, the people assembled on the field fled; the empty buses were then hit by rocket-propelled grenades and caught fire. Three persons were brought to the hospital, one severely injured. The Georgian security forces arrived rapidly at the scene and fired for a protracted period in the direction of the ceasefire line. The entire incident was recorded by the Georgian media. The Georgian side immediately accused the Abkhaz side of being responsible for the incident. The Abkhaz side denied any involvement.

The Mission’s investigation into this incident was able to establish the locations from which the attackers fired, approximately 100 meters from the buses, on the Georgian-controlled side of the ceasefire line. While no hard evidence has been found so far regarding the identity of the perpetrators, inconsistencies in the circumstances surrounding the incident, in particular the fact that the incident was filmed in such a way as to suggest that events were anticipated rather than simply recorded as they were happening, require UNOMIG to continue its investigation.”

According to sources in the humanitarian community, the Zugdidi regional police division has purportedly initiated a criminal case (no. 044080471) to investigate the attack on the innocent civilians, which they have characterized as attempted murder by Abkhaz armed groups (under Articles 236, 109 and 239 of the *Georgia's Criminal Code*).

It is claimed that eyewitnesses were then questioned by the criminal police of the Zugdidi division of Ministry of Interior. According to Iuri Chiava and Nestor Akhvlediani (drivers of the buses who were hired by Zaal Eliava, head of administration of the village Nabakevi), on May 21 2008, at about 11:00 they arrived by their buses in the village Khurcha and awaited the voters near the football pitch, approximately 30 meters from the river Khurcha. After sometime, voters

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from the village Nabakevi began gathering. They then explained that they had crossed the river from Khurcha in the direction of Nabakevi and then loaded onto the buses. The drivers reported that there were nearly 20 voters in each bus.

At about 13:30, the Georgian journalists approached the buses and asked the locals to get off the buses and so to take an interview before their departure to Zugdidi region where they had to cast their ballots. Voters as well as drivers had unloaded the buses and stood in front of journalists, approximately 20 meters from the buses. At this moment shooting began from the Nabakevi direction. People immediately panicked. The two buses were then hit with explosive rounds. One woman was injured. After about ten minutes Georgian security and law enforcement services arrived on the scene and engaged in a firefight with the attackers, which lasted for approximately 20 minutes.”

### **Conclusion and Recommendations**

Based on the above evidence it appears, in retrospect, that some ‘rogue elements’ in the Georgian government may be implicated in the Khurcha Incident. This is especially concerning in light of the difficult social and political-economic situation that now faces the region. There are other related “incidents” that have transpired in other parts of Georgia, including other bombings in the Gali region of Abkhazia which have also been ignored by official investigations. None of the events that transpired during or after the Khurcha incident have been investigated to an acceptable standard; this includes the August Russian military intervention into South Ossetia, Abkhazia, (two breakaway regions), and the Russian occupation of parts of Georgia proper.

It is not only necessary to follow-up in Georgia proper but the breakaway region of Abkhazia as well. There is already a range of stakeholders who have indicated an interest in this incident and with representatives of both sides of the political divide, including domestic and respected international organizations: UN, Organisation for Security and Co-operation in Europe and other stakeholders, including various NGOs.

In conclusion, the Human Rights Centre recommends that an independent investigation be opened, and observers from both the Abkhaz and Georgian sides be allowed to fully participate. Upon completion, a detailed report should be shared with authorities within the legally recognized borders of Georgia, international organizations – and that all those found culpable – regardless of level of compliancy, citizenship or standing in government, be held accountable to the fullest extent of the law. Such acts of violence directed towards a government’s own citizens should be seen as a direct contravention of basic human rights.

It is understood that the Khurcha Incident appears to have represented a sheer act of Machiavellian malfeasance at first impression, and to the best of the knowledge of the Human Rights Centre, Georgian authorities have not followed-up with any promised investigation, which they claimed to have immediately launched in the aftermath of the Khurcha incident. Sadly, it seems the case that none will be held accountable or brought to justice for this apparent act of state-sponsored terrorism. It seems evident that, in the final analysis, that this case has been closed by Georgian authorities and their sponsors, we thus will probably never know the truth.

## **Monitoring Condition of IDPs**

### ***Background***

The representatives of the Human Rights Centre have been visiting conflict zone after the August 23 onwards for the purposes of monitoring and documentation of alleged human rights violations. Particular attention was paid to the material conditions of internally displaced people (IDPs) in the so-called city of tents as well as in other temporary IDP centers. Additionally, the aim of the visit was to identify the individual cases of alleged violations of human rights for the purposes of bringing these cases to the European Court of Human Rights. Moreover, to document alleged occurrence of war crimes and crimes against humanity and to hand over the documented information to the Prosecutor's Office of the International Court. The Human Rights Centre has also carried out several visits to the conflict zone with its partner organizations the Norwegian Helsinki Committee, the Austrian Helsinki Association and Caucasia Centre for Human Rights and Conflict Studies. These included visits to the villages that now fall under the effective control and jurisdiction of the Government of Russian Federation.

### ***Material Conditions of IDPs residing in Gori***

Monitors of the Human Rights Centre concluded that the majority of temporary settlements the material conditions have been unacceptable and which is often equaled to inhuman and degrading treatment. Some of the most common problems observed severe overcrowding of the settlements, lack of food, unhygienic conditions and lack of medical care. The government's response to pressing needs was delayed while assistance provided by some international organizations such as ICRC or UNHR was insufficient or ineffective. Some illustrative examples observed include but are not limited to the following, as found in IDP settlements visited by the HRIDC monitors:

#### ***Former milk factory of Gori***

Former milk factory of Gori have been used as a refugee shelter since the early 1990s. It is mainly occupied by the IDPs from the first wave of South Ossetia conflict that has taken place in the early 1990s. There were new arrivals IDPs who have recently been sheltered in this building. Most of the inhabitants are elderly and children. The material conditions of the old three store building can be described as poor, with malodorous "unpleasant" stench of toilets that can be noted before even entering the building. Windows are covered with scrapes of metal and plastic. The sanitary conditions are extremely poor and pose a serious public health threat to those warehoused in this facility.

IDPs prepare the food on their own. Even what food they have is inadequate, as only a limited amount of food has been delivered by humanitarian organizations, which IDPs could not recall by name; these deliveries take place but once a day. The health of the elderly inhabitants of the centre, as well as children is not being monitored at all and there are no medicines available for those who are in need.

*Nina, 77, is from the village of Kekhvi, Gori District. She recalls that shooting started on 4-5 of August. At this time, there were buses that were meant to take people away*

*from the village. Most of the villagers left with these buses. However, Nina decided to stay behind in her village. She had contact with two of her neighbors Lili and Makvala who also remained in the village. She had some food stocks and could easily maintain herself. Nina explains that she personally saw how persons who were dressed in military uniforms and whom she could not recognize and they went about looting and burning the houses. Nina also recalled that she saw this military people stealing cars, tractors and other forms of transportation from the village. Those people spoke Ossetian. Around 15<sup>th</sup> of August Ossetian men in military uniforms came to her and requested her to go with them. She was taken to Tskhinvali. She was searched, probably in a police building, which she recalls was a two storied building. During the search she was asked to name her identity and hand over all her personal belongings and money. Two men who were searching her spoke Georgian. Nina had saved up her pension and had about 500 GEL and it was also confiscated. She was later taken to the cell in the basement of the same building. She describes a cell as a small dark room which was inhabited with approximately 50 people including men women and children. There were no beds, mattresses or chairs in the cell. Nina recalls that she had spent approximately 5 days in this cell. During these five days she slept on the floor made of concrete. One day she not provided any food. Another day, she was only provide a small amount of buckwheat. Small pieces of bread were brought to the people in the cell. Nina saw one man in the cell named Misha who was rather aggressive. He had described that his brother had been killed. Around August 27<sup>th</sup> the people were taken from the cell and placed in two buses. The buses delivered us to the town centre of Gori city. Nina recalls that she was then taken to Tbilisi and proceeded on the same day to Rustavi, which is near Tbilisi. Nina remembers she was settled in Rustavi school #2. Around September 3<sup>rd</sup> was relocated from Rustavi to Gori. Nina later learned from relatives that her house had been burned to the ground.*

#### Gori Kinder garden No 12

Kindergarten No 12 is plagued by a severe sanitation problem. The building itself is old and living conditions are poor and substandard. There is inadequate space due to severe overcrowding. No privacy is provided to the inhabitants. A single room is often packed by six-seven families with four-five members in each family unit. Sewage pipes are damaged and the contaminated effluent leaks into the rooms where people are living. Even though enough quantity food has been provided to the residents, they still complain about the overall quality of the food. There have been even some reported cases of food poisoning. One of the most common problems named by the resident was extremely delayed medical assistance. Usually medicine only arrives after 3-4 days of consulting a doctor, and in many instances it is no longer needed as the illness has passed.

#### “Tent Town” of Gori

The so-called “Tent Town” in Gori remained to be the largest IDP settlement with over 2000 residential units until its final disbandment. The size of the settlement made its management

difficult from the start. However, the overall lack of diligence of the part of the Georgian Government to resolve the most pressing needs of the “Tent Town” residents did not contribute to the elimination of major problems experienced. The settlement was managed by the Italian Red Cross together in cooperation with UN High Commission for Refugees UNHCR. However, as representatives of IRC and UNHCR have said, the Georgian Government was not cooperative enough in solving the problems faced by IDPs.

Similar to other settlements, those living in the “Tent Town” residents experienced the same kind of problems but in a more precarious manner. Food was delivered only twice a day and with no breakfast provided in the morning. The standard lunch menu included: two sausages, one egg and two loaves of breads for four persons. Standard dinner menu included: buckwheat, boiled beans and pasta. Residents often complained about the quality of the food, saying that it was not prepared based on Georgian tastes and traditions, was often without flavor and even if they were starving they would have been unable to eat such food. Moreover, the unappealing menu was rarely changed, even on occasions when it was changed; it did not make much difference. The Human Rights Centre representatives, after receiving numerous complaints from the “Tent Town” residents approached the Italian Red Cross representatives who were in charge of food preparation. Mr. Vakhtang Chichinadze, who served as a chief cook in the camp explained that lack of diversity of the food was due to the insufficiency of various food supplies. Some of the ingredients that were used such as beans, pasta and sausage were prepackaged. Meat was not included in the ration because of the high temperature and the risk of food poisoning. Nonetheless the IRC managed to deliver daily portion of 2300 calories to each of the residents. In light of food safety concerns, IRC assigned a qualified person to be responsible for checking the quality of drinking water on a daily basis. IRC representatives identified that the content of the chlorine was not detectable in the drinking water. Absence of the chlorine in drinking water increased the risk of biological condemnation of water to unacceptable levels which could result in epidemic diarrhea.

*Zhuzhuna, 65 has not heard anything from her son since the 12<sup>th</sup> of August. Zhuzhuna is a cleaning lady in Tkviavi hospital. Her family lived in a small shelter close to the hospital, together with her husband and son and mother-in-law. When the bombings started on 8th of August she was hiding in her garden with her mother-in-law. On 10th of August they left Tkviavi. However, her husband and son decided to stay behind in the village to protect their home and belongings. Her son also left Ktviavi on 12th of August with two of his friends. Three of them were detained by Russian military on their way to Gori. They were all taken to Tskhinvali and held in a police detention centre for three days. Zhuzhuna’s son was taken outside the prison cell, where he was held together with his friends and no one has seen him since.*

Residents complained about hygiene problems, in particular the lack of basic toilet supplies: soaps, detergents, tooth paste and access to sanitary toilets. Woman complained about insufficiency of sanitary napkins. Residents could not take shower because of the absence of hot water and because of the fact that cabins that were designated for shower were extremely dirty. UNHCR representative explained that there was a problem with waste collection. In fact, the

local government was in charge of the waste collection problem. However, in spite of this responsibility, they failed to provide for trash service in timely and efficient manner. Such a situation caused concentrations of organic and inorganic waste which posed a serious risk of disease generation and the breeding ground for vermin.

Health care issues were noted by many of the residents of “Tent Town” and they complained about the low level of qualifications medical personnel as well as the amount and kinds of medicines that were being made available. In addition, there was no efficient and operative system to provide for medical assistance. Usually, the medicine was delivered to sick after 4-5 days following a medical examination. Children, who were often sick due to the repeated stress, suffered the most because of slow response in the provision of medical assistance.

The Human Rights Centre has continued to monitor human rights in the conflict zone in the months following August. This monitoring included various aspects of the daily life of people living in the Georgian controlled territory of the conflict zone as well as human rights situation of those who were forcefully displaced during and after the conflict. For this purpose monitors of the human rights centre have been visiting villages close to the de facto border, some of the remaining temporary IDP settlements, and new IDP settlements on weekly basis. Special attention was paid to the particular aspects of the above listed places, this report however does not provide statistical analysis in relation to number of IDPs and their movement.

### **Human rights situation in villages of the conflict zone**

Monitors of the Human Rights Centre have regularly been visiting villages in the former buffer zone since August. Villages visited during this period include: Dirbi, Dvani, Takhtisdziri, Zemo and Kvemo Khviti, Zemo and Kvemo Nikozi, Megvrekisi, Brotsleti, Ergneti, Ditsi, Mereti, Koshka, Tirdznisi, Karbi and Kere.

Special attention was given to the safety and security related situation in the villages like Dvani and Koshka, which are bordering the de facto South Ossetian border. In addition social economic conditions and distribution aid was being monitored. Monitoring was carried out based on direct observation and interviews with inhabitants of the villages.

There were both military and police presence in villages located on or close to the de facto border. Representatives of both police and Ministry of Defense explained that their mandate is to provide security for the villagers and maintain order. Village residents had good relationships with military and police, however explained that their presence is not a sufficient factor for maintaining the sense of safety. While the sound of shooting, coming from the Ossetian side is regular, residents do not feel safe. There were instances of directed shooting on several occasions for example in Koshka. As residents of Koshka explained shootings came from the side of village Disevi, located on the hill overlooking Koshka, as a reaction of the gathering of several Georgian men in the outskirts of Koshka. There were about 10 houses in Koshka’s outskirts, on the de facto border, where residents cannot stay because of the security concerns. Same is true for Dvani as well, where police representatives had selected a house of the local resident close to the checkpoint where they stay overnight. The owner of the house commented that family had a good relationship with the policeman and that there was no intimidation

whatsoever. However, other village residents also explained that one of the houses that was occupied by Georgian soldiers and where the house owner was not staying at the same was significantly damaged and different items were also taken.

In addition to the Georgian police and military the villages are also subject of monitoring of European Union Monitoring Mission (EUMM). EUMM's mandate is to monitor the implementation of the Agreements of August 12 and September 8, in particular the withdrawal of Russian and Georgian armed forces to the positions held prior to the outbreak of hostilities. It is also tasked to contribute to the stabilisation and normalisation of the situation in the areas affected by the war, to monitor the deployment of Georgian police forces and to observe the compliance with human rights and rule of law.<sup>8</sup> Regular visits to the villages in the former buffer zone are a part of the ordinary daily routine of the EUMM monitors. However, as residents of the villages explained they are aware of the limited mandate of the EUMM and their presence does not really add to their sense of safety and security. In general village residents gave positive response when asked about the EUMM. Moreover, they have also noted that it would be much appropriate and useful to have permanent presence of the external police type force which can be deployed on the border instead of Georgian military. This could in addition prevent minor incidents that still happen on the border and that carry potential of escalation of the conflict.

### **Social economic conditions in the villages of the former buffer zone**

The major source of income for the residents of the villages in the former buffer zone is agriculture and farming. Since the war in August coincided with the period of collection of crops village residents were not able to collect the harvest from their land. Moreover, in the days following the armed hostilities the villages were subject of lootings from the side of Ossetian paramilitary groups, who stole most of the valuable items including transportation means, household items, cattle and other domestic animals. As a result, most of the families in those villages that were looted remained without any means of subsistence and rely on solely on the external support.

**Principle 18** of the Guiding Principles on Internal Displacement state: ‘All internally displaced persons have the right to an adequate standard of living. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: (a) Essential food and potable water; (b) Basic shelter and housing; (c) Appropriate clothing; and (d) Essential medical services and sanitation

The village residents explained that they have received various types of assistance both in terms of monetary assistance and assistance in the form of food, medications etc. in the months following the conflict.

Based on the explanations given by the residents of the villages located in the former buffer zone, following types of monetary compensations has been delivered after the conflict:

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<sup>8</sup> Information on the European Union Monitoring Mission can be found at: <http://www.eumm.eu/en/>

- 15 000 USD was awarded by the Georgian Government to those whose houses have been burnt or otherwise destroyed;
- 800 USD was awarded by unidentified non-governmental source to those whose houses were burnt;
- 400 USD was awarded to those whose houses were looted.

Unidentified nongovernmental source has built one room cottages to those whose houses were burnt or otherwise destroyed during the war and distributed firewood for heating over winter.

In many cases villagers complained about the lack of food supplies. In general village residents had difficulties in identifying the source of assistance and status of such assistance due to the lack of information in this respect.

The medical services were usually inaccessible to the villagers. There was a case of one village resident being taken on sledge to the hospital, because the emergency cars could not access the village. There is no access to medications and since villagers have very limited income in many cases the treatment is unaffordable for them.

The electricity was cut in several villages including Dvani for example in December, for the whole month due to the nonpayment of the electricity bills. Residents were asked to pay 20 USD for electricity from the assistance that was due to be delivered for the period since August.

In general, village residents explained that the monetary and other kinds of assistance given to them are not sufficient for maintaining the ordinary life and many families, especially those with minors are forced to resettle due to the harsh economic conditions.

### **Forceful return of IDPs**

The Human Rights Centre has identified policy of forceful return of IDPs by the Georgian Government. In general there are four demographic groups: people who never left the conflict zone even during the active hostilities, people who were displaced during the conflict but returned to their usual places of residence after the Government of Georgia took control of the territories (former buffer zone), people who were resettled by the Georgian Government in the newly built settlements and finally people who did not return and are living in temporary places like unused governments buildings etc. and whose housing issues are not yet decided due to various factors. Based on the findings of the Human Rights Centre the last group is the one that faced and still faces significant challenges. This are families who did not receive cottages mainly because their houses were not destroyed during and after the conflict and who come from the villages where most of the population has already returned. This raises the questions related to the status of IDP settlement of which for various reasons has been postponed by the Government of Georgia. Among the explanations given by the government representatives, in relation to the delay of the issuance of the IDP status was the fact, that forcefully displaced persons, formerly living in the area outside the *de facto* South Ossetia borders, are not entitled to the IDP status because their permanent residence places are not recognized as “occupied territory”. If one draws parallel to the definition of the IDP in the Guiding Principles on the Internal Displacement, it becomes clear that connecting granting of the IDP status with the ‘occupation of

the territory' solely is far from being adequate. In particular it is stated in the Guiding Principles that: "internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border." The article 1 of the Georgian "Law on Internally Displaced Persons" provides a definition of the internally displaced person which is slightly narrow from the one in the IPD Guiding Principles. In particular Article 1 states: ". Internally displaced person (IDP) is the citizen of Georgia or stateless person permanently residing in Georgia, who was forced to leave the place of his/her habitual residence and was displaced (within the territory of Georgia) as a result of threat to his/her or his/her family member's life, health or freedom due to the aggression of foreign country, internal conflicts or mass violation of human rights."

In fact both definitions gives emphasis on the actual displacement that took place due to armed conflict, situation of generalized violence, violations of human rights {...} and therefore artificial approach to the issue of granting the status to the 'occupation of the territory as it was done by the representatives of the Georgian Government is a demonstration of the lack of genuine will to protect the fundamental human rights its own citizens.

The journalist of the Human Rights Centre Nona Suvariani has prepared an article in relation to the forceful return of IDPs from village Knolevi.

Residents of Knolevi village in Kareli district, who shelter in the building of Rustavi Vocational College # 17, are demanded to return to their village; whilst people are afraid to go there. Knolevi borders with Znauri district that is controlled by the Russian Federation. Checkpoint of Russians is opened at the one side of the village and Ossetian militants are deployed on the other side.

Residents of Knolevi applied to the Human Rights Center for help initially in November 2008. The Ministry of Refugees and Accommodation demanded them to return to the village. As internally displaced people reported to the Human Rights Center, they were even "bullied". Curtains were torn away, and IDPs were compelled to get on the bus and go to Knolevi. The Human Rights Center initially met the IDPs at the Ministry of Refugees and Accommodation. Then they requested to meet the minister however, with no success. The Human Rights Centre has already published one article about the issue on its online portal [www.humanrights.ge](http://www.humanrights.ge)

Vladimer Jugheli, the head of Kareli district police department, claimed that return of IDPs to the village is safe. Later, an official from the Ministry repeated the same with IDPs in Rustavi. However, before that he was claiming that presence of women in the village is really dangerous. The officials from the ministry spoke about the necessity of IDPs' return to Knolevi based on the information of Lado Vardzelashvili, Shida Kartli regional governor. However, the women from the village, whom the Human Rights Center met in front of the Ministry, stated that gun-fire was often heard in the village. The Human Rights Centre contacted Deputy District Governor of Karelil Region to check the information. Levan Abashashvili confirmed that the situation is not

very safe in the village. However, he added that the situation was not acute in Knolevi, but on the territory that is located at the border. He said that officials had information about the situation and demanding the women and children to return to Knolevi might be a mistake.

Nevertheless, Levan Abashashvili stated that IDPs should return to the village immediately because if their houses remain empty Ossetians will occupy it. It must be pointed out that the government demands those 9 people to “defend the position” out of whom 5 are children.

Ledi Birtvelishvili, a resident of Knolevi, stated to the Human Rights Center that officials from the Ministry compel the people to pack luggage in the bus and go to the village. Ledi Birtvelishvili: “We have little children and we are afraid for them. Our living conditions are unbearable. Let them wait a little and when it is calm we will go there. They took some people but everybody returned here. We do not request anybody to help us; we are just waiting for situation to get more safe so that we can leave there without constant fear. Despite that, people from government are coming and demanding us to pack the luggage. Russians are closer to our houses in Knolevi than Georgian police. Men are in the village but women and children cannot stay there.”

On January 16, 2009, at 10:00 am, 27-year-old Mamuka Kakhniashvili, a policeman from Shida Kartli Regional Department, was killed when fire was opened from the territory occupied by Ossetians. The Ministry of Internal Affairs spread information about it. The accident happened at the administrative border near the police station in Knolevi village. According to the preliminary information the policeman was killed by muffler sniper weapon. This accident frightened local residents even more. They state the government will not guarantee their safety if they return to the village; particularly those people who live close to border will be in serious danger.

Davit Chkonia, the head of Kvemo Kartli, Mtskheta-Tianeti and Kakheti Regional Department of Territorial Agency of the Ministry of Refugees and Accommodation, states that a policeman can be killed in every place at any moment. It does not mean that law enforcers do not control the situation in Knolevi.

“These people are not from occupied territories. They live in the village close to border. They will not get the same assistance as IDPs from occupied territories. They have their own houses. 90 % of villagers live in their houses. They have children who go to the village school. The state guarantees their safety in Knolevi.”

Vova Jugheli claims that safety of Knolevi residents is protected and the entire village is controlled by Georgian police.

“Our checkpoint is in front of Russian checkpoint. People do not live in front of the checkpoint. Most local residents have already returned to the village and do not run anywhere. However, if somebody does not want to return, it is different problem.”

It is worth mentioning here that Georgian Government should have and could have granted status of IDP to those who resettled as a result of August conflict based on the Article 2 (9) of

the Georgian “Law on Internal Displaced Persons” according to which “during the mass displacement of the population in the circumstances provided by the article 1 of the present law, the status of internally displaced shall be granted immediately.”

The status of the IDP in this relation becomes a form of a guarantee against the forceful return of those who are afraid to return, and inaction of the Georgian Government in this regard is an indication that it leaves a room for a political maneuver on the price of the rights of IDPs. Moreover above described situation clearly contradicts several of key provisions of the Guiding Principles on Internal Displacement. In particular, *Principle 14* according to which ‘every internally displaced person has the right to liberty of movement and freedom to choose his or her residence. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.’ And Principle 15, according to which: ‘internally displaced persons have: (a) The right to seek safety in another part of the country; (b) The right to leave their country; (c) The right to seek asylum in another country; and (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.’

### **Situation in ‘new settlements**

The Human Rights Centre representatives have visited newly built IDP settlements in Tserovani, Shavshvebi and Gori on numerous occasions. Based on interviews with the residents of the settlements it is not clear if this newly built houses are a form of compensation for the lost property or just a temporary arrangement for sheltering the IDPs and for how long they will have to stay at these new settlements, which residents themselves compare to ghetto camps.

One of the first things that was easily noticeable was the low quality of constructions that could be seen even before the constructions were completed.

Construction of new settlements completed in unrealistic time frames in technical terms, which is, on the one hand understandable considering the political pressure that Government of Georgia experienced and the real need for housing tens of thousands of internally displaced who remained without shelter. However, on the other hand the speedy settlement in superficially completed constructions had negative effect on the health of the people who started living there, to leave aside the quality of the construction itself.

As for the specific problems, in addition to the insufficient living conditions the residents mainly complained about the socio economic situation, including lack of food supplies, availability of medical assistance, heating and hygiene conditions.

There is no system of provision of the food supplies to the settlements. Therefore residents go shopping for food supplies in nearby towns which are either Tbilisi or Gori depending on the location of the settlement. There are small grocery shops that have been organized privately but these are not sufficient for proper food supply. The bread that is sold in this private shops costs 65 tetri which is more expensive compared to the standard price of bread.

Houses in the settlements are heated by the gas heaters that have been installed after the completion of construction. However, these gas heaters are not sufficient, mainly due to the low gas pressure and residents usually use electric heaters in addition. The cost of the gas and electricity is covered by the government.

The problem of hygiene is also very disturbing especially in Shavshvebi settlement where the houses are not equipped with the shower and toilets due to the absence of the sewage system. The Turkish style toilets are installed outside the houses and shared by two houses. However, residents of the Shavshvebi settlement practically have no possibility to shower. As for those houses which are equipped with shower rooms – residents explained that it is not possible to use these showers because the glazed tiles are already off the walls and the water is leaking to guest room. There is no hot water supply and no equipment for warming water. Therefore the only way for the residents to warm water is to use gas cookers. Hygienic materials were distributed initially and once afterwards. There is a lack of clothing. Many people were same cloth for months.

Roofs are leaking in many cottages. The thin floor is practically directly attached to the ground and does not preserve heat.

The medical treatment was initially provided by medical emergency service (033) representatives. However, in January medical centers have been provided as a result of support of Czech Government. These medical centers provide possibility of both immediate medical aid as well as basic stationary treatment.

Overall resident of the new settlements explained that conditions are acceptable in case they do not have to stay there for the prolonged period.

### **Conclusion and recommendations**

Some basic assumptions can be made as a result of monitoring carried out by the representatives of the Human Rights Centre: follow-up actions of the Government of Georgia aimed to assist IDPs have been insufficient and lacked overall coordination. The result has been in many instances that they have been left without shelter, food and urgent medical assistance. Moreover, IDPs find that government officials lack the capacity, will or ability to deal with their problems. Taken together, the incompetence of governmental officials has made an already difficult situation more acute. The result is that humanitarian assistance has been provided haphazardly. There have been allegations of favoritism, mismanagement and even some suggestions of corruption. Taken together, the situation reflects an overall lack of transparency, political will and competency. To add injury to insult, there have been instances of verbal and even physical abuse from local government officials when they were approached by people in urgent need of assistance. Key governmental officials have directed insults towards IDPs and blocked access for them to address their concerns. Mr. Saba Tsitsikashvili, a coordinator of the HRIDC's Gori office has become a subject of persecution by the regional administration for attempting to help IDPs in Gori and for criticizing failure of local government to provide assistance to those in desperate need.

Based on above the Human Rights Centre recommends Georgian authorities:

- To address and fully eliminate the pressing humanitarian needs of IDPs with due diligence and political resolve;
- To implement all necessary measures to improve the material conditions of IDPs, which includes but is not limited to adequate housing in single or extended family units, food, medical care and psychological needs;
- To especially pay attention to the developmental and educational needs of children and special needs persons to assure that they receive basic education that corresponds to the generally accepted educational standards, and that they will not fall behind in their studies and normal development stages
- To allocate necessary funding train an adequate number of administrative personnel that is able to effectively deal with IDP in a concerted and effective fashion;
- To guarantee safe and voluntary return of IDPs and whenever this is not possible, to implement all necessary measures aimed at integration of IDPs into temporary residential areas, which should among others include measures aimed at employment of IDPs.
- Intensify its attempts to guarantee more representative presence of the external police force (EU, UN or other alternative), which shall be deployed especially in those areas of the border that are populated. Without real guarantees for safety and security the return of the population to the former buffer zone is relative because of the ever present fear of escalation of the conflict and the fear of persecution.
- Undertakes practical steps to provide residents of the former buffer zone with basic means of subsistence, including housing to those whose property has been destroyed as a result of the armed conflict, food supplied and medical treatment.
- Any forceful attempt of return of internally displaced to the former buffer zone contradicts to the requirement of Constitution of Georgia and country's obligations under international law. In any case, when government 'offers' IDPs to return to their permanent place of residence this should not happen collectively. Instead individual circumstances of each family or individual have to be taken into account.
- Government of Georgia needs to clearly explain the status of the new settlements and relevant housing arrangements. In case this arrangements are of a permanent character substantial work should be done in terms of improvement of living conditions and for the employment of the residents of the settlements. Finally, free and voluntary return of the internally displaced, with basic guarantees of safety and security as well as social and economic guarantees, should remain as a key priority for the Georgian Government.

## Increasing Impunity and Denial of Justice

### Background

In the international law of human rights the term “impunity” refers to the failure to bring perpetrators of human rights violations to justice and, as such, itself constitutes a denial of the victims' right to justice and redress. Impunity is especially common in countries that lack a tradition of the rule of law, suffer from corruption or that have entrenched systems of patronage, or where the judiciary is weak or members of the security forces are protected by special jurisdictions or immunities either *de facto* or on the level of legislation. The amended Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, submitted to the United Nations Commission on Human Rights on 8 February 2005, defines impunity as:

"the impossibility, *de jure* or *de facto*, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims."

The First Principle of that same document states that:

"Impunity arises from a failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations."

The problem of impunity can arise in both weak and strong states. In the cases of weak states the problem of impunity is often rooted in the inability of the state to exercise the justice in an appropriate way. However, there are some states that despite having the capacity to carry out investigations with respect of grave human rights violations refuse to do so since the state apparatus and elite of the bureaucracy is the author of those violations.

Arguably Georgia belongs to the second category of countries where justice is selective and major accusations by the civil society with respect of grave human rights violations remain without investigation – identification and punishment of perpetrators. Notorious cases of extrajudicial killings or killings with use of excessive and unnecessary force are not duly investigated. The issue of responsibility of some of the high ranking officials is brought to the attention of the investigative authorities only after they leave the office and become critical towards the official state policies. However, the clearest example of impunity in the recent Georgian history is the way how Georgian Government treated the crimes that have been committed during the conflict in August 2008.

### **Failure to investigate war crimes**

The conflict in August between Georgia and Russian federation has brought hundreds of civilian casualties, destruction of civilian property and displacement of the residents of the conflict zone. These facts have been well documented by both national and international NGOs that did thorough fact finding on the both sides of the border. Based on the findings of those organizations that were involved in the fact finding both parties of the conflict have committed crimes that can be characterized as war crimes under international law. Some of these crimes are so called crimes of universal jurisdiction, meaning that any state is obliged to carry out prosecution in the presence of the specific evidence that the person(s) has committed such a crime. In addition to this, Government of Georgia is obliged under the Statute of the International Criminal Court (Rome Statute), which it had ratified in 2003, to carry out the prosecution in case any of the four crimes that fall within the jurisdiction of the International Criminal Court (ICC) have taken place within its jurisdiction.

Under the Article 8 of the Rome Statute following is considered to be the war crimes:

In the context of international armed conflict:

- Grave breaches of the 1949 Geneva Conventions (followed by the exhaustive list of acts (Article 8.2.a.))
- Other serious violations of the laws and customs applicable to the specific situation within the established framework of international law (followed by the exhaustive list of acts (Article 8.2.b.))

In the context on internal armed conflict:

- Serious violations of common article 3 to the four 1949 Geneva Conventions (followed by the exhaustive list of acts (Article 8.2.c.))
- Other serious violations of the laws and customs applicable to the specific situation within the established framework of international law (followed by the exhaustive list of acts (Article 8.2.e.))<sup>9</sup>

Based on the Rome Statute the Government of Georgia has a legal obligation to investigate not only those crimes that have been committed by the Armed Force of the Russian Federation or by the South Ossetian paramilitary groups that were acting under the Russian control, but also to investigate allegations of the possible occurrence of war crimes by its own armed forces.

The Human Rights Watch released the comprehensive report in January 2009 which, inter alia, deals with the violations of the laws of wars by the parties to the conflict. The report contains violation on the account of the Georgian Government. In particular it states: “Human Rights Watch’s investigation concluded that Georgian forces committed violations of the laws of war during their assault on South Ossetia. Research shows that during the shelling of Tskhinvali and neighboring villages and the ground offensive that followed, Georgian forces frequently failed to abide by the obligation to distinguish between military targets that can be legitimately attacked,

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<sup>9</sup> For the exhaustive list of war crimes please refer to the Article 8 of the Statute of the International Criminal Court

and civilians, who may not be targeted for attack. This was compounded by Georgia's failure to take all feasible measures to avoid or minimize civilian casualties. While HRW found no evidence that Georgian forces sought to deliberately target civilians, Human Rights Watch research concludes that Georgian forces demonstrated disregard for the protection of civilians during the shelling campaign, causing large-scale damage to civilian objects and property, and civilian casualties.

In the course of three missions to South Ossetia in August, September, and November 2008, Human Rights Watch interviewed more than 150 witnesses and survivors of the attacks on Tskhinvali and the ethnic Ossetian villages of Khetagurovo, Dmenisi, Sarabuki, Satikari, Gromi, Tbeti, Novyi Tbeti, Nizhnii Gudjabauri, Muguti, Monasteri, Batatykau, Kohat, Bikar, Tsinagari and Tsairi. Human Rights Watch researchers also examined the majority of sites where attacks took place, and gathered information from public officials, hospital personnel, and public activists.

The mere fact of civilian casualties or destruction of civilian objects does not mean that a violation of international humanitarian law occurred. Where civilian loss or damage occurred, what was important to seek to determine was whether there was evidence of a legitimate military target in the attack area, and how that target was attacked. In many cases Human Rights Watch researchers found no evidence of military objectives in the area under attack; other attacks did strike legitimate military targets, causing combatant and, in some cases, collateral civilian casualties.

In a number of cases, moreover, there were no direct witnesses and no reliable information regarding the circumstances of the attack. Also, since Georgian and Russian forces use some identical Soviet-era weapons systems including main battle tanks, Grad multiple-launch rockets, BMP infantry fighting vehicles, and tube artillery, Human Rights Watch could not always conclusively attribute specific battle damage to a particular belligerent, especially for the attacks that happened on and after the evening hours of August 8 when both Russian and Georgian troops were present in Tskhinvali.

Yet many of the attacks on South Ossetia during the brief conflict can be clearly attributed to Georgian forces—based on witness accounts, the direction of the attack, and the timing of the damage in light of the advance of Georgian forces. Human Rights Watch has concluded that a number of these attacks were indiscriminate.

The massive shelling of Tskhinvali was indiscriminate because at the very least the Georgian military effectively treated a number of clearly separated and distinct military objectives as a single military objective in an area that contained a concentration of civilians and civilian objects.

In some of the attacks investigated by Human Rights Watch, evidence suggests that the Georgian forces targeted lawful military objectives (that is, objects or persons making effective contribution to the military action) but the attacks may have been disproportionate, because they

could have been expected to cause loss of civilian life or destruction of civilian property that was excessive compared to the anticipated military gain. In others, Georgian forces carried out a number of artillery attacks in which they failed to take all feasible precautions to minimize the likely extent of loss or injury to civilians. Georgia's use of multiple rocket launching systems, such as BM-21s ("Grads") in civilian populated areas violated international humanitarian law's principle of distinction. These weapons cannot be targeted with sufficient precision to be accurate against military targets, and their broad area effect makes their use incompatible with the laws of war in areas where civilians or civilian objects (such as schools or hospitals) are located. The use of such weapons in populated areas is indiscriminate by nature and thus prohibited under international humanitarian law.

Several Ossetian civilians reported looting by Georgian ground forces but otherwise generally did not complain of other abusive treatment during the ground offensive by Georgian troops. Those detained by Georgian forces, however, reported they were ill-treated when taken into custody."<sup>10</sup>

The Amnesty International wrote in its report "Civilians in the Line of Fire the Georgia Russia Conflict": "The Georgian army entered South Ossetia at around 11.00pm on 7 August along three main axes. Part of the Georgian army headed directly for Tskhinvali along the main road from Gori. Georgian forces also sought to occupy the heights on either side of Tskhinvali, entering South Ossetia to the West of Tskhinvali via Muguti, Didmukha, and Khetagurovo and, to the east of Tskhinvali, through Dmenisi and Sarabukh. The entry of Georgian ground forces into these villages, and into Tskhinvali itself, was preceded by several hours of shelling and rocket attacks as well as limited aerial bombardment. Much of the destruction in Tskhinvali was caused by GRADLAR MLRS (GRAD) launched rockets, which are known to be difficult to direct with any great precision. Eyewitness reports, the nature of the munitions used and the evidence of scattered destruction in densely populated civilian areas strongly suggest that Georgian forces committed indiscriminate attacks in its assault on Tskhinvali on the night of 7 August, causing deaths and injuries among South Ossetian civilians and considerable damage to civilian objects.

Whilst Ossetian forces may have violated Article 58(b) of Protocol I to the Geneva Conventions requiring parties to avoid locating military objectives within or near densely populated areas by firing at Georgian forces from locations close to civilian areas prior to their entry into Tskhinvali itself, Amnesty International is concerned that the Georgian forces may have selected targets in areas with large numbers of civilians on the basis of outdated and imprecise intelligence and failed to take necessary measures to verify that their information was accurate before launching their attacks. At the time of the initial shelling of Tskhinvali, Georgian forces were positioned several kilometres from Tskhinvali, at a distance from which it would have been difficult to establish the precise location of the Ossetian positions firing on them. Nor, as Ossetian forces were lightly armed and mobile, could there have been any guarantee that positions from which

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<sup>10</sup> Up in Flames – Humanitarian Law Violations and Civilian Victims over the South Ossetia Conflict. Human Rights Watch, January 2009 <http://www.hrw.org/en/reports/2009/01/22/flames-0>

munitions had been fired in preceding days were still occupied on the night of 7 August. Amnesty International is also concerned that rules on other precautions, such as giving warning to civilians where feasible and choosing means and methods that are least likely to cause harm to civilians, were not properly followed.

The nature of the munitions used, the scale of the destruction caused and the number of civilian casualties that resulted from the bombardment of built-up residential areas in the course of the Georgian assault on Tskhinvali on the night of the 7-8 August all point to a failure to take necessary precautions in attack in violation of Article 57 or Protocol I and may in some instances have amounted to a violation of Article 51(4), the prohibition of indiscriminate attack.”<sup>11</sup>

The Georgian Government which brought legal action against the Russian Government by bringing a case to the International Court of Justice as well as by initiating the inter-state application against Russia in the European Court of Human Rights is not undertaking steps to investigate allegations of the commission of war crimes by its own armed forces and those who were in the high chain of command.

There was an attempt to establish the truth over the August war by creating some kind of truth commission, which at the end worked under political shadow and the issued rather political statement in the form of a conclusion. The commission was established by the Decree No 292 II s, of the Parliament of Georgia, dated 26 September 2008 for the period of three month. The purpose of the creation of the commission as it was defined by the Decree and the name of it was already political. The Commission was named as: “Commission on Enquiry of the Facts of Infringement of the Territorial Integrity, Military Aggression and other Acts Committed by the Russian Federation”. The Commission was empowered to examine the facts of infringement of the territorial integrity and military aggression against Georgia by the Russian Federation.

The Commission was composed of ten members out who four were from the ruling party – United National Movement, four from Christian Democrats and two majoritarian MPs.

The Commission had interviewed 21 representatives of the Georgian Government, including the President and issued its conclusion in late December 2008. Instead of providing balanced assessment of the August conflict the Commission’s conclusions is an attempt to justify the actions of the Georgian Government, especially the use of military force in the beginning of August. The conclusion briefly deals with the issue of conduct of hostilities and the application of the international humanitarian law during the August conflict. This part of the conclusion is mainly based on the abovementioned reports of the Human Rights Watch and Amnesty International. However, in the part of the conclusion which deals with the recommendations which are addressed to the Georgian Government there is no mention of investigation of the war crimes either committed by Georgian or Russian sides.

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<sup>11</sup> Civilians on the Line of Fire – the Georgia Russia Conflict, Amnesty International Publication, 2008, <http://www.amnesty.org/en/library/info/EUR04/005/2008/en>

Arguably one of the reasons why the work and conclusion of the commission leave the impression of being biased and subjective is rooted in the way it was created and how it operated. Principle 6 of the Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity states that: “To the greatest extent possible, decisions to establish a truth commission, define its terms of reference and determine its composition should be based upon broad public consultations in which the views of victims and survivors especially are sought. Special efforts should be made to ensure that men and women participate in these deliberations on a basis of equality. In recognition of the dignity of victims and their families, investigations undertaken by truth commissions should be conducted with the object in particular of securing recognition of such parts of the truth as were formerly denied.” Moreover, the Principle 19 of the same document stipulates that: “States shall undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished. Although the decision to prosecute lies primarily within the competence of the State, victims, their families and heirs should be able to institute proceedings, on either an individual or a collective basis, particularly as parties civiles or as persons conducting private prosecutions in States whose law of criminal procedure recognizes these procedures. States should guarantee broad legal standing in the judicial process to any wronged party and to any person or non-governmental organization having a legitimate interest therein.”

Even though the Commission on Enquiry of the Facts of Infringement of the Territorial Integrity, Military Aggression and other Acts Committed by the Russian Federation is not a truth commission as such, the above mentioned principles should still have been applied, considering the fact that the commission sought to shed the light over the armed conflict in August – a task that commission had failed to deal with in an impartial and objective manner.

### **Recommendations**

The Human Rights Centre recommends Georgian authorities to investigate the alleged occurrence of war crimes and crimes against humanity within the jurisdiction of Georgia. The investigation must be carried out in an impartial and transparent way and guarantee the participation of the victims at all stages of investigation. In the long term it is desirable that Government creates an institutional structure within the criminal justice system of the country that will be used for the purposes of investigation of the crimes of universal jurisdiction. This shall include the special investigative/prosecuting division within the relevant government structure and training of the judges that might have to deal with the issue.

## **Freedom of Expression and Media**

### **Introduction**

The right to freedom of expression is a right which encompasses three elements in itself. These are the right to have opinions, the right to receive and the right to impart information. While the first aspect of the right is of an absolute character the other two can be subjected to limitations under certain circumstances. However, in some situations when the state control over the media is overwhelming, this can have a drastic impact on the freedom of having opinions. All three aspects of this fundamental right, which is said to be the cornerstone of the democratic society, continue to be blatantly infringed in Georgia.

The control of the freedom of expression is exercised by the Georgian government in various forms and so far these methods have been rather effective. One of the ways that the Government is using to repress the free dissemination of the information is through media ownership. Bold questions that had been asked in relation to the shareholding of Rustavi 2 and Mze remain without answer. The ownership of the Imedi TV had effectively been manipulated and Georgian society has no question marks as to the who defines the information policy of the Imedi TV as well as Radio Imedi. Same is true for the Public Broadcasting, which despite multiple reforms and innovations that were implemented by the new administration is far from being objective and serving its true purpose. The row over the license issues is another example of the state involvement in the broadcasting and case of TV Maestro is just one demonstration of this.

One more visible trend among the state controlled TV stations is the unprecedented support of the militaristic propaganda. In addition, it is also worth mentioning that several of the political talk shows have been closed in the period preceding the conflict in August. TV Mze was also transformed to the entertainment channel in the same period. Government has ordered private cable providers to stop broadcasting all Russian Language TV channels, including the Russian version of the EURONEWS. Most of Russian language web pages have been blocked during and after the August events. However, what is most disturbing for the Human Rights Centre is the abuse of the representatives of the journalistic profession by the government officials with the ever present feeling of impunity.

Journalists of the Human Rights Centre have themselves become subject of such violence during 2008 and none of those facts of abuse have been duly treated by the investigation authorities. The journalistic freedom is especially fragile in the regions where individual journalists have to face state machinery in its real face when they try to do their ordinary job in an impartial and objective way. On this background the Georgian society is greatly deprived of possibility to receive the objective information on the key issues of public importance. All major TV channels that broadcast on a country wide scale are mere means of propaganda of the official state policies. Political parties are deprived of possibility to effectively communicate with the electorate through media. To the same extent civil society organizations are unable to disseminate critical information in relation to the wrongdoings of the government. All this taken

together, greatly hampers the development of the democratic processes in Georgia and has dramatic effect in economic development in the long term, among others.

On this background, it seems essential that Georgian civil society unites its efforts in supporting the freedom of expression and undertakes concrete and firm steps towards supporting the freedom of media on all fronts.

This report covers the work and findings of the journalists of the Human Rights Centre throughout the year 2008. It starts with a case of persecution of the journalist of the Human Rights Centre Mr. Saba Tsitsikashvili, who was subjected of the persecution that he was doing as a journalist and a human rights defender.

### **Saba Tsitsikashvili – A journalist working with the HRIDC becomes persecuted by the local Regional Administration of Gori Region**

Mr. Saba Tsitsikashvili was physically and verbally assaulted in the village of Karaleti (Shida Kartli region) by Messrs. Lado Vardzelashvili, the Shida Kartli Governor, and Zurab Chinchilakashvili, Deputy Governor. Mr. Saba Tsitsikashvili was covering a demonstration against the Russian occupation when Messrs. Vardzelashvili and Chinchilakashvili, along with several other men, approached him. Mr. Chinchilakashvili and Mr. Vardzelashvili grabbed him and continued to verbally and physically abuse him, while the men threatened him in the following terms: “Keep in mind, if you continue as you are doing we will arrange your disappearance and you will be beaten every day”.

When Saba Tsitsikashvili tried to come closer to the head of the regional administration, who was nearby, Mr. Zurab Chinchilakashvili grabbed his wrist and strongly squeezed. He accused him of having brought journalists with cameras and told him: “I will make sure you disappear...”. Then two unknown persons appeared and started beating him, hitting his ribs and legs.

Afterwards, they brought Mr. Tsitsikashvili near the car of Mr. Davit Khmiadashvili, the Gori District Governor, who was present there along with Mr. Giorgi Kvitsinadze, the Deputy District Governor. As they approached them, Tsitsikashvili heard Mr. Chinchilakashvili saying, “take him back!”. Near the District Governor’s car, Tsitsikashvili was beaten in his ribs with the help of a key. The District Governor and Deputy Governor then told him to “f.ck off from the place”. Tsitsikashvili immediately returned to Gori.

Subsequently, Mr. Tsitsikashvili went to Tbilisi to report the events to the HRIDC and the Public Defender.

Mr. Zurab Chinchilakashvili started to become aggressive towards Tsitsikashvili after August 29, 2008. On that day, Mr. Ucha Nanuashvili, HRIDC Executive Director, along with several other employees of HRIDC, including Mr. Tsitsikashvili, visited the Kombinat's Dasakhlebia (Factory Settlement) hosting internally displaced people (IDPs) originating from the Georgian-Ossetian conflict zone. They wanted to find out what were the living conditions of IDPs two weeks after

the bombing. It turned out that the Gori inhabitants who had returned from Tbilisi had no shelter, and had been left to sort out their problems themselves. Messrs. Nanuashvili and Tsitsikashvili took two homeless IDPs to the regional administration to talk with officials in charge of IDPs, and met Mr. Zurab Chinchilakashvili.

On this occasion, Mr. Chinchilakashvili asked Mr. Ucha Nanuashvili: “Excuse me, who are you?”. He then said: “I have some problems to clear up with your organisation”. After this, he took Mr. Saba Tsitsikashvili to talk separately and said: “Ask your boss what he was doing and where he was when the Russians entered Gori. We needed him at that very instance!”. Then he came to Mr. Nanuashvili, saying that he wanted to make a complaint against HRIDC, which is “always looking for some negative information” and that they “will pay for [their] statements”. He finally shouted: “Let’s discuss all your articles from your web site. Who are you anyway? Where were you when Russians entered Gori? You should have come at that time and stand beside us!”.

On August 30, 2008, Mr. Tsitsikashvili went back to visit the IDPs in Gori, in the company of a British journalist who was shooting a documentary film. Mr. Antony Butts, a TV News filmmaker, was filming the plight of IDPs when high-ranking Georgian authorities showed up to the camp: Tbilisi Mayor Gigi Ugulava and Messrs. Koba Subeliani, Lado Vardzelashvili and Zurab Chinchilakashvili. While the camera operator was filming Mr. Gigi Ugulava, Mr. Chinchilakashvili approached Mr. Tsitsikashvili and whispered in his ear, “Did you not hear what I told you yesterday? I do not want to see you in the office of regional administration!”. He added: “I wish you were not a journalist, otherwise I would beat you”.

### **Journalistic Solidarity and Professionalism is the Solution**

By Eka Kevanishvili

Dato Chaganava, a former journalist of TV-company Rustavi 2 was dismissed for lack of discipline – at least that’s what the administration officially told him when he was fired. Prior to his dismissal he had prepared two rather critical stories on the events of November 2007. However, in spite of all his work, they were never aired.

However, people saw these news pieces via internet. Dato Chaganava’s first news piece was on Zugdidi when the authorities in Zugdidi did their best to prevent people from being able to travel to Tbilisi and join the peaceful demonstration. In his story the journalist spoke about the reasons for blocking all kinds of transports for these people from being able to protest. Minibus drivers were intimidated by patrol police. One excuse was that necessary number of tickets had not been sent from Tbilisi to Zugdidi. Consequently, a large number of people were unable to go to Tbilisi.

Dato Chaganava prepared the second news piece two weeks after the protests and beatings of November 7, 2008. The program showed the most important and terrible moments of the demonstration dispersal on November 7. The journalist showed the shots of the Special Unit

chasing the demonstrators to undergrounds, drug stores, the entrances of apartment buildings in order to beat them. The news piece also covered the fact of dispersing the hunger strikers in front of the parliament hall in the November 7 morning:

“The news program was objective. We showed all the dispersal related scenes, talked about the legislature. We highlighted the fact that the police went to the parliament hall in the morning and started beating innocent people. The fact of beating journalists, destroying their cameras was also highlighted,” recalls Chaganava. After this news piece Chaganava was dismissed from the TV-company.

Dato Chaganava’s main concern is not his dismissal. He is more concerned about the lack of professionalism among Georgian journalists.

“If a journalist can make an objective story he will do it, and if he is lucky enough his story will be broadcasted. Today the pressure is on the entire media and not only upon individual journalists. Our country underwent the Rose revolution because of the strength of the media. However, now the level of professionalism has reached a bottom in Georgia. Much of the problem for lack of media freedom is that there are few real journalists working in Georgia. However, there are many people who wish to gain easy and cheap popularity and call themselves journalists.

Everyone knows about this situation. I am thinking about the ways of changing it. The televisions are blocked from being able to work normally. Print journalists have very low salary which reduces level of professionalism and the overall quality of the printed media. The research shows that the majority of population watches TV rather than uses other information sources. Consequently, the pressure on TV-companies is high. Those who are responsible for implementing reforms (meaning that Georgian government) think that no one can prevent them from doing so. Criticism is something that does not suit them.

When my story was blocked the staff of Kurieri P.S. should have refused to go on air, which would have been a solution under the circumstances. I know what a job means for the journalists. They do not want to lose income and therefore they do not want to protest actively, but this should be stopped. One French journalist told me that if the similar problem arose in France all the journalists would go on strike. Apparently, I did not protest when some other journalist’s story was blocked and then they came after me and there was nobody to stand with me.

Dato Chaganava thinks that the concept of creating a code conduct for journalists is a good one. This charter will be able to regulate the relations between the politicians and journalists, and if one journalist has some problems, than every media source must start talking about it. This would be a form to express solidarity, which will allow for freedom of media at a normal stage in its development. However, such resistance would probably stop the young government from doing as it wants, and the government does what it can to keep the media from organizing and the motivations are clear.

## **Terror of Different Opinions Continues**

By Eka Kevanishvili

“This is terror against different opinion,” stated Sozar Subari, the Public Defender of Georgia in front of the journalists gathered at the entrance of the Office of Public Defender. The journalists, rather concerned with the restrictions on freedom of speech went there to support Nona Kandiashvili, former head of the radio Imedi broadcasting.

Mamuka Ghlonti, the founder of the studio Maestro opened the meeting with the petition from Georgian journalists:

“Radio Imedi, especially its leadership, Nona Kandiashvili, the director of its broadcasting, and Irakli Khetereli, the general director were dismissed on May 30, 2008. We consider that their dismissal was unfair, as it lacked any objective motivation. We consider that editorial independence was breached and the freedom of speech further restricted.

All the media ratings show that the radio Imedi is among the top radio stations in Georgia. In addition, this radio covered all of the territory of Georgia. Society trusts and loves radio Imedi as it has always been oriented towards satisfying the interests of the general public. The decision to dismiss the heads of the broadcasting is inappropriate and most biased. It further deprives Georgian society from being able to receive qualified, objective information via radio Imedi.

The form of treating our colleagues astonishes us. We express solidarity to them and demand that the real professionals be returned to their jobs - Nona Kandiashvili and Irakli Khetereli to their former positions so that they can do their work with a high degree of responsibility and quality; the way they had been doing their job in the last several years.

We, Georgian journalists request the international organizations and the diplomatic corpus in Georgia to give subsequent evaluation to the fact. We also call our colleagues and all plenipotentiary organizations to join with us in protecting freedom of Georgia.” The statement was signed by more than one hundred journalists yesterday. Nona Kandiashvili who also attended the meeting stated that she would not stop fighting. The journalists’ meeting apart from signing the petition aimed at uniting those people who think that the freedom of media is in serious danger in Georgia in the newly launched journalist’s house. The idea of establishing the house belongs to Mamuka Ghlonti.

“A hot line should be established. Every journalist will be able to call and inform other journalists about his/her example of undergoing the pressure. I am only the initiator of establishing a journalists’ house. It does not mean that this house belongs to one group of journalists. The journalists have not had a house of their own - a place where they could gather and discuss their problems up to now. I am telling everyone including the journalists from TV-companies Rustavi 2 and Mze that the number of news programs will be limited very soon. Many people will find themselves jobless. If we do not protest actively today, everyone including those who have relatively good financial income today will have problems and their

rights will be violated. There is a plan of changing the journalistic faculty from major to secondary faculty. Not only you but also your colleagues that did not come today must attend our next meeting. We must go beyond writing petitions. We must now organize protest demonstrations at the governmental institutions that are involved in imposing restrictions and pressure on the media,” told Mamuka Ghlonti who represents journalists in the Office of the Public Defender, and among them some were famous some less famous.

The Public Defender evaluated the current situation in the Georgia as the terror of different opinion: “The restriction of media became the politics of the country. The people are detained in this country simply for having different opinions about certain things. This situation has one name: terror. If it goes on like this we will not have democracy even for show.”

The Public Defender’s statement was proved by another example payback: Mamuka Kvaratskhelia, the UEFA media officer was brutally beaten. Kvaratskhelia is famous for his critical articles on the Football Federation of Georgia and the problems of Georgian sport. Two days ago Mamuka Kvaratskhelia was beaten by several unidentified assailants driving Jeeps who tied his hands, broke his fingers and dumped him in the Vashlijvari Forest near Tbilisi. If the establishment of the journalists’ house and the hot line would actually function, and if the journalists do not remain silent and are able to express their protest against the violation of their rights, then the fast and determined process of imposing restrictions on media will be impeded. If it does not happen and the general prognosis is accepted by the journalists themselves on Georgia’s falling behind Belarus and Azerbaijan as well other post Soviet countries in ranking for media freedom of media, which will have been justified.

### **Broadcasting Frequencies Confiscated from Their Owners**

*Journalistic investigation by Eka Kevanishvili*

The question was asked to the Georgian National Communications Commission as to which broadcasting frequency that TV- Company Alania used? It is widely known why some TV-companies were shut down after the Rose Revolution and the circumstances.

Alania is the government funded and sponsored Ossetian language station that supports the reintegration of the breakaway region of South Ossetia into Georgia proper. The issue of frequency ownership issues was an incidental question in passing but carefully considered. It is a current issue that needs to have some light shed upon it. Contributing circumstances to the ongoing battle over Georgian airwaves is known at both the local and international level.

The real questions, however, provides extra insight into the pattern, and not merely commentary about happenstance. Some stations have stopped broadcasting at the owners’ initiative, so it would seem at first impression, while others were intentionally forced off the air under various forms of governmental pressure. Their broadcasting frequencies have quietly removed from their real owners and without much fanfare. In their place soon appeared new TV stations that

immediately started broadcasting with these confiscated or non-operational frequencies.

Alania was one among the new-born TV-companies, and this case may be but the tip of the proverbial iceberg. You can be the judge as to what has actually transpired, as we received the following answer from our discussion with GNCC about the background and contributing circumstances surrounding Alania.

Much to our surprise, we soon learned that this TV-company is not on the Commission register of licensed broadcasters. We were told that "The Commission was not familiar with any such a broadcasting company. Consequently, no broadcasting license had been issued to the company with under that name." However, to make a long story short, the TV-company exists and did not just materialize out of nowhere.

Human Rights Center became interested with the pressing issue of TV-frequencies and started a its own journalistic investigation when TV-Imedi was shut down on November 7, 2007. If we take into account the scale of the Georgian TV market, the number of broadcasting companies that disappeared for various reasons is substantial: Metskhre Arkhi, Iberia, 202, Evropa, Obiektivi, and Aisi.

We had been waiting for single piece of public information from different state bodies for more than ten days. Although a bit late, the answers were forthcoming and practically useless for the purpose of an investigative article. That too can be construed as an answer in an indirect fashion. The rest of this investigated article will give you insight into the story within the story and you can glean the importance of this issue from the information shared by some of those that we interviewed.

#### Iberia- Unpublicized Dispersal

Zaza Okuashvili is the owner of the Iberia TV-company. It was shut down in 2004 and the exact circumstances are still unknown to a wider audience. The TV Company was considered as being indirectly owned by Aslan Abashidze, former leader of Adjara. Iberia went off the air when Irakli Okruashvili was the Prosecutor General. He is the former Georgian Minister of Defense as well.

At present he is under house arrest in France pending a ruling on his political refugee status. He was charged on abusing his powers and tax evasion, other criminal charges as well). Luba Eliashvili, the journalist of the broadcasting company Iberia, the author and presenter of the analytical/ current affairs program Dialogi recalls the events associated with the shutting down of Iberia as follows:

"On February 19, 2004 the representatives of the Office of Prosecutor General entered TV-company and firm Omega, which are both owned by Zaza Okuashvili. The investigator had a list of organizations where searches were to be conducted. However, Iberia was not on the list. Luba Eliashvili told that the search was actually a criminal entrance into the TV-company.

Special Forces were standing at the TV-station from early morning that eventful day. They had not rubber but real bullets in their weapons. We found out about it when the Special Forces opened fire at the journalists at the building of printing-house and the bullets penetrated the walls and left a hole in a gas pipe. The operation was not long and the Special Forces departed the TV-station in 3 hours. However, their departure was only temporarily. Soon they were back and the owner was forced to first take my program off the air and then to shut down the entire TV-company."

Zaza Okuashvili's all businesses had been blocked by that time. Special Forces were "protecting" all the enterprises owned by Okuashvili including newspaper Akhali Epoka and magazine Omega. The journalists of Iberia went to the printing-house to find out what Special Forces were doing there. As Eliashvili recollects, the gates of the printing-house opened and the rain of bullets started: "Their brutal conduct was a sign that they would not make any concessions. It was obvious that the rights of journalists had been violated, so the journalists went to Georgian Public Broadcaster and requested live air, but they were rejected."

All businesses owned by Zaza Okuashvili were brought to a halt. He was accused of printing fake tax excise stamps. The security forces stayed in his offices for 7 months and why can only be justified with some allegations. We can only assume that whatever secret funds that may have been in existence were confiscated from Okuashvili was transferred to another bank or disposed of in some manner.

At least on paper, officially the license of the TV-company Iberia, second ranked channel - was soon bought by Davit Kakauridze, former administrator of the Hotel Varazi. He became the owner several broadcasting frequencies and this will be discussed later in this investigative report. We tried to contact him via the administration of Hotel Varazi, but to no avail.

Luba Eliashvili further explained that Kakauridze's TV-company did not continue broadcasting nor the frequency of the company was tendered. This topic became irrelevant when a plea-bargain agreement was used in dealing with the charges facing Zaza Okuashvili. Some journalists of TV-company Iberia changed their professions; some lost their jobs and are still unemployed, while others ended up working for various governmental organizations.

Regardless of all the sorted history, nobody accepted the task of answering the direct questions presented to the management or other bodies about the station and the events that transpired.

### **Obiektivi to Alania**

The journalistic union Obiektivi was founded back in 2003. Irma Inashvili, one of the founders of the Union says that 200 journalists joined the Union for the purpose of protecting their rights as journalists. It was to be the forum where they could turn to reveal instances of harassment directed towards journalists and to collaborate in carrying our investigations. Following the Rose Revolution in 2003 the journalists had much material for their investigations, including the facts of licenses having been taken away, confiscation and force conveyance of decimeter

channels to other purposes. However, the full facts of taking over broadcasting frequencies were somewhat less obvious than the direct confiscation of houses and other property, including factories.

Irma Inashvili, the founder of the journalistic union Obiektivi says that with the involvement of the government with various law enforcement bodies, the Georgian National Communications Commission started to engage in what should be considered as unacceptable activities. The various forms and expression of harassment against the owners of frequencies remained practically unknown to greater Georgian society.

TV-company Aisi was first to address Obiektivi for assistance. This broadcasting station was covering the areas of Tbilisi and Lilo settlement. The administration of the TV-company was alleging that the National Communications Commission was making artificial problems for them. Inashvili looked into the claims and then started its journalistic investigation.

Meanwhile, as the first investigation was getting started, the TV-company Obiektivi contacted her with its claims. After the negotiations the agreement was reached between journalistic union and TV-company that the materials prepared by Journalistic Union Obiektivi would be broadcasted via TV-company Obiektivi. All this transpired back in 2003. The preparation for the program production was finally launched.

TV-company Obiektivi was broadcasting music and Georgian films during this period. One day Misha Agladze, the deputy director of the TV-company announced to his staff that they had to go off the air and stop broadcasting. Soon afterwards the TV-company Alania started transmitting its programs on the frequency that belonged to Obiektivi.

In 2004 control package of TV-company Obiektivi was registered over the name of Davit Kakauridze, a person on whom Iberia was registered earlier. The information about this purchase is public and is accessible in the Public Registry Agency. Ketevan Asatiani, the founder of TV-company Obiektivi though conveyed her share to Kakauridze but she has not been paid 19,950 GEL - the price that the shares are now valued.

After this the frequency acquired new name. Now the TV station has a new name- it is called **Obiektivi** 2.

Misha Agladze, depute director of TV company Obiektivi filed a legal suit in the court at the end of 2007(afew years later). However, the information relating to the pending case leaked out before the going to court. It was now known Agladze was being seriously harassed by the authorities.

Agladze recalls that Ltd. TV-company Obiektivi was created in 2001 and was broadcasting under the license of frequency 35. As it had been mentioned, the TV-station was broadcasting until “one fine day” of 2004. On this day Agladze was asked by Dimitri Kitoshvili, the head of Georgian National Communications Commission to come to his office.

“Kitoshvili said that he wanted to talk to me. The director of the TV Company was Paata Guraspauli at that time. However, in fact I was actually managing the affairs of Obiektivi. Kitoshvili further explained how we might have some problems for the future.

Misha Agladze said that “they had some professional problems, as every TV-company experiences. Officially in such instances a television station would normally receive a reprimand. However, when I asked what we did wrong. Kitoshvili told me that we had to forfeit half of the shares in the event we wanted to keep the remaining half. The Commission had not put forth any outstanding issues or found faults with our TV-company. They simply needed a TV-company and they were able to get what they wanted. TV-company Alania is now broadcasting on was frequency 35.”

The staff of Obiektivi was offered to buy other property to make up for their material losses. However, it is all still a well kept secret; Agladze still declines to specify the details of the negotiations and final deal. Initially the authorities of the TV-company rejected the “unofficial” offer, but as Agladze says “the pressure was so extreme that it was not worth putting up any resistance.”

The methods described were rather direct and to the point, “Some officials called and threatened that they will do this or that to you. I will not specify their names. However, the point is that we did not do as requested as no money was transferred as a so-called present. Instead, we gave it as a concession. If we had given the shares as a present we would have taken them back in a year, as in the event that we identified problems in their work.”

Davit Kakauridze soon became the owner of 51 % of all the shares. Misha Agladze told that official registration of shares is under the name of Kakauridze and this was sealed in the notary office Ginturi; the process was attended by an officer from the State Chancellery. The bureau entitled Ginturi has the fame as being considered as being the best “white washer” of illegal property under a stamp of approval.

He adds, “It happened in September 2004; this was the period of mass imprisonments and widespread fear. After having arranged everything according to the demands and when we were leaving the office, someone grabbed my hand, and it was as if he was trying to take me away to somewhere. However, when the officer told him that everything was fine and to leave me alone. Soon afterwards, we requested to be provided with a “substitute” for our property as we understood that we were to receive according to the agreement between the parties. Nonetheless, were then advised not to be so active in our efforts, and as a result I could see little choice but to address the court with the issues, and based on the chain of events, that’s why the case was filed late. Since then I have been called with harsh demands to drop or suspend the court proceedings and drop the suit”, says Misha Agladze.

Immediately after the arrest of Dimitri Kitoshvilihead of GNCC, Davit Kakauridze alleged as his relative, that the shares were turned over Nodar Charkhalashvili, and this was back in autumn of 2007. What is odd, and as what was expected, the entire process was completed without Ketevan Asatiani, founder and owner of 49 % of Obiektivi shares being present. The document of the so-called “gift” is recorded in the Public Registry. This operational was endorsed in the same infamous notary bureau Ginturi 1. The protocol carries the signature of Nato Chankotadze.

What will be the court decision on Agladze’s suit is unknown but much is open to speculation. We were initially interested in this story when we started looking into as whether Alania had any broadcasting license or not. The official answer of the Commission reads as follows: “The Commission is not familiar with such a broadcasting company. This TV-company is not on the Commission registry of licensed broadcasting companies; consequently, no broadcasting license was granted to the company under that name.”

#### *Burglarized TV-company Europa*

*Irma Inashvili and her journalistic staff members who soon found themselves unemployed were called from a newly formed TV-company Europe and offered airspace for their programs. TTV-company Europa had its own history and it had been taken away from us. Both Tamar Tsagareishvili and Ednar Giorgobian were planning to work for Europa.*

Temur Shengelia, founder of the TV-company had signed a contract with Euronews. Euronews programs were to be broadcasted in Georgian on this channel. It was a unique project. However, a special unit of Constitutional Security Department (CSD) entered the TV-company back in 2005 and alleged that the company was being managed by Russian intelligence. They raided the company and hauled off all the equipment, as well as 40 cassettes of dubbed films. And do you know where the equipment was taken? It was taken straight to Alania,”recalls Irma Inashvili.

Europa takes it to court

Irakli Tsnobiladze, the attorney of the TV Company:

“Approximately 600 people were to be employed in the TV Company. There was a contract with Euronews and out of blue the broadcasting license was withdrawn from the TV- Company. The work of the company went off the air and its motif was no longer used. The Georgian National Communications Commission announced by decree that the TV-company terminated its broadcasting and it was not able to stay on the air as required by law. In fact the company was not able to broadcast for only a day and a half. There had been some technical glitches in broadcasting on the airwaves. The TV Company appealed the ruling against the Commission’s decree immediately. The appeal was first brought to the District Court where it was rejected, then to the next level of the court of appeals, which set aside the decision of the lower court, and remanded the case back to the District Court to consider again. Meanwhile the District Court was

abolished and the case was transferred to the Board on Administrative Cases of Tbilisi City Court as to the court of original jurisdiction.

The court annulled the decision of the Commission and ordered for the GNCC to discuss the issue once again.

Besides, the judge wrote in the legal opinion as part of the verdict that “to terminate broadcasting” and “to suspend broadcasting for only a day and a half” is not the one and the same.

Generally if the owner infringes the license conditions there is another solution for the problem-impose a fine for instance. In this situation GNCC could impose a -f 5000- GEL fine on the TV-company, and as is provided under the Code dealing with Administrative Infringements.

According to the older Law on Broadcasting, the commission had only to suspend the license temporarily until the company was able to overcome its shortcomings. However, the Commission did not choose to do so. The facts indicate that instead that they were following the instructions of higher ups in the government”, emphasizes Irakli Tsnobliladze.

He is personally an eyewitness to Special Units entering the TV-station and says that scales of the raid were much less about than in comparison to TV-Imedi, though the entire inventory of equipment apparatus was hauled off.

“We do not know exactly where the equipment was was taken, but we have backdoor information that technical staff of Alania works now with Europa’s decoder.”

Mamuka Tatoshvili, head of Alania flatly denies this information as being false. He told us during the interview that Alania does not use the equipment of Europa. Temur Shengelia, founder and owner of TV-company Evropa has been quoted in an interview with newspaper Rezonansi (see January 5, 2006 edition) that he wanted “to establish a good TV-company”. Temur Shengelia is a businessperson who works in Moscow. In an interview Shengelia stated that he was running a multipurpose company and carrying out investments. As addressing his political involvements, there exists antidotal information that Shengelia has close ties with Russian authorities. Consequently, he was immediately suspected of having being a Kremlin agent that had certain instructions. In the interview with the newspaper he said: “I am sure that Europa’s conception will support the main direction of Georgia’s foreign policy, the main trend of which is the continued effort towards full integration into European structures.” Nobody believed Shengelia and now the focus of the court case.

How TV-channel 202 turned into military channel SakarTVelo

We want to finish our journalistic investigation with the case of TV-company 202, was replaced by so called military channel SakarTVelo (it is called TV SakarTVelo as well). According to the official website of the channel, SakarTVelo is an independent, private channel. It has been

broadcasting on 33rd decimeter frequency since September 1, 2007. The TV-company has been cooperating with the Ministry of Defense of Georgia since April 2007. The Ltd. TV-company SakarTVelo and the Ministry of Defense of Georgia signed the contract on 2007 on the bases of Georgian Law on State Purchases.

“Our Motto is – We Serve Those Who Serve” – means that we in the service of young Georgian army. For the most part the programs of our channel are produced under the direction and order of the Georgian Ministry of Defense. Military themes are predominant on the channel as well and military history. The channel mostly broadcasts military features and documentary films. It plans to make domestically produced programs on a range of military issues. These will involve military experts, historians and the representatives from various spheres. There is also a plan of producing analytical and educational programs and these will discuss not only military themes but the issues regarding Georgian history, patriotism, bravery on the battlefield and devotion to the country. Moreover, the reoccurring issues of integration into Euro-Atlantic structures, including NATO, and reintegration of breakaway regions and territorial integrity will be targeted. Current and future reforms the military sphere will be especially highlighted”- a quote from the channel website.

It is rather strange that the replacement of TV-company 202 with TV-company SakarTVelo is connected with the journalists connected the Journalistic Union Obiektivi.

“The issue of TV Company Europa had not lost its significance when Hans von Sachsen-Altenburg, new owner of closed TV-company 202 came to me and suggested some collaboration. According to the law of broadcasting, any license will be confiscated from that channel that does not continue to broadcast. In December, 2006 I again gathered the journalists, started the preparation process, film editing. On December 29 gave a presentation and announced that Obiektivi would start broadcasting on TV 202.

On February 16 the channel was sold and Kakha Ninua bought it. I have the information that he is the brother of Depute Minister of Defense. When I asked Altenburg how it was possible to sell the channel in a month and a half (560,000 Dollars were paid which was more than it was really worth. He further explained that Kitoshvili was threatening him, who himself had received the instructions from Zurab Nogaideli. To make a long story short, Altenburg admitted that he was forced to sell the frequency,” says Irma Inashvili.

Irma Inashvili called Kakha Ninua’s phone number which was indicated in the Notary act. Actually she called to the organization New Georgian Legal Group (address: Bambis Rigi #7). She also found out that this organization was founded by Mrs. Zura Nogaideli, the wife of the former prime-minister.

“Can we assume that there is some connection between Nogaideli, Kitoshvili and Ninua? On the first page of GNCC magazine (in one of the old edition) is publish Dimitri Kitosgvili’s biography. It is mentioned in the biography that he was appointed director of New Georgian

Legal Group in 2003, so we can suppose that there must be some kind of connection between Kitoshvili and Ninua.

Dato Aladashvili was appointed the director of the now frequency on which SakarTVelo started broadcasting later. He is my former colleague from Channel One. So I called him and asked what was going on. He said that he had no idea about the developing events but he was handed over the channel to run”.

Inashvili found one more interesting fact in the magazine:

“The Commission makes national surveys to find out what kind of programs people like to watch. The Commission proposes the frequencies for auction bidding in order to have this or that kind of television on this or that kind of frequency based on the results of the survey. The survey showed that people were not interested in politics following the Rose Revolution. Business Consulting Group makes surveys on the order of the Georgian National Communications Commission. Moreover, it must be mentioned that Dimitri Kitoshvili’s wife works in Business Consulting Group (this organization was making survey on the last election). When the husband (meaning Kitoshvili who was the head of GNCC at that period) orders the survey to wife, some doubts arise on the fairness of the survey.

To cut a long story short 202, the channel which was the last broadcaster of TV-debates in Georgian TV space, a channel with anti-governmental parody cartoon film Dardubala was replaced by the military channel SakarTVleo.

We made a survey of 20 people about SakarTVelo and they told us that patriotic, in particular military spirits are raised when they watch SakarTVelo.

Dato Aladashvili has stepped down from his former post of channel director for half a year now. He was not very eager to talk to us. He said, “I was responsible for purely administrative affairs in SakarTVelo. I worked as the program director on the First Channel (which is called Georgian Public Broadcasting, Editor’s remark), I heard about the TV company (meaning Ltd.SakarTVelo), I suggested myself, and they accepted my suggestion and I went to work there. That’s all what I can say.”

202 stopped broadcasting so swiftly that the audience was unable to understand what had actually happened. This fact is rather strange as the TV-company had begun preparations for news-programs with three months. The fact is that Vaja Kiladze, the owner of frequency 33, who had a deal with Goga Kokhreidze that TV-company 202 could use his frequency for 2 years and Goga Kokhreidze would have the first refusal if Kiladze decided to sell the frequency sold channel to for 120 000 Dollars. All this transpired when Shalva Ramishvili, TV anchor for political debates on 202 and Dato Koxreidze, Goga Kokhreidze’s brother were in prison and the situation in 202 was very blurred in the light of the problems that they faced at this time.

Altenburg made David Maple, owner of newspaper Georgia Today the partial shareholder of the

channel. However, nothing was mentioned about his shares or interests when Altenburg on his own sold the channel to Kakha Ninua for a large amount of money. Mapley only found that the channel had been sold when he returned from England. He sued Altenburg and has asked for a criminal investigation. However, for the purpose of this story, these details are not the main attention. The short story is that suddenly TV-company SakarTVelo replaced 202.

We have only some unofficial indications of just how much money the Ministry of Defense pays to SakarTVelo for its programming. We were not able to check the information as on our official letter requesting the copy of the contract between the Ministry of Defense and the TV. No proper response has been forthcoming. However, the Ministry has informed us in written form that they were not able to send us the copy because we had not indicated a specific date in our request for the information. Nonetheless, we made every effort to get the information from other sources and contacted Irakli Sesiashvili, Chief Justice and the Freedom Association, a non-governmental organization. He has been working on military themes for many years .He told us that he had been trying to find access to public information about the “purchases of the Ministry of Defense”, but all his efforts have been in vain.

It must be mentioned that in July 2007 Kakha Ninua, the owner of frequency 33 registered his shares on Beka Paatashvili, inhabitant of village Digomi and consequently Paatashvili became the effective owner of the channel, at least on paper. We have unofficial information that these registrations were connected with the imprisonment of Irakli Okruashvili and the subsequent replacement of his political team.

Our investigation got interested what had happened with TV channel Metskhre Arkhi. We contacted GNCC. The representatives of the body that the broadcasting license # B 9 of the Metskhre Arkhi (from 198 megahertz to 206 megahertz) and utilized by the broadcasting company Rustavi2 (the license is valid until 18.11.2015).

Simon Papuashvili, lawyer of Human Rights Center states that the above-mentioned facts are adequate proof of how the elite network of corruption actually works: “Since coming into power, the so-called Velvet government has been making efforts on many fronts to exert its influence over the media. The government controls not only Georgian Public Broadcasting but private TV-companies such as Mze and Rustavi 2. In spite of the fact that acting legislation makes the media environment nearly perfect, the reality on the ground is quite different. Various decisions and decrees of the Georgian National Communications Commission show how effectively the government is using this body as an instrument to control the media.”

The facts that we discussed in our investigation are but a few examples of how events have developed around broadcast frequencies and the pressure that has been applied on their owners. [www.humanrights.ge](http://www.humanrights.ge) continues its investigation and will present the second part of the investigation as soon as the organization receives official answers to some of the hard questions that have been presented to various governmental and regulatory bodies.

## **Recommendations**

The Human Rights Centre recommends the Georgian Government to:

- Ensure the implementation of the values and principles enshrined in the Georgian Law Freedom of Speech and Expression;
- Stop influencing the information policies of the private broadcasters;
- Stop influencing the information policies of the Public Broadcasting;
- Stop pressuring those journalists who criticize declared government policies;
- Investigate the facts of the violations of the rights of the journalists, including physical and verbal abuse and punish those who are responsible;

## **Political Persecutions**

The political persecutions that reached its peak around November events of 2007 continued in 2008 as well. The civil society on its part intensified its efforts to fight against political persecutions. The Georgian Conservative Party has initiated the creation of the special commission entitled to review individual cases and to decide whether the person is or not a political prisoner. Initially, the commission was supposed to be composed of the representatives of the civil society and be free from the participation of the political parties. However, eventually the Conservative Party maintained its leading role in the process of the work of the commission, which might have a negative effect on the impartiality image of the commission.

The commission has already has examined several cases and found that individuals involved have been detained on political grounds and in relation to their political convictions.

Moreover, there was a growing interest in the issue of political persecutions in Georgia by the side of the international community. International NGO – FIDH (International Federation for Human Rights), member of which is the HRIDC, has organized a regional conference in Tbilisi in the beginning of November 2008. One of the major concerns in relation to human rights that was raised by the Georgian civil society was the political persecutions. The FIDH has met with the family members of the several alleged political prisoners and based on these meetings it was decided that the FIDH will send a special mission to Georgia for the purposes of examination of the issues of political prisoners. The mission has visited Georgia in early 2009 and will issue its findings soon.

The Human Rights Centre has published a report which deals with political persecutions in the recent years. It gives overview of the types of persecutions and lists the persons who were persecuted under each category as well as provides the details of the cases. The report can be found on the on line portal of the Human Rights Centre: [www.humanrights.ge](http://www.humanrights.ge)

## **Professor Omar Kutsnashvili<sup>12</sup>, Director of “Geoengineering Ltd”<sup>13</sup>**

66-year-old Omar Kutsnashvili, Doctor of Technical Science, head of Cathedra of Geologic Engineering at Tbilisi Technical University is accused for appropriating the property of other person and introducing incorrect data in expenditure documents.

According to the investigation materials that was conducted on rehabilitation works on South Caucasian Gas Pipe-Line in Gldani settlement in Tbilisi the Ministry of Finances discovered some violations. The rehabilitation works were ordered by the Foundation “Millennium Challenge for Georgia”<sup>14</sup> (MCG) and it was implemented by “Geoengineering Ltd”. According to

<sup>12</sup> <http://www.employer.ge/site/303/DesktopDefault.aspx?tabid=303>

<sup>13</sup> <http://www.geoengineering.ge/>

<sup>14</sup> <http://www.mcg.ge/?i=576&l=2&year=2006&gid=581&pid=674>

the accusation the crime of Omar Kutsnashvili is envisaged under Article 182 Paragraph II “a”, “d” and Article 210 Paragraph II “b” of the Criminal Code of Georgia.

On November 3, 2006 “Geoinginerig” and “Foundation Millennium Challenge for Georgia” signed agreement based on which Ltd got right to conduct rehabilitation works on North-South Gas Pipe-Line of Georgian Oil and Gas Corporation in Gldanula settlement in Tbilisi. The Ltd had to repair damaged parts of the pipe-line (193 kilometers in total).

The price of the rehabilitation works on the pipe-line was 1 006 306 USD; 690 000 USD was envisaged for construction activities. The entire activities were funded by the Foundation Millennium Challenge for Georgia.

In order to implement the works the Ltd Geoinginerig signed sub-contract with Didgori Ltd. According to the contract, Didgori Ltd had to carry out construction activities on the pipe-line. This construction became the reason for the detention of Professor Kutsnashvili. The investigation claims that 205 000 USD out of the allocated sum was not spent on purpose and Kutsnashvili had appropriated it.

According to the defense side conclusion of the technical expertise is fabricated. “Based on the request of the investigation Criminalist department of the Ministry of Internal Affairs prepared expertise conclusion in a day; however, this time was not enough to study the materials with 1 200 pages. Evidently, based on his testimony, the expert had carried so called expertise without having studied the project.

**The most important proof in favor of the accused person is a letter sent by Colin Hew Beckley, Director of the Millennium Challenge Corporation MCC (US Governmental Corporation), dated by August 27. In this letter Beckley answers the questions of the investigation: “The project had some faults in initial tender documents (draft project) and consequently, “Geoinginerig Ltd” was requested to work on improved alternative project; after what the latter was approved.”**

“Millennium Challenge Corporation is sure in the conscientiousness of the “Geoinginerig Ltd” and its director and considers that demands of their contract were implemented in comply with higher standards then requested.”

On August 27 2007, “Geoinginerig Ltd” received a quality certificate for the implemented work by the Gas and Oil Corporation of Georgia. The certificate demonstrated that the project was implemented in comply with the conditions envisaged in the contract.

**Case materials and witness testimonies demonstrate that there are no signs of crime on Kutsnashvili’s case. Consequently, the real reason for the detention of Omar Kutsnashvili is related to the activities of his son, Zakaria Kutsnashvili.**

**Zakaria Kutsnashvili:** “My father is innocent and accusation against him is fabricated. I have more than enough arguments to claim that this charge is fabricated.” As for part of the accusation which claims that Kutsnashvili introduced false data in documents, Zakaria Kutsnashvili <sup>15</sup>stated that “receipts and invoices, signed by my father, could not demonstrate the implemented work”<sup>16</sup>.

**Rights envisaged in Criminal Procedural Code of Georgia were breached in regard with Omar Kutsnashvili several times. Consequently, Article 6 of the European Convention on Human Rights (right to fair trial) was breached.**

## **Recommendations**

The Human Rights Centre recommends the Georgian Government to:

- Guarantee free expression of the political ideas by all stakeholders, including opposition political parties;
- Ensure the existence of the pluralistic political environment;
- Stop all forms of persecution of the political opponents;
- Release those individuals who are deprived of liberty due to their political convictions and related work;
- Investigate cases of political persecution and punish those responsible.

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<sup>15</sup> <http://www.geotimes.ge/index.php?m=home&newsid=14796>

<sup>16</sup> <http://www.geotimes.ge/index.php?m=home&lang=geo&newsid=15975>