



CIVILIANS IN THE LINE OF FIRE

THE GEORGIA-RUSSIA CONFLICT

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Cover photo: A house in a South Ossetian village destroyed by Georgian bombardment, 30 August 2008.

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CONTENTS

1. INTRODUCTION	5
The Georgia–South Ossetia conflict.....	7
Background to the recent hostilities.....	8
The war and its aftermath.....	9
2. International law applicable to the conflict and its aftermath.....	12
International humanitarian law.....	12
Prohibition on direct attacks on civilians and civilian objects – the principle of distinction	13
Prohibition on indiscriminate or disproportionate attacks	15
Precautions in attack	15
Precautions in defence.....	16
Weapons.....	17
Forced Displacement	18
International human rights law.....	19
International Criminal Law.....	20
Command responsibility.....	21
Crimes against humanity	21
Reparations and state responsibility.....	21
Armed groups and reparations.....	22
3. The conduct of hostilities.....	23
Attacks by Georgian forces.....	24
Georgian bombardment and missile attacks.....	24

Georgian ground forces.....	28
Attacks by Russian forces	28
Russian aerial and missile attacks	29
Russian ground forces.....	31
Use of cluster bombs.....	32
Landmines	34
The conduct of South Ossetian forces and militia groups.....	34
Attacks on civilians by South Ossetian armed groups	39
Arson and looting: Georgian-majority villages inside South Ossetia under de facto pro-Georgian administrative control until the conflict.....	40
Georgian-majority villages inside South Ossetia under de facto South Ossetian administrative control until the conflict	44
Georgian villages outside of South Ossetia in the “buffer zones”	44
4. Civilian detainees and prisoners of war	46
POWs.....	46
Civilian detainees.....	46
5. Displacement.....	48
Numbers of those displaced	48
Displacement to the Russian Federation	48
Displacement within Georgia	49
6. International monitoring missions.....	54
7. Accountability for violations of international humanitarian human rights law.....	56
National Investigations and Inquiries.....	56
International investigations	57
Proceedings before international courts	58

MAP OF GEORGIA



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1. INTRODUCTION

The injured were taken to the basement; they arrived not one by one, but in groups of five or 15, fighters and civilians. The most serious cases we started to operate right in the corridor. Blood loss was the most serious problem. During the shelling, there had been no possibility to bring the injured here, they had been sitting somewhere for many hours, bleeding. Many people died because of this. We had space for two operating tables here in the corridor; the others were taken down to the basement. We had people dying, who had very complicated injuries, in one case the abdomen wall of the injured was torn, and he died from this injury. I remember the woman who came with her dead daughter. She had been looking for shelter but was hit by a shell. The daughter was supposed to get married this month.

-Amnesty International interview with a doctor, Tskhinvali, 29 August 2008

We were bombed. We came out of the house where we had been hiding in the cellar with relatives, got into the car and headed down the road that leads into the forest. We wanted to get to Tbilisi. That's when we were bombed. As we approached Eredvi village a bomb fell on the car in front of us. The four people inside were killed. From the car we could also see that the houses in the village had been bombed too.

-Georgian villager, speaking to Amnesty International in Tbilisi, 20 August 2008.

From the onset of the five-day war between Georgia and Russia in the self-proclaimed republic of South Ossetia in August 2008 the conflicting parties failed to take necessary measures to protect civilians from the hostilities. Villages and residential areas in towns were bombed and shelled, and some civilians reported being bombed while fleeing their villages. The overall number of civilian deaths outnumbered that of combatants, and in communities across the conflict divide homes, hospitals, schools and other mainstays of civilian life were damaged or destroyed. Extensive pillaging and arson by militia groups loyal to South Ossetia wrought large-scale destruction to several Georgian-majority settlements on territory controlled by Russian armed forces at the time. The conflict displaced nearly 200,000 people at its peak, and leaves a legacy of long-term displacement for tens of thousands unable to return to home in the foreseeable future.

Information collected by Amnesty International in visits to the region in August 2008, together with that from other sources, raises concerns that serious violations of both international human rights law and international humanitarian law were committed by all parties, both during the course of the conflict and in its aftermath. This report highlights these concerns.

International humanitarian law comprises legal obligations binding upon all parties to an armed conflict, be they states or armed groups. These obligations, which apply only in situations of armed conflict, serve to protect primarily those who are not participating in hostilities, especially civilians, but also combatants, including those who are wounded or

captured. International human rights law applies both in armed conflict and peace time. This report presents the findings of Amnesty International's enquiries into alleged violations of international humanitarian law and human rights abuses by Georgian, Russian and South Ossetian armed forces.

In public statements published during the conflict and its aftermath Amnesty International sought to remind the conflicting parties of their obligations under international human rights and humanitarian law, to take precautions to protect civilians. Following the cessation of hostilities Amnesty International delegates visited the conflict zone in and around South Ossetia. This report is based on the research findings of four visits to the field by Amnesty International representatives. These visits took place in South Ossetia (24-28, 29-30 August), North Ossetia in the Russian Federation (21-28 August), the capital of Georgia, Tbilisi, and surrounding areas (15-23 August) and the Georgian town of Gori, near to the conflict zone (29-30 August). Amnesty International was granted access to most areas, although the organization was not given access by the Russian military to the so-called "buffer zone" to the north of Gori on two consecutive days in late August. In the course of their research Amnesty International representatives met with those wounded and/or displaced during the conflict, representatives of international humanitarian organizations, government officials in Tbilisi, Tskhinvali and Vladikavkaz, non-governmental organizations, journalists and health workers. They also collected extensive photographic documentation of the damage caused by the conflict on the ground. The report also makes use of photographs collected by Amnesty International, news reports, official statements and communiqués, updates and reports issued by humanitarian and human rights organizations, as well as satellite imagery analysed by the American Association for the Advancement of Science for Amnesty International.

The conflict was characterized from the outset by misinformation, exaggeration in reports of the scale of fighting and numbers of casualties and sometimes wildly conflicting accounts of the same events. All parties to the conflict have sought to justify the use of force and the way in which they have conducted hostilities. While the exact circumstances surrounding the onset of hostilities on 7 August remain the subject of dispute, all sides have declared their actions to be "defensive" even when civilians on the other side have borne the brunt of their military operations. Wherever possible Amnesty International sought independent confirmation of reports and allegations made in order to minimize the margin of doubt. Nevertheless, numerous alleged facts and figures have been extremely difficult to independently verify. This report further reflects responses received from the Georgian authorities on 7 October and from the Russian authorities on 10 October to letters detailing Amnesty International's concerns.

Amnesty International takes no position on the broad political issues underlying the hostilities between Georgia and South Ossetia, or Georgia and Russia. The use of terms such as "South Ossetia" and "Georgia proper" in this report does not imply support for any political position in the conflict, but is aimed at clarity of language. However, from the outset of the conflict Amnesty International has urged all sides to respect international humanitarian law, the rules of which apply to both attackers and defenders, the armed forces of recognized states and organized armed groups without official state affiliation.

For this report Amnesty International has investigated the conduct of all sides in the light of their obligations under the rules of international human rights and humanitarian law. In the light of its findings Amnesty International is calling upon the conflict parties, and the international community, to ensure justice and reparation for the victims of violations of international law, accountability for those responsible for violations of these rules and the prevention of similar violations in the future.

THE GEORGIA–SOUTH OSSETIA CONFLICT

The status of South Ossetia is one of two such issues over sovereignty that accompanied Georgia's exit from the Soviet Union in 1991, the other being located in Abkhazia on the Black Sea coast. The former autonomous region of South Ossetia, established by the Soviet authorities in 1923 and abolished in 1990 by sovereign Georgia's first president, Zviad Gamsakhurdia, is known in Georgia as Tskhinvali district (or more informally by its historical Georgian name Samachablo). A two-year conflict between 1990 and 1992 ended with the *de facto* secession of South Ossetia¹; in 1992 conflict ensued in Abkhazia, also resulting in its *de facto* secession after Georgian military defeat in 1993. While South Ossetia and Abkhazia proclaimed their independence from Georgia, no other state recognized them as independent until the present conflict. South Ossetia saw a fleeting yet nonetheless serious resumption of violence in August 2004.

In 2003 the government of Georgia was ousted in the "Rose Revolution" following widely discredited elections and opposition figure Mikheil Saakashvili won subsequent presidential elections in 2004. President Saakashvili made the restoration of Georgia's territorial integrity a priority of his administration, which was renewed with a very narrow majority in presidential elections called early as a result of mass protests in the Georgian capital Tbilisi in November 2007.²

The *de facto* authority in the capital of the region, Tskhinvali, refers to itself as the Republic of South Ossetia, which was not recognized by any state until Russia's 26 August recognition. Nicaragua is the only other state to have recognized the independence of South Ossetia and Abkhazia.³ In this report the term "South Ossetia" is used to denote the territory of the former South Ossetian autonomous region. Tskhinvali is known as Tskhinval to Ossetians.

Since 1992 the authorities of South Ossetia retained *de facto* independence from Georgia, although they did not control South Ossetia in its entirety — sizeable but territorially non-contiguous parts of territory within the former South Ossetian autonomous region, populated mainly by Georgians, remained under Georgian control. According to a Georgian government source, there were 21 villages under *de facto* pro-Georgian administrative control until the August conflict.⁴ Up to the August 2008 conflict South Ossetia therefore represented a patchwork of territories under *de facto* Georgian and South Ossetian control.

Russia has extended various forms of support to the *de facto* administrations in Abkhazia and South Ossetia since the early 1990s, and has issued passports to substantial shares of the population in each territory. Without these passports inhabitants of Abkhazia and South Ossetia would have no other document (other than the politically charged acceptance of Georgian passports) allowing for international travel. This process of "passportization" provides the basis for the Russian claim that military action against Georgia was necessary in

order to protect “Russian citizens”.

Since 2001 the *de facto* administration of South Ossetia, located in the capital Tskhinvali has been headed by President Eduard Kokoity. Since 2006 a rival, Tbilisi-backed *de facto* administration emerged in South Ossetia, headed by Dmitri Sanakoev. An ethnic Ossetian previously associated with the secessionist administration, Dmitri Sanakoev subsequently became an advocate of resolving the conflict within the framework of Georgian territorial integrity.⁵ His administration was based in Kurta, a Georgian-majority settlement under *de facto* pro-Georgian administrative control.

BACKGROUND TO THE RECENT HOSTILITIES

From April 2008 tensions around South Ossetia increased, against a longer-term backdrop of deteriorating Georgian-Russian relations. Although tensions appeared to be more serious in Abkhazia, Georgia's other disputed territory, in July there were reports of armed clashes, the kidnapping of Georgian military personnel by South Ossetian forces, sporadic shelling and firing on Tskhinvali and Georgian villages in the region, the alleged violation of Georgian airspace by Russian military aircraft and shooting incidents in South Ossetia through July.⁶ Dmitry Sanakoev also survived an assassination attempt on 3 July. These developments took place against a background of the collapse of the formal negotiations process for resolving the conflict. A Russian proposal for the first meeting in two years of the Joint Control Commission (JCC), the multilateral body tasked with monitoring the conflict zone⁷, was rejected by Georgia, and a proposal for bilateral Georgian-Ossetian talks was rejected by the *de facto* authority in South Ossetia. Both Ossetians and Georgians who had been displaced from South Ossetia by the conflict and who were interviewed in displacement by Amnesty International told of the general deterioration in the security situation in the months preceding the conflict and of sporadic skirmishes between Georgian- and Ossetian-populated villages over this period.

Tensions flared in the first week of August preceding the outbreak of hostilities. On 31 July reports indicate that South Ossetian forces attacked and blew up a Georgian military vehicle carrying Georgian peacekeepers.⁸ Following skirmishes on 1 August, the *de facto* South Ossetian authorities admitted six dead and 15 wounded, many hit by sniper fire, whilst the Georgians admitted nine wounded.⁹ Both sides accused the other of using mortar fire.¹⁰ The *de facto* authorities began to evacuate parts of the population to North Ossetia, a republic within the Russian Federation with close ties to South Ossetia; some Georgians also left the area for locations elsewhere in Georgia.¹¹ Civilians from South Ossetia interviewed by Amnesty International reported sleeping in their cellars during the first week of August in anticipation of resumed hostilities.



Bella Kharibova, with daughter, a South Ossetian refugee in Vladikavkaz, Russian Federation, 25 August 2008. Her husband Valerii Dzhioev was killed in an explosion near the Georgian-South Ossetian border on 25 July 2008.
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THE WAR AND ITS AFTERMATH

The five-day war began on the night of 7-8 August 2008. Russian-brokered Georgian-Ossetian talks collapsed on 7 August; a Russian attempt to convene a UN Security Council emergency meeting on the situation failed to secure agreement on a text proposed by Russia calling on both sides to renounce the use of force. At 7pm Georgian President Mikheil Saakashvili declared a ceasefire during a televised speech. Some four hours later at 11.30pm Georgian forces launched an offensive on the capital of South Ossetia, Tskhinvali.

Statements by Georgian officials initially indicated that the assault on Tskhinvali was a response to sustained attacks on the Georgian villages of Prisi and Tamarasheni by Ossetian forces; a statement by Mamuka Kurashvili, commander of Georgian peacekeepers in the region, said that Georgia had “decided to restore constitutional order in the entire region” of South Ossetia.¹² On 13 August President Saakashvili, however, said that “[w]e clearly responded to the Russians...The point here is that around 11 o'clock, Russian tanks started to move into Georgia, 150 at first. And that was a clear-cut invasion. That was the moment when we started to open fire with artillery.”¹³ Russian officials dispute the claim and maintain that the movement of Russian armed forces into Georgia was initiated in response to the Georgian assault on Tskhinvali.

Although Georgian forces initially took control of parts of Tskhinvali and several surrounding villages, they were rapidly repelled by Russian forces, which had entered South Ossetia from North Ossetia via the Roki tunnel (through the Caucasus mountain range between the

Russian Federation and Georgia). As Russian troops were taking control of South Ossetia, hostilities further extended to a number of other locations in Georgia outside of South Ossetia, including the nearby town of Gori, the Black Sea port of Poti, the western Georgian towns of Zugdidi and Senaki, and the Kodori gorge, the only part of Abkhazia under Georgian control. Russian troops, backed by air forces, quickly assumed control of these locations, some of which were far removed from the immediate conflict zone in South Ossetia.

On 12 August Russian President Dmitri Medvedev agreed to a truce brokered by President Nicolas Sarkozy of France, the holder of the rotating chair of the European Union, and announced the end of Russian operations in Georgia; Russian forces nonetheless continued to be deployed in areas outside of South Ossetia and Abkhazia.¹⁴ A six-point peace plan based on the ceasefire agreement brokered by President Sarkozy was signed by President Saakashvili on 15 August and President Medvedev on 16 August.

Against a backdrop of differing interpretations of the six-point peace plan and disputes between Russia and Georgia over the meaning of some of its terms, Russian troops remained in place in early September, demarcating strips of territory known as “security” or “buffer zones” on undisputed Georgian territory beyond South Ossetia. On 8 September Russia conditionally agreed to withdraw all of its forces still deployed outside of the boundaries of South Ossetia and Abkhazia by 10 October, upon the deployment of 200 monitors from the European Union.

While a certain degree of confusion and conflicting information is practically inevitable during a period of intense fighting, it appears that there was deliberate misinformation and exaggerated reports during the course of the conflict, and particularly in its early stages. The problem of obtaining reliable information was exacerbated by the blocking of access by the parties to the conflict zone for independent monitors to verify claims of civilian casualties by the parties and reproduced in the international media.

Following the Georgian assault on Tskhinvali on the night of 7 August Russian media sources, some of them citing Russia’s ambassador to Georgia, were reporting that 2,000 civilians had been killed during the attack¹⁵; the *de facto* authorities in Tskhinvali reported 1,492 deaths on 20 August.¹⁶ Russian sources on 21 August dramatically reduced the number of casualties to 133 civilians and 64 combatants killed.¹⁷ In an interview on 12 October, the head of the Investigative Committee of the Russian Office of the General Prosecutor stated that 159 civilian deaths had been registered to date.¹⁸ As of 12 September there were 220 wounded in Tskhinvali hospital and 255 wounded in Vladikavkaz, the capital of North Ossetia in the Russian Federation.¹⁹

With regard to casualties on the Georgian side, according to information supplied to Amnesty International by the Georgian Ministry of Foreign Affairs, as of 7 October there were a reported total of 405 deaths (220 civilians and 169 military servicemen, of whom 41 were still unidentified, and 16 policemen) as a result of the hostilities.²⁰ There was, in addition, as reported in mid-September, a total of 2,234 wounded, of whom 1,964 were combatants, 170 civilians and 100 unidentified.²¹ Overall, the total number of deaths appeared to be in the hundreds rather than thousands as originally reported.

The withdrawal of Russian forces from the so-called “buffer zones” began with the dismantling in early October of some of the checkpoints established on Georgian territory near South Ossetia. On 3 October a car bomb in Tskhinvali killed seven Russian soldiers and injured several others. No one claimed responsibility for the attack. The Russian withdrawal from the “buffer zones” was completed by 10 October, although Russia continues to maintain a significant military presence in both South Ossetia and Abkhazia.

2. INTERNATIONAL LAW APPLICABLE TO THE CONFLICT AND ITS AFTERMATH

Several bodies of international law apply to the conflict between Georgia and Russia. International human rights law applies both in peacetime and during armed conflict and is legally binding on states, their armed forces and other agents. International humanitarian law, also known as the laws of war, binds all parties to an armed conflict, including non-state armed groups. Customary international law, consisting of rules of law derived from the consistent conduct of states, applies to all parties to an armed conflict. Under international criminal law, individuals incur criminal responsibility for certain violations of IHRL, such as torture and enforced disappearance, and for crimes against humanity and genocide, as well as for serious violations of international humanitarian law, such as war crimes. International law also provides a framework to address the issue of the right to remedy and reparations for victims.

In some instances Amnesty International has clearly identified violations of international human rights law and international humanitarian law by the parties to the conflict, and calls for the conduct of hostilities by all parties to be the subject of an international enquiry as laid out in the recommendations at the end of this report.

INTERNATIONAL HUMANITARIAN LAW

International humanitarian law applies only in situations of armed conflict. Its central purpose is to limit, to the extent feasible, human suffering in times of armed conflict. It sets out standards of humane conduct and limits the means and methods of conducting military operations. It contains rules and principles that seek to protect primarily those who are not participating in hostilities, notably civilians, as well as combatants, including those who are wounded or captured.

The four Geneva Conventions of 1949 and their two Additional Protocols of 1977 are among the principal instruments of international humanitarian law. Georgia and Russia are both parties to and thus bound to implement these treaties. Article 3, common to the four Geneva Conventions and Protocol II, applies to non-international conflict, but does not contain detailed rules on the conduct of hostilities. The rules governing the conduct of hostilities are included in Protocol I, which governs the conduct of international armed conflict. The rules on the conduct of hostilities are considered part of customary international law and are thus binding on all parties to a conflict. An International Committee of the Red Cross (ICRC) study on customary law concluded that most of these rules are binding in non-international armed

conflict, as well as international armed conflict.²² Grave breaches of many of these rules may amount to war crimes. The generally accepted definitions of these crimes in both international and non-international armed conflict are contained in the Rome Statute of the International Criminal Court (ICC).

International humanitarian law defines combatants so as to include all members of a government's armed forces (and their proxies, such as paramilitaries). Organized non-state armed groups fighting in a non-international armed conflict, while not classified as combatants, are civilians who are actively participating in hostilities. As such they lose their civilian immunity from attack for the duration of their participation in hostilities. Members of the armed forces who are captured by the adversary military in an international armed conflict are entitled to the status of prisoners of war (POWs). In non-international conflict, there is no POW status, for captured members of the security forces or of non-state armed groups, but such prisoners must be treated humanely at all times, as outlined in Common Article 3 of and Protocol II to the Geneva Conventions. Civilians are defined in international humanitarian law as those persons who are not combatants.

The responsibilities of an occupying power are laid out in the Regulations concerning the Laws and Customs of War on Land (the Hague Regulations) and the Fourth Geneva Convention. Article 42 of the Hague Regulations defines occupation: "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised." In such situations, the occupying power "shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." (Hague Regulations, Article 43).

The Fourth Geneva Convention prescribes rules for an occupying power in relation to the inhabitants, who are described as "protected persons". Among other things, the rules prohibit the occupying power from wilfully killing, ill-treating or deporting protected persons. The occupying power is responsible for the welfare of the population under its control. This means it must ensure that law and order is maintained and basic necessities are provided for.

PROHIBITION ON DIRECT ATTACKS ON CIVILIANS AND CIVILIAN OBJECTS – THE PRINCIPLE OF DISTINCTION

Article 48 of Protocol I sets out the "basic rule" regarding the protection of civilians – the principle of distinction. This is a cornerstone of international humanitarian law:

"In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives."



A house in Tskhinvali , South Ossetia, destroyed by a GRAD missile.
©Amnesty International

According to the Rome Statute, intentionally directing attacks against the civilian population or against individual civilians not taking direct part in hostilities is a war crime.²³ Under Article 51(3) of Protocol I, civilians remain protected “unless and for such time as they take a direct part in hostilities”. Article 52(1) of Protocol I stipulates that:

“Civilian objects are all objects which are not military objectives.”

Article 52(2) defines military objectives as:

“those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”

Objects that do not meet these criteria are civilian objects. In cases where it is unclear whether a target is used for military purposes, “it shall be presumed not to be so used” (Article 52(3)).²⁴ Intentionally directing attacks against civilian objects, and the wanton, unlawful and extensive destruction of property not justified by military necessity are war crimes.

Military advantage may not be interpreted so broadly as to render the rule ineffective. To justify under this provision attacks to harm the economic well-being of the adversary or to demoralize civilians perceived to support one’s adversary in order to weaken the ability to fight distorts the legal meaning of military advantage, undermines fundamental IHL principles, and poses a severe threat to civilians.

The destruction or seizure of property of an adversary is prohibited by international humanitarian law, unless required by imperative military necessity. Wanton, extensive and unlawful destruction of property not justified by military necessity is a war crime (Article 8 (2) (b) (xiii)).

PROHIBITION ON INDISCRIMINATE OR DISPROPORTIONATE ATTACKS

Article 51(4) of Protocol I prohibits indiscriminate attacks, which are those:

“of a nature to strike military objectives and civilians or civilian objects without distinction.”

A disproportionate attack, a type of indiscriminate attack, is one that:

“may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated” (Article 51(5)).

Intentionally launching a disproportionate attack²⁵ is a war crime, as is launching an indiscriminate attack resulting in loss of life or injury to civilians or damage to civilian objects.²⁶ The extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly, is also a war crime.²⁷



A woman stands in front of the ruins of her former home on Thaelman Street in Tskhinvali, South Ossetia, 24 August 2008.

© Amnesty International

PRECAUTIONS IN ATTACK

Article 57 requires all parties to exercise constant care “to spare the civilian population, civilians and civilian objects.” Article 57(2) stipulates that those who plan or decide upon an attack shall:

(i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of Article 52 and that it is not prohibited by the provisions of this Protocol to attack them;

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

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

(b) an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(c) effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit."



Bombed café in the centre of Tskhinvali, South Ossetia, August 2008.

© Amnesty International

PRECAUTIONS IN DEFENCE

Warring parties also have obligations to take all feasible precautions to protect civilians and

civilian objects under their control against the effects of attacks by the adversary. Protocol I requires each party to avoid locating military objectives within or near densely populated areas (Article 58(b)). Article 50(3) states that “The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.”

As indicated by the ICRC in its authoritative commentary:

“In wartime conditions it is inevitable that individuals belonging to the category of combatants become intermingled with the civilian population, for example, soldiers on leave visiting their families. However, provided that these are not regular units with fairly large numbers, this does not in any way change the civilian character of a population.”



Russian military vehicle in Tskhinvali, South Ossetia, 26 August 2008. © Amnesty International

WEAPONS

International humanitarian law prohibits the use of weapons that are by nature indiscriminate and weapons that are of a nature to cause superfluous injury or unnecessary suffering. The ICRC Commentary to the Protocols mentions “long-range missiles which cannot be aimed exactly at the objective” as an example of indiscriminate weapons.

Other weapons used in attacks during the conflict which may have been indiscriminate included cluster weapons. Cluster bombs or shells scatter scores of bomblets, or submunitions, over a wide area, typically the size of one or two football fields. These can be

dropped by aircraft, or fired by artillery or rocket launchers. Depending on which type of submunition is used, between 5 and 20 per cent of cluster bomblets fail to explode. They are then left behind as explosive remnants of war, posing a threat to civilians similar to anti-personnel landmines. The use of these bombs in areas where there is a concentration of civilians violates the prohibition of indiscriminate attack, because of the wide area covered by the numerous bomblets released and the danger posed to all those, including civilians, who come into contact with the unexploded bomblets.

A new treaty banning cluster weapons was agreed in Dublin in May 2008, but has not yet come into force. According to Article 1(1) of the Convention on Cluster Weapons: "Each State Party undertakes never under any circumstances to: (a) Use cluster munitions; (b) Develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, cluster munitions; (c) Assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention."

However, Russia is already a party to the Convention on Certain Conventional Weapons as well as its Protocol V on Explosive Remnants of War, which entered into force in 2006. States party to the Protocol, and which control an area with explosive remnants of war are responsible for clearing such munitions. The Protocol covers munitions, such as artillery shells, grenades, and cluster sub-munitions, that fail to explode as intended, and any unused explosives left behind and uncontrolled by armed forces.

FORCED DISPLACEMENT

Warring parties are prohibited from forcibly displacing civilians except for the civilians own safety or when absolutely necessary for imperative military reasons. Parties to a conflict must prevent displacement of civilians caused by their own actions, when those actions are prohibited in themselves. Article 7 of the Statute of Rome characterizes forced displacement as a crime against humanity.

Forced displacement can occur when civilians are forced to flee because parties to a conflict are terrorizing the civilian population or committing other violations, as well as when they are physically expelled. The Guiding Principles on Internal Displacement,²⁸ which have been recognized by the General Assembly as an important international framework for the protection of internally displaced persons, address this situation.²⁹ According to Principle 5: "All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons."

Additionally, Principles 28 and 29 set out four basic rules regarding the return of internally displaced persons to their places of origin.³⁰ First, states must make available three solutions for internally displaced persons: return to their former homes; local integration; and resettlement in another part of the country. Second, internally displaced persons, as citizens of the country, have freedom of movement and the right to choose their place of residence, like anybody else. They must have the ability to freely choose between these options and competent authorities are responsible for creating the conditions that allow displaced persons to rebuild their lives in any one of these locations, and ensure that displaced persons participate fully in the planning and management of their return, resettlement and reintegration. Third, decisions to return must be voluntary, that is free of coercion and based

on an informed choice, and return must occur in conditions of safety and dignity, which would allow returnees to live without threats to their security and under economic, social and political conditions compatible with the requirements of human dignity. Finally, internally displaced persons and returnees are entitled to be protected from discrimination and to recover their property, and/or receive compensation in cases of damages or loss.

INTERNATIONAL HUMAN RIGHTS LAW

Georgia and Russia are both parties to a number of universal human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination. Georgia and Russia are also party to a number of regional human rights instruments, including the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR). Both states are legally bound by their obligations under these universal and regional treaties, as well as by relevant customary international law to take measures to respect and protect a range of human rights.

As affirmed by the International Court of Justice and the UN Human Rights Committee, human rights law applies in times of armed conflict as well as peace. The UN Human Rights Committee has also affirmed this principle and added that with respect to rights under the ICCPR:

“While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specifically relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.”³¹

As the UN Human Rights Committee also made clear the human rights obligations of states in respect of the ICCPR apply extraterritorially with respect to any person within the power or effective control of that state party,³² while the ICESCR provides for no explicit limitations with respect to territorial jurisdiction.

Among the human rights concerns highlighted in this report are concerns about violations of the right to life (Article 6 of the ICCPR and Article 2 of the ECHR), the prohibition against torture and other ill-treatment (Article 7 of the ICCPR and Article 3 of the ECHR), the prohibition against arbitrary detention and enforced disappearance (Article 9 of the ICCPR and Article 5 of the ECHR), the right to adequate food and housing (Article 11 of the ICESCR) and the right to education (Article 13 of the ICESCR). Actions that are aimed towards or are likely to result in the destruction or impairment of infrastructure necessary for the enjoyment of those rights, on the territory or with respect to persons or territory within the effect control of the state, including hospitals, and schools are violations for which the state can be held responsible. Furthermore, the destruction of hundreds of homes by Georgian or Russian forces and in the course of subsequent pillaging may constitute unlawful forced evictions breaching Article 11 of the ICESCR. The Committee on Economic, Social and Cultural Rights defines “forced evictions” as:

“the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”³³

The Committee includes among such evictions those resulting from “international armed

conflicts, internal strife and communal or ethnic violence”.³⁴

INTERNATIONAL CRIMINAL LAW

Grave breaches of the Geneva Conventions and Protocol I and other serious violations of international humanitarian law are war crimes. The list of war crimes in Article 8 of the Rome Statute of the ICC basically reflected customary international law at the time of its adoption, although they are not complete and a number of important war crimes are not included. Article 86 of Protocol I requires that “[P]arties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches of the [1949 Geneva] Conventions or of this Protocol which result from a failure to act when under a duty to do so.”

Individuals, whether civilians or military, can be held criminally responsible for such violations. Commanders and other superiors can be held responsible for the acts of their subordinates. Article 86(2) of Protocol I, which imposes a single standard for military commanders and civilian superiors, reflects customary international law. It states:

“The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.”

Superior orders cannot be invoked as a defence for violations of international humanitarian law, but they may be taken into account in mitigation of punishment. This principle has been recognized since the Nuremberg trials after World War II and is now part of customary international law.

There are several possible mechanisms for investigating the truth about crimes and bringing to justice those responsible for violations of international humanitarian law, in proceedings which meet international standards of fairness and do not result in the death penalty. States must also ensure respect for the rights of victims and their families to seek and obtain full reparations:

- (a) By Georgia, Russia and South Ossetia: Each party to the conflict has an obligation to bring to justice any person suspected of being responsible for serious violations of internationally recognized human rights or international humanitarian law.
- (b) By other states: other states should exercise their obligations to conduct criminal investigations of anyone suspected of grave breaches of international humanitarian law and other crimes under international law during the conflict. If there is sufficient admissible evidence, states should prosecute the suspect or extradite him or her to another state willing and able to do so in fair proceedings which do not result in the imposition of the death penalty or surrender him or her to an international criminal court which has jurisdiction. In addition to being obliged to exercise universal jurisdiction for grave breaches of the Geneva Conventions and Protocol I, states are permitted to exercise universal jurisdiction for other serious violations of international humanitarian law. If there is sufficient admissible evidence states should also prosecute, extradite the suspects to another state willing and able to try them or surrender them to an international criminal court.

(c) By the ICC: Georgia ratified the Rome Statute on 5 September 2003. War crimes or crimes against humanity, committed on the territory of Georgia, regardless of nationality of the perpetrator, would fall within the jurisdiction of the International Criminal Court under Article 12 of the Rome Statute of the International Criminal Court. Russia signed the Rome Statute on 13 September 2000; while it has not yet ratified it, it is bound not to defeat its object and purpose by committing war crimes or crimes against humanity.

COMMAND RESPONSIBILITY

Commanders and other superiors (including civilians leaders) can be held responsible for the acts of their subordinates if they knew or had reason to know that their subordinates were committing or were about to commit a breach and they were in a position to prevent or suppress such breaches and failed to do so. In the words of Article 86(2) of Protocol I:

"The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach."

Article 87 specifies the duty of commanders "with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol." The principle of command responsibility is reflected also in the Rome Statute of the International Criminal Court (Rome Statute, Article 28).

The ICRC study of customary international humanitarian law has concluded that the principle of command responsibility is a norm of customary international law applicable in both international and non-international armed conflict (Rules 152 and 153.)

CRIMES AGAINST HUMANITY

In addition to war crimes and genocide, the ICC also has jurisdiction over crimes against humanity. According to the Rome Statute, certain acts, if directed against a civilian population as part of a widespread or systematic attack, and as part of a state or organizational policy, amount to crimes against humanity. Such acts include, inter alia, murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, rape and other sexual crimes, and enforced disappearance. Crimes against humanity can be committed in either times of peace or during an armed conflict.

REPARATIONS AND STATE RESPONSIBILITY

The rules governing the responsibility of states under general international law for "internationally wrongful acts" have been incorporated into the 2001 International Law Commission's Articles of Responsibility of States for Internationally Wrongful Acts. These Articles codify the law on state responsibility and were commended to governments by the UN General Assembly in 2002.³⁵ Article 31 states that:

"[t]he responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act... Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State."

Internationally wrongful acts include violations of a state's obligations under customary and conventional international law.

The right to reparation of individual victims is also well established in international human rights law as a key element of the right to a remedy contained in international and regional human rights treaties.³⁶ The Customary International Humanitarian Law³⁷ study by the ICRC concludes in Rule 150: "A state responsible for violations of international humanitarian law is required to make full reparations for the loss or injury caused." In addition, the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the UN General Assembly in 2005 (Resolution 60/147 of 16 December 2005), enshrines the duty of states to provide effective remedies, including reparation to victims. This instrument sets out the appropriate form of reparation, including, in principles 19-23, restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

ARMED GROUPS AND REPARATIONS

Under the law of state responsibility, an armed group can only be required to provide reparations if it subsequently becomes the new government of a state, or succeeds in establishing a new state in part of the territory of a pre-existing state or a territory under its administration.

International human rights law focuses primarily on the obligations of states and therefore does not create obligations in respect to armed groups, except the obligation of the state to exercise due diligence to prevent, investigate or redress the harm caused by such actors. With regard to militia groups engaged in arson and pillaging attacks on civilians and their property documented in the conflict the South Ossetian authorities are responsible for the activities of armed groups that they controlled; as the occupying power with responsibility for law and order in areas under its control Russia is also responsible for their activities.

3. THE CONDUCT OF HOSTILITIES

The conflict proper, dating from the Georgian assault on Tskhinvali to the signing of the ceasefire agreement, lasted five days and took place, with the exception of isolated incidents in and around the neighbouring territory of Abkhazia, within a relatively thin strip of land no more than 30km wide and 60km long.

In the course of various missions in and around the conflict zone, Amnesty International delegates gathered information strongly suggesting that serious violations of international humanitarian law were committed by all parties. Amnesty International is particularly concerned by apparent indiscriminate attacks resulting in civilian deaths and injuries and considerable damage to civilian objects, such as schools, hospitals and houses, and a small number of other incidents suggesting that civilians may have been directly targeted.

This report provides information gathered by Amnesty International. The information is based on the direct observation by Amnesty International delegates of material destruction in Tskhinvali, Gori and some, but not all, of the surrounding Georgian and Ossetian villages, as well as interviews with civilians caught up in the conflict.

In all cases an attempt has been made to obtain as much information as possible regarding the circumstances surrounding the destruction observed or the events described by witnesses, including, in particular, the precise time, location and source of the attack, the nature of the weapons and munitions used and the possible presence nearby of combatants or other military objectives. However, serious difficulties remain in reconstructing events from material damage and eye-witness accounts seen and heard several days after they occurred. Material damage speaks only of the consequences of an attack and not of its cause, nearby movements nor the knowledge or intent of the attackers. Eye-witness accounts inevitably present a partial, and occasionally confused, view of all the circumstances relevant to assessing the lawfulness of a particular attack.

Further investigation and disclosure by all parties of information regarding the intended targets, means and methods of particular attacks affecting the civilian population is urgently required before any definitive conclusions can be reached regarding the nature and degree of responsibility of those engaged in, or directing, military operations. Information is also required about precautions in defence, that is, what measures were taken to protect civilians from the effects of hostilities.

ATTACKS BY GEORGIAN FORCES

GEORGIAN BOMBARDMENT AND MISSILE ATTACKS

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

“Ana”³⁸, an Ossetian woman interviewed by Amnesty International in Vladikavkaz on 23 August, recounted her experiences:

I was hiding in a cellar of an old two-storey building with other civilians, my neighbours. My house was only a few yards away from this building, but my cellar was weak and rather primitive to provide shelter from bombing. The shelling started on 7 August, late in the evening — bombing, tanks, airplanes. My family (I have two children aged 12 and 14) was asleep when it started, so we jumped out of our beds in our night clothes and dived into the cellar of that big building nearby. That night we spent in the cellar, without light, without water. The children were asking for water and as there were male civilians in the cellar, one of them, a man of about 50 by the name of Vassili Bazayev, volunteered himself to fetch some water. He brought a bottle of water and as he was stepping down into the cellar, he was killed... Next time they wanted water I thought I cannot send anybody to die and I decided to go myself. Another lady in the cellar said she had some bread and pies in her house and asked me to bring the food. As I went out of the cellar at about ten o'clock the following morning I saw my house [in Thaelmann Street] had burned down. Just the walls were left standing.

Of the outlying Ossetian villages, Khetagurovo sustained particularly heavy damage resulting, according to the village's mayor, in the death of six civilians and injuries to many more. According to information supplied to Amnesty International by the Georgian authorities, the severe damage sustained by Khetagurovo was due to the location in and around the village of substantial amounts of military equipment and personnel.³⁹ Georgii Mamiev, a young man also from Khetagurovo, told Amnesty how his father died in the bombing of his village:

They started firing at the village on 7 August. At first there was some firing at the end of the village and then they started firing at the centre. Nobody expected that they would be firing

at the village's centre. My father was worried about us and he came out. He came out just to see what was happening - two bombs fell near him and he was killed by the shrapnel. Then for two days we stayed here in order to bury him. The firing continued. On the 8th the Georgians came here with tanks. On the second night the fire was most severe with Grad missiles and artillery. Two shells fell on our house while we were on the first floor.



The remains of a shell that hit a house in Thaelman Sreet, in Tskhinvali, South Ossetia. © Amnesty International

The Georgian authorities claim that other Ossetian-majority villages that came under Georgian control for two days from 8 August did not sustain heavy damage, nor were there reports of pillaging or arson. This appears to be corroborated by reports by both South Ossetian officials and civilians to Amnesty International to the effect that other Ossetian villages suffered only limited destruction. "Soslan", a resident of Khetagurovo told Amnesty International:

Everything started during the night, then I saw Georgian troops in the village in the morning. They didn't enter the houses and didn't touch anything. I approached them and they asked me who else was in the house, then went in and came out again. They came back after half an hour, detained me then let me go because they must have received an order to leave... They didn't touch my parents. Maybe they were looking for my son, who's in the military.

The shelling of Tskhinvali itself began at around 11.30pm and continued for several hours. According to information provided to Amnesty International by the Georgian authorities, Georgian artillery fire was directed against three types of target:

- points of origin of artillery attacks on Georgian peacekeepers and villages under Georgian control prior to the onset of full-scale hostilities;

- military targets pre-determined on the basis of intelligence information; and
- points of origin of artillery attacks once full-scale hostilities had begun.

The Georgian forces employed a variety of munitions in the assault on Tskhinvali and the surrounding villages, including 122mm howitzers, 203mm self-propelled artillery system DANA, tankfire and GRAD rockets. The Georgian authorities informed Amnesty International that GRAD rockets were employed in the assault on Khetagurovo, and to target three locations in Tskhinvali itself.

The first of these areas was Verkhny Gorodok, on the southern fringe of the town, where Russian peacekeepers were based, and from which the Georgian authorities allege artillery was being fired despite repeated warnings to the Russian peacekeepers not to allow their positions to be used for attacks. Ten Russian peacekeepers were reported by the Russian authorities to have been killed and a further 30 injured in the course of this attack and another on their second base in the north of Tskhinvali.

The Georgian authorities also acknowledged using GRAD rockets to target stockpiles of munitions and fuel depots in the western part of the town and military barracks in the northwest. Whilst these areas are all on the periphery of Tskhinvali they are all adjacent to built up civilian areas. Many missiles that missed their target consequently landed in civilian areas causing considerable damage to private houses and resulting in numerous civilian casualties. Amnesty International representatives observed extensive damage to civilian property in a radius of 100-150m from these points, particularly in the south and south west of the town, highlighting the inappropriateness of the use of GRAD missiles to target these locations.

Amnesty International representatives also observed damage caused by GRAD missiles during the night of 7 August in built up areas at least half a kilometre from these areas. Thaelmann Street, in the eastern part of the town was particularly severely hit, with a row of 10 houses stretching over 50m almost completely destroyed. Other streets to have been struck by an array of artillery fire, including GRAD missiles, include Lenin Street, Pobeda Street, Geroev Street, Kalinin Street and Komarov Street.

In Tskhinvali, Kazbek Djiloev showed Amnesty International representatives around his severely damaged house in a residential area in the southern part of the town. He showed Amnesty International the remains of four GRAD rockets, which he claimed had struck his house on the night of 7 August:

We were listening to Saakashvili who was saying that he agrees to any negotiations. We felt comfortable ... I was drinking tea and suddenly I heard gunfire followed by tanks, artillery... we all went downstairs. Two hours later I heard explosions, the house shook, the roof exploded and these four GRAD missiles fell on our house. The sofa and other stuff caught fire. We heard an airplane and it aimed at us and started firing at us with a machine gun. My brother and I hid downstairs again. After a while another GRAD fell and half of the house was destroyed. I was in shock. The Georgians claim that they fired at positions of Russian soldiers. This is a lie. There was no soldier here. They were firing at peaceful citizens. There was nothing military here. I was here with my brother and mother ... Now I don't have a

house. The weather is fine right now and I can sleep in the garden, but I don't know what to do when the rain comes. Nobody is helping me. I'll never be able to restore the house because I don't have the money...

An analysis of satellite imagery of Tskhinvali on 10 August obtained by the American Association for the Advancement of Science for Amnesty International identified a total of 182 damaged structures, liberally scattered across the town.⁴⁰ Whilst some of the destruction in Tskhinvali resulted from Georgian artillery and tank-fire in the course of street-fighting on 8 and 9 August and also Russian artillery fire as Russian forces moved into the town, eyewitness accounts related to Amnesty International suggest that the bulk of the destruction occurred during the initial shelling of Tskhinvali by Georgian forces on night of 7 August.

Whilst Ossetian forces may have violated Article 58(b) of Protocol I to the Geneva Conventions requiring parties to avoid locating military objectives within or near densely populated areas by firing at Georgian forces from locations close to civilian areas prior to their entry into Tskhinvali itself, Amnesty International is concerned that the Georgian forces may have selected targets in areas with large numbers of civilians on the basis of outdated and imprecise intelligence and failed to take necessary measures to verify that their information was accurate before launching their attacks. At the time of the initial shelling of Tskhinvali, Georgian forces were positioned several kilometres from Tskhinvali, at a distance from which it would have been difficult to establish the precise location of the Ossetian positions firing on them. Nor, as Ossetian forces were lightly armed and mobile, could there have been any guarantee that positions from which munitions had been fired in preceding days were still occupied on the night of 7 August. Amnesty International is also concerned that rules on other precautions, such as giving warning to civilians where feasible and choosing means and methods that are least likely to cause harm to civilians, were not properly followed.

The Georgian authorities informed Amnesty International that they estimated the population of Tskhinvali prior to the conflict at around 7,000 people and that this number decreased substantially in the first few days of August as many South Ossetians left the region as the security situation deteriorated. The town appeared virtually deserted to Georgian officials who travelled to Tskhinvali on the 7 August for the aborted ceasefire discussions. According to the Major of Tskhinvali, however, 15,000 people out of the town's pre-conflict population of 30,000 were in Tskhinvali on the night of the Georgian assault⁴¹. A member of the South Ossetian Parliament spoken to by Amnesty International, estimated the number of civilians in Tskhinvali on the night of 7 August at between three and four thousand, most of whom, however, had long ceased to venture out of their homes and spent the night of the bombardment hiding in their cellars. Even if the population of Tskhinvali was, indeed, much reduced on night of 7 August, there were still several thousand of civilians in their homes across the town.

A precise estimate of the number of civilian casualties resulting from the Georgian shelling of areas in and around Tskhinvali is difficult to provide. Accounts provided by witnesses in the areas that were struck suggest that the number of deaths in the each of the streets affected ranged from two or three to around 10 in the worst hit areas. The 133 civilian deaths reported by the Russian Prosecutor's Office covers the entirety of the conflict and may well include a number of private individuals who engaged in military activity. However, doctors at

the Tskhinvali hospital indicated that the majority of casualties they treated were brought to the hospital during the early hours of 8 August. Casualties could have been significantly higher were it not for the fact that many of the houses hit were built out of reinforced concrete, allowing residents hiding in cellars to emerge relatively unscathed. Indeed, many of the casualties would appear to have resulted from bombs falling on brick houses and from individuals being caught outside in the street by the blast and debris from falling rockets.

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

GEORGIAN GROUND FORCES

Georgian ground forces entered Tskhinvali early in the morning of 8 August, having taken the surrounding Ossetian villages a short while earlier. Both in the villages and in Tskhinvali, Georgian ground forces met resistance from a variety of South Ossetian forces, including organised units, less formal militia and privately armed individuals. Whilst the South Ossetian forces had a number of light armoured vehicles most were engaged on foot or driving around in civilian vehicles, which would have made it difficult for the advancing Georgian forces to distinguish between armed resistance fighters and fleeing civilians such as those that were reported to have occupied some of the few cars that were hit by tank fire on the road from Khetagurovo to Tskhinvali on 8 August.

When Amnesty International delegates visited Tskhinvali at the end of August, signs of heavy fighting were still etched in many of Tskhinvali's buildings. Along the main roads, very few windows remained intact and walls were heavily pock-marked with machine gun fire. Several public buildings, including the university, the central library, the hospital and schools number five and six, as well as numerous private houses had been damaged by tank and artillery fire. Given the nature of the fighting, however, it is difficult to say of any individual incident whether the damage was caused by exchanges of fire between combatants or as a result of indiscriminate firing by Georgian troops.

Georgian forces withdrew from Tskhinvali and the rest of South Ossetia in the early hours of 10 August, as they came under sustained attack from Russian air strikes and ground forces.

ATTACKS BY RUSSIAN FORCES

Following the entry of Georgian troops into South Ossetia on the evening of 7 August, the first wave of Russian forces engaged the Georgian army north of Tskhinvali during the course of 8 August. Russian and Georgian ground forces continued to exchange fire on the 9 and 10 August, as the Russian advance progressively gained ground. Russian forces took control of Tskhinvali on 10 August, following which Georgian military activity in the area progressively dissolved. The Georgian government maintains it ordered its troops to cease firing on the evening of 10 August. Alleging the continued bombardment of South Ossetia by Georgian forces on 11 August, however, the Russian army continued its advance and aerial bombardment until 12 August, when it agreed to a French-brokered truce. By this time the Russian army had already extended its control to the town of Gori, some 20km beyond the

Ossetian border, and occupied strategic locations around the Georgian-Abkhaz border in the west of the country. Until its withdrawal beginning on 20 August, the Russian army continued to destroy and remove military hardware from Georgian bases outside South Ossetia and Abkhazia and to disable selected civilian infrastructure including the Black Sea port of Poti and the railway bridge at Metekhi-Grakali, linking the east of Georgia to the west.

Russian armed forces continued to retain control over so-called “buffer” or “security zones” extending beyond the 1990 boundaries of South Ossetia and Abkhazia until the second week of October. Russian forces began their withdrawal on 8 October, and Georgian civilians began to return to their homes in some areas.

RUSSIAN AERIAL AND MISSILE ATTACKS

The Russian aerial and artillery bombardment took place over four days from 8 to 12 August. According to information supplied to Amnesty International by the Georgian government, there were more than 75 aerial bombardments of Georgian territory by Russian air forces, including areas where there had previously been no fighting, such as the Autonomous Republic of Ajara, Imereti region and Tbilisi itself.⁴² Amnesty International has not received a response from the Russian authorities to a request for further information regarding the conduct of hostilities and the measures taken to minimize risk to civilians by Russian forces.

Eyewitness accounts suggest that the bulk of the bombardment occurred in a relatively small area around Eredvi in South Ossetia and around Tqviavi and Variani in the Gori district. The ethnic Georgian villages to the north of Tskhinvali from Kurta to Tamarasheni would appear to have been less extensively targeted by aerial bombardment. The town of Gori was hit in four or five localised areas in the course of a number of separate attacks between 8 and 12 August.

As with the Georgian bombardment of Tskhinvali and the surrounding Ossetian villages, the Russian bombardment of populated areas could not be described as blanket bombing. Most of the bombing would appear to have targeted Georgian military positions outside built up areas. However, villages and towns were hit, even if the damage would appear to be limited to stretches of streets and isolated houses here and there in the villages affected.

Unlike the Georgian assault on Tskhinvali, the Russian bombing took the form of isolated attacks on a range of targets, over a wide area and over a period of several days, as the military situation on the ground evolved.

Eyewitness accounts of many of these attacks clearly point to the presence of military targets in the vicinity. However, Amnesty International delegates also heard a number of accounts in which civilians and civilian objects were struck by aerial and missile attacks in the apparent absence of nearby military targets. Amnesty International is consequently concerned that civilians and civilian objects may have been directly attacked in violation of Article 51(3) of Protocol 1 to the Geneva Conventions, or that they were hit in the course of indiscriminate attacks in violation of Article 51(4).

On 12 August at around noon, an aerial bomb attack on the main square of Gori resulted in the death of a Dutch journalist and a reported seven Georgian civilians. The intended target of this strike remains unclear. The square is not close to any military installations and there

do not appear to have been any Georgian armed forces nearby. Amnesty International spoke to Maneli Maisuradze who was injured in the attack:

I was injured near the local municipality building, next to the statue of Stalin [in the main square in Gori]... I was out with two other women. The plane flew over and the bomb exploded soon after. Pieces of the bomb affected my eyes and we were all wounded. A journalist died in this incident. I also saw three other dead bodies. I live close to the local municipality building. The window panes in my house broke during the bombings. This was on the 12 of August at about 12pm. Before the bombing, humanitarian aid was being distributed. Elderly people were walking around and waiting to get assistance. We were also trying to get humanitarian aid. We were on the other side of the road but those people who were on the side of the municipality building died and were more seriously injured during the bombings. There were no Georgian soldiers there at that moment, only elderly people who stayed in the city.

At 11.30 am on 9 August, Avto Tsimakuridze, an elderly man, was injured outside his house in the village of Karbi when a Russian fighter plane dropped two bombs on the village, killing nine people. He described the attack as follows:

We were just civilians. They must have made a mistake – why else would they bomb us? A plane flew high over the village and dropped two bombs. Seven people died in front of my eyes. The other bomb fell in another part of the village and killed two more people. There were no Georgian soldiers in the village. There were Georgian batteries about two kilometres away with anti-aircraft weapons. First they targeted these batteries. Then the plane came back and dropped the two bombs on the village. I really did not believe that the Russians would do such a thing to us. I had a lot of Russian friends. I was in the Russian army and I really could not believe this.



Avto Kurashvili, a civilian wounded on 10 August in Gori. He does not know who shot him. He was later moved to a hospital in Tblisi. © Amnesty International

Amnesty International also received reports of Russian aircraft bombing fleeing Georgian civilians as they moved southwards towards Georgia out of the conflict zone. "Maka", from Kemeti village, told Amnesty International:

On 8 August there was panic that the gorge would be bombed...the local population was left to fend for itself, leaving their houses in cars. I took only my bag and passport...others did not manage to take anything. Like this we left, and took the roundabout roads to get out of there...We heard shooting from all sides. I did not know how to protect my daughter, I just covered her body with my own. Everybody with children was doing the same. When we crossed the gorge and got to Ereti, a car with a man and woman in it in front of us was hit and exploded. Bombs were falling on civilians, families...

"Goga" told Amnesty International how he was injured by Russian bombing as he was driving through the village of Variani:

On 12 August, I was leaving my village of Pkhvenisi [a few kilometres south of Tskhinvali] with a number of other civilians in my car. As I was driving through Variani at about 11 o'clock in the morning three planes flew overhead and started dropping bombs. The village was practically deserted and mine was the only car moving. I decided it would be safer to stop the car and we all got out. At that moment a bomb fell near us and I was injured. The man standing next to me was killed. Apart from the planes I couldn't hear any other sounds of fighting nearby.

Amnesty International also wrote to the Russian authorities about these specific incidents requesting information about the intended targets of these attacks and what measures were taken to verify that they were targeting military objectives and that they were minimizing risk to civilians. The reply from the Russian authorities did not address these specific concerns.

RUSSIAN GROUND FORCES

Eye-witnesses to the activities of Russian soldiers and Ossetian forces and militia groups contrasted the disciplined conduct of the Russian infantry with accounts of looting and pillaging by Ossetian fighters and militia groups. Amnesty International was widely informed by Georgians displaced from South Ossetia that Russian soldiers had, on the whole, conducted themselves in a disciplined and orderly fashion with regard to Georgian civilians.

However, Amnesty International delegates did interview two injured civilians recovering in a hospital in Tbilisi who reported that they had been shot at, at close range, by Russian soldiers as they were fleeing an aerial bombardment of the area around Akhaldaba, in the Gori district at around 11.00am on 12 August. "Nugzar" was working as a security guard with three other colleagues at a television mast about 10km north of Gori, when the bombing raid began. Whilst it is unclear whether the television mast was directly targeted, Nugzar alleged that the aerial bombardment covered a wide area, including strikes on the television mast, and lasted about an hour. Deciding that it was unsafe to remain in the area, Nugzar and his three colleagues decided to leave in an ordinary civilian vehicle. As they were leaving the television antenna, they passed a column of tanks approaching the television mast from the direction of Tskhinvali:

We were driving away in an ordinary car, when three Russian tanks approached from the opposite direction with lots of soldiers sitting on top. As the first tank went past the soldiers on top opened fire on our car. The soldiers on the second tank also fired at us. It was not a populated area, there was no else around, though we could hear shooting in the distance. There were four of us in the car. One of us was killed. My colleague here [in the next door bed], was also injured. The other one was only lightly injured. After they had gone by, we got out of the car and made for the forest. Eventually we got to the nearest village [Akhaldaba], where we tried to call an ambulance. But no ambulance was allowed to get through. We spent three days in the village before we were eventually evacuated on Friday [15 August].

Amnesty International is particularly concerned by the many reports of Russian forces looking on while South Ossetian forces, militia groups and armed individuals looted and destroyed Georgian villages and threatened and abused the residents remaining there. One Georgian from the village of Marana told Amnesty International that he was warned by Russian soldiers to leave his village before the arrival of South Ossetian paramilitaries, as they could not guarantee his security.

As the occupying force, the Russian army had a duty to ensure the protection of civilians and civilian property in areas under their control. Whilst this may have been difficult in practice in the early days of the conflict, when Russian forces were still engaging the Georgian army, the looting and destruction of property owned by ethnic Georgians, and the threatening of remaining Georgians in South Ossetia and the surrounding “buffer zone”, continued on a large scale for several weeks after the formal cessation of hostilities. It is clear that the Russian authorities singularly failed in their duty to prevent reprisals and serious human rights abuses being carried out by South Ossetian forces and militia units. In the “buffer zones”, Russia was bound by its obligations as an occupying power as codified in the Fourth Geneva Convention. This means that it was primarily responsible for the security and welfare of Georgian civilians in those areas. In South Ossetia, while it may not formally have been the occupying power, it was nevertheless bound by its obligations under human rights law to respect and protect the rights of all those under its effective control.

USE OF CLUSTER BOMBS

Amnesty International is concerned by the use of cluster bombs in this conflict, the first instance of their use since the Israel/Lebanon conflict of 2006. A cluster munition is a weapon comprising multiple explosive submunitions which are dispensed from a container. Cluster munitions pose severe risks to civilians' lives and livelihoods both at the time of their use and after hostilities have ended. This is due to the wide-area effect of cluster munitions and the large number of sub-munitions they leave unexploded, due to their high dud rate. Unexploded sub-munitions continue to indiscriminately injure and maim after the conflict has ended, hinder humanitarian assistance, peace operations and post-conflict reconstruction. For these reasons, Amnesty International called for many years for a moratorium on their use. There is an emerging international consensus that the use, stockpiling and transfer of cluster weapons should be banned. This is why over 100 states adopted, in May 2008, the Convention on Cluster Munitions. Neither Georgia nor Russia has signed this Convention.

There is compelling evidence that both Russian and Georgian forces used cluster bombs, a weapon commonly found in the arsenals of post-Soviet states, although by mid-October only

Georgia had admitted their use. On 1 September the Georgian authorities stated publicly that while cluster bombs had been used, they were deployed only against Russian armament and military equipment in the vicinity of the Roki tunnel in the early hours of 8 August.⁴³ The Georgian authorities clarified to Amnesty International on 7 October that cluster munitions were used only by Georgian ground forces. These were MK4 LAR160 type rockets with M85 submunitions fired by GRADLAR 160 multiple launch rocket systems. The Georgian authorities informed Amnesty International that such cluster munitions were also used on 8 August to attack Russian and Ossetian forces on the Dzara byroad, which runs from Tskhinvali towards the north, in the direction of the Russian approach.

Amnesty International is concerned that while the intention behind these attacks may have been to hit military objectives, the nature of cluster weapons makes it particularly likely that civilians will also have been affected. It is likely that there would have been at least some civilian movement around the Roki tunnel at the time of their deployment, as the tunnel offered the main avenue of flight for South Ossetians travelling north. The Georgian authorities maintain that there were no civilians on the Dzara road at the time of the Georgian cluster bombing as the movement of all kinds of civilian transport vehicles was stopped during combat operations in the area, and that this was confirmed by Georgian forward observers. Amnesty International is not able to establish whether there were definitely civilians in the areas targeted by Georgian cluster bombs along the Dzara road at the precise time of their deployment. However, it is clear that several thousand civilians were fleeing their homes both towards central Georgia and to North Ossetia during the course of 8 August and that the Dzara road was an obvious avenue of flight for South Ossetians heading north. Indeed, Amnesty International representatives heard several accounts from displaced South Ossetians in Vladikavkaz alleging that the Dzara road was shelled as they were travelling along it on 8 August.

M85 cluster munitions and impact traces have also been found in an arc of villages just outside South Ossetia, suggesting that the use of cluster munitions by Georgian forces was not limited to the Dzara road and the vicinity of the Roki tunnel. Whilst the majority of the local residents, mostly ethnic Georgians, had already left the area, many were still left behind as the targeted Russian army entered the Gori region.

As noted above, unexploded cluster bomb ordnance remains a hazard to civilians long after its deployment. The Georgian authorities have stated that M85 submunitions they deployed have a self-destruction mechanism designed to ensure that armed bomblets are not left on the battlefield to endanger either friendly troops or civilians.⁴⁴ However, the presence of a self-destruct mechanism has been widely discredited as a solution to the problem of cluster munitions both by non-governmental organisations and by independent and military fuse experts.⁴⁵ UN led clear-up operations following the recent Israel/Lebanon conflict reported finding large numbers of unexploded M85 submunitions.⁴⁶ Field studies following the conflict put the failure rate at between 6 and 10 percent - much higher than the 1 percent rate claimed by states who have acquired this weapon.

Although Russia continues to deny the use of cluster bombs, Amnesty International delegates heard numerous independent eye-witness accounts suggesting their use in Kvemo Kviti, Trdnisi, Tqviavi, Pkhvenisi, Kekhvi, Ruisi and Akhaldaba, mostly on 8 August, but also in the following days. Material evidence of the use of both AO 2.5 RTM cluster munitions

(dropped from planes in RBK 500 bombs) and Uragan fired M210 bomblets have been found around several villages just north of Gori. These areas were still populated by many civilians, many of whom were on the roads trying to flee the conflict. It has also been alleged that the bomb attack on the central square of Gori on 12 August was conducted using cluster munitions.⁴⁷

Uri Sekmiashvili was severely injured in a bomb attack near Akhaldaba on 12 August between 10 and 11am. In an interview with Amnesty International, he described multiple small explosions and alleged that he had sustained his injuries as a result of a bomblet exploding next to him. Speaking to Amnesty International, Bejam Basilidze described a cluster bomb attack he witnessed over Kvemo Kviti on 8 August between 6 and 7pm.

It was evening. Suddenly I heard a terrible sound. I saw an explosion in the air, then bombs were falling like hailstones each covering an area of 3 or 4 metres. Everything exploded, the ground, the roofs of the houses. Seven people were wounded and cows too. There weren't any Georgian troops in the area – they had already left for Gori in the afternoon.

Amnesty International continues to call on all parties to make public all relevant information about the deployment of cluster munitions in the recent conflict so that appropriate warnings can be given to the population and the required clearing of unexploded devices can take place.

LANDMINES

The Georgian authorities have alleged the use by Russian forces of planting landmines on roads and on railroad tracks in the region of Svaneti, near Abkhazia, and near Gori. Information supplied to Amnesty International by the Georgian Ministry of Foreign Affairs, 7 October 2007. On 24 August a train carrying crude oil reportedly exploded upon hitting a landmine five kilometres west of Gori. The Georgian authorities report finding mines and unexploded artillery shells at other locations along the tracks. Anti-personnel mines have also reportedly been found in gardens and orchards in the Gori area; according to information received by Amnesty International from the Georgian authorities mines killed a woman in her garden in Gori on 24 August, and injured a man in Tirdznisi village.

THE CONDUCT OF SOUTH OSSETIAN FORCES AND MILITIA GROUPS

According to eye-witness testimony collected by Amnesty International, the advancing Russian army was accompanied by both regular South Ossetian forces and an array of paramilitary groups. The latter groups have been widely referred to as “militias” (*opolchentsy* in Russian, *dajgubebebi* in Georgian), and their exact composition is unclear. Just prior to the conflict there were reports of the arrival of 300 Ossetian volunteers who had been serving in the police in North Ossetia.⁴⁸ *De facto* South Ossetian President Eduard Kokoity reportedly ordered the integration of these volunteers into the *de facto* South Ossetian Ministry of the Interior forces. There were also reports of representatives of other ethnic groups from the North Caucasus moving into South Ossetia following the onset of hostilities, in order to fight on the South Ossetian side. Amnesty International was also informed in North Ossetia that significant numbers of men who initially fled to North Ossetia from South Ossetia in the first days of the conflict returned to South Ossetia in order to fight. Several South Ossetians interviewed by Amnesty International representatives in both South and North Ossetia stated that they had taken up arms and participated in the hostilities.



Houses set on fire in the Georgian village of Eredvi in South Ossetia, 26 August 2008. © Varvara Pakhomenko



Internally displaced persons centre in Tblisi, Georgia, 20 August 2008. © Amnesty International



Satellite image of Tskhinvali, South Ossetia taken on 10 August 2008 with damage overlay from 10 and 19 August. The orange dots represent damage present on 10 August, and the red dots represent damage present on 19 August. Dots at the top of the picture (north) and at the bottom to the right (south east) are included in assessments for Tamarasheni and Ergneti, respectively. Note that the majority of damage to Tskhinvali occurred prior to or on 10 August, with 182 structures damaged, while only 4 additional damaged structures were identified for the city on 19 August. © 2008 GeoEye



Satellite image of the Georgian village of Tamarasheni, South Ossetia, taken on 19 August. The red dots represent all buildings sustaining damage (152 structures in total). © 2008 ImageSat



Ruined buildings on Thaelman Street in Tshkinvali, South Ossetia, 29 September 2008. © Amnesty International



Bombed building in Gori, Georgia 29 September 2008. © Amnesty International

The composition of armed groups identified by eye-witnesses as “South Ossetian militias” is therefore extremely difficult to establish. Several accounts collected by Amnesty International indicated that these militias were composed of representatives from different ethnic groups and used Russian as a common language. These groups are widely described as having followed in the wake of Russian ground forces or aerial attacks; they were also widely reported by eye-witnesses and humanitarian organizations as moving through the “buffer zones” established and maintained by Russian armed forces following the cessation of hostilities and throughout the following weeks. It would appear that the majority of these groups answered, if only loosely, to a South Ossetian chain of command and that the South Ossetian forces in turn operated in co-operation with Russian military forces.

Amnesty International is concerned by the serious abuses against ethnic Georgians in South Ossetia and adjacent “buffer zones” under effective Russian control. Amnesty International documented unlawful killings, beatings, threats, arson and looting perpetrated by armed groups associated with the South Ossetian side and acting with the apparent acquiescence of Russian armed forces. Whilst the looting and pillaging of ethnic Georgian villages was initially focused on South Ossetia, and limited, in the immediate aftermath of the conflict, to largely opportunistic raids on Georgian property and villages along the main roads beyond the regions borders, it progressively extended to the adjacent “buffer zone” under effective Russian control in the weeks that followed. However, Georgian-populated settlements in South Ossetia under *de facto* South Ossetian administrative control are not reported as having suffered extensive damage.

As the occupying power Russian armed forces had overall responsibility for maintaining security, for law and order and for ensuring the welfare of the populations living in areas under their control. The Russian authorities therefore share, with the *de facto* South Ossetian authority controlling them, accountability for human rights abuses committed by South Ossetian militias engaged in looting, arson and other attacks, whether within the 1990 boundaries of South Ossetia or in Georgia proper.

ATTACKS ON CIVILIANS BY SOUTH OSSETIAN ARMED GROUPS

Amnesty International is seriously concerned by reports of assaults on civilians by groups aligned with South Ossetia, during and in the wake of the conflict. In many cases South Ossetian armed groups or irregulars arrived in villages that were largely depopulated, with only the elderly and infirm remaining. According to eye-witness reports militias ordered local inhabitants to leave; Amnesty International received reports that those who resisted these orders were, in some cases, beaten and/or killed. Others were attacked in the course of uncontrolled looting.

“Ani” from the village of Disevi, a village in South Ossetia to the east of Tskhinvali, told Amnesty International:

All the Georgian villages were burned. Only those houses which had Ossetian wives in their households survived. This was done by the Ossetian separatists and Russian and Cossack groups dressed in black military uniforms with masks on the faces. One of them even spoke to us in Georgian from the tank. One of my neighbours who tried to resist them was killed.

In the village of Avnevi, in South Ossetia, on 27 August representatives of Amnesty

International met two elderly Georgian men who had remained in the village after the other residents had fled. They told Amnesty International:

I worked for 20 years as the director of the village school. It was a mixed school, we had both Georgians and Ossetians studying and working there. In our village there were 350 families and there was someone of Ossetian background in about 200 of these families. They all left when Georgian forces attacked Tskhinvali. Only the old people stayed behind, those who didn't have relatives. Here they only killed two people. Shura, my neighbour, he was really ill – he was 50 years old when they burnt him to death in his home. They killed another man, he must have been about 50 years old. They began setting fire to things from 11 o'clock in the morning and again every night. There were people moving around in civilian clothing and in uniform. I saw one young lad, 20 years old maybe, shouting to these other two other boys to bring the goods out more quickly and jump in the car. And then I saw that the house they had come out of was on fire, though I managed to put the fire out. [On the intervention of the South Ossetian Ombudsman, the two men were taken by the ICRC to Tbilisi, where they were reunited with their families.]

“Revaz”, a Georgian interviewed by Amnesty International in a hospital in Tbilisi on 21 August, gave the following account of the injuries he sustained in Gori during the looting of the town shortly after the truce was agreed:

There was a lot of shooting around Gori by marauding gangs of militias. They were stealing anything that crossed their path. Three paramilitaries were firing full magazines into my car. I was hit in the kidney, and another passerby was also shot.

ARSON AND LOOTING: GEORGIAN-MAJORITY VILLAGES INSIDE SOUTH OSSETIA UNDER DE FACTO PRO-GEORGIAN ADMINISTRATIVE CONTROL UNTIL THE CONFLICT

Amnesty International has documented the extensive looting and arson of Georgian-majority villages by South Ossetian forces and militia groups on territory within South Ossetia but under *de facto* pro-Georgian administrative control prior to the conflict. As well as eye-witness testimony and Amnesty International's own observations, satellite imagery obtained for Amnesty International has confirmed extensive destruction in various settlements that occurred after the ceasefire.

Looting and arson attacks appear to have been concentrated on Georgian-majority villages north and east of Tskhinvali, associated prior to the conflict with the Tbilisi-backed alternative administration headed by Dmitri Sanakoev. In particular, the villages of Kekhvi, Kurta, Kvemo Achabeti, Zemo Achabeti, Tamarasheni, Ergneti, Kemerti, Berula and Eredvi sustained heavy damage.⁴⁹ Official Georgian sources claim that the population of the municipalities of Kurta, Tighva and Eredvi, estimated at 14,500 prior to the conflict, was displaced almost in its entirety as a result of the conflict. The Georgian Civil Registry Agency registered 13,260 internally displaced people from these municipalities as of 26 September.⁵⁰

The destruction of houses and property in some Georgian-majority settlements in South Ossetia took place in the aftermath of hostilities and not as a direct result of them. Satellite images obtained for Amnesty International by the American Association for the Advancement of Science reveal no damage to the village of Tamarasheni, for example, on 10 August.

Satellite photos from the 19 August, however, already reveal extensive destruction, with 152 damaged buildings in Tamarasheni.⁵¹ By the time that Amnesty International delegates were able to visit these villages at the end of August, they were virtually deserted and only a very few buildings were still intact.

Extensive looting of Georgian administered villages appears to have taken place over the two weeks following the cessation of hostilities. Eye-witness accounts of some villages dating from the 13-14 August refer only to limited looting, yet when Amnesty International representatives visited these same villages almost two weeks later on the 26 August, they observed first hand that looting and pillaging was still going on .

According to eye-witnesses interviewed by Amnesty International, when Russian forces entered the cluster of Georgian administered villages only a few dozen of their inhabitants remained, mainly elderly and disabled people, or those who did not want to leave their homes. One such person, Nina, an elderly woman from Kurta village in South Ossetia, told Amnesty International:

Men in military uniform were going through the gardens. They were Russian-speaking but not Russian soldiers. I took them to be Ossetians, Chechens, some Asians, maybe Uzbeks and Cossacks. They were all wearing the same military uniform and they were armed with Kalashnikovs. They burnt about 15 houses in Kurta, and took the livestock away on trucks. As we were leaving Kurta we saw two neighbours being abducted, they were pushed into a car boot by the marauders. We left Kurta on 13 August by foot. We went to Eredvi via Kheiti. In Eredvi we saw dead bodies, a man, woman and two children. We continued walking and reached the village of Ditsi [outside of South Ossetia]. I saw no dead bodies in Ditsi and some of the houses were burnt down, but not all of them. We passed Ditsi and reached Trdnisi. There we also saw many burnt houses and property thrown around in the streets. We stayed the night there and moved on to Tqviavi. We saw many more dead bodies there, under cars and vans. All the dead bodies were civilians, I didn't see any dead Georgian soldiers..."



Nina from Kurta in a centre for displaced people in Tbilisi, 22 August 2008. © Amnesty International

Reportedly, Russian forces only installed roadblocks and checkpoints controlling the entries and exits to these villages on 13 August. On 24 August, however, Amnesty International representatives observed South Ossetian forces in control of these checkpoints and overseeing movement into and out of these villages along the main road running north from Tskhinvali. Travelling along the road from Java to Tskhinvali on 27 August Amnesty International representatives observed scenes of total destruction, with houses pillaged, burnt and many in ruins. Only a few new buildings and the local park appeared to be intact. In Kurta, at the buildings housing the former alternative South Ossetian administration headed by Dmitri Sanakoev, Amnesty International representatives encountered two men loading office furniture and other items onto a truck. Amnesty International was not able to find native inhabitants in any of the above-mentioned villages on 27 August, nor did it observe the presence of any Russian military.

Some of those displaced from these villages spent several days moving cross-country on foot before arriving in Gori at the end of August. In Gori Ira, a Georgian woman from the mixed Georgian-Ossetian village of Beloti, some 18km to the north-east of Tskhinvali, told Amnesty International:

On 9 August Ossetian militias entered Beloti and began shooting at about one o'clock in the afternoon. They wounded the village policeman and demanded all weapons be handed over to them. At the sound of shooting all the young people from the village escaped into the woods, and the whole population of the village scattered ... We found ourselves on the other side of the village, in the woods, and ... we watched events from there. That same day the Ossetian militias set fire to the houses and burnt them ... We saw how the Ossetian militia carted

everything off in trucks, anything that was there, and then they set fire to the houses. Only the old and the infirm stayed behind, but even to these people the Ossetians were saying 'Get out! We don't want any Georgians here. We're burning your houses so your children won't come back'...The Russians didn't bother us at all, it was the Ossetian militias...Even the local Ossetian population was joining in, people whom I knew from the local administration...

Two women from Disevi, a village to the east of Tskhinvali, told Amnesty International:

I saw Russians and Ossetians destroying our houses. Russian planes bombed the villages, then soldiers came into the village. They took one of the local inhabitants, a man, beat and killed him. They started looting all of the houses ...it was purposeful, looting then burning... The Russian soldiers didn't participate in the looting, they just held their positions at the checkpoints and looked on as the looting was taking place...

It was just Georgian houses that were destroyed. Those households where there were mixed marriages survived, the rest were burnt by Ossetians and Russians... Whether the Russians were Cossacks or not, I don't know... They were dark, swarthy people, in military uniform and sometimes in masks. They killed one of my neighbours who tried to stop them... They took everything out of the houses then burnt them... But my neighbour had an Ossetian wife and they didn't touch his house... They targeted houses with families from the military, from the police...

In another pocket of mixed Georgian-Ossetian settlement in South Ossetia, in the villages of Avnevi and Nuli, Amnesty International observed a similar, if not so complete, state of destruction. The majority of houses were burnt and pillaged, although the level of destruction was less severe. Painted on the gates and walls of some houses Amnesty International representatives observed the words "*Iron*" ("Ossetians") and "*Zanyato*" ("Occupied"); these houses had been pillaged, but not burnt or destroyed. Amnesty International representatives established that some houses belonging to Georgians had indeed been occupied by Ossetians, while some houses belonging to friends or relatives of local Ossetians had been spared by militias. Although chickens could be observed in the yards of some houses, no larger livestock was present. In the neighbouring village of Nuli, Amnesty International representatives observed looters loading up goods and objects onto trucks to be taken away. These observations are consistent with those of a wide range of media reports.⁵²

In the village of Eredvi on 26 August Amnesty International representatives witnessed ongoing looting and pillaging, including by armed men. As the looting was ongoing, Russian military equipment continued to pass through Eredvi (due west of Tskhinvali) and Russian checkpoints controlled entry and exit to the village; Amnesty International observed that only ordinary cars, rather than trucks or other large vehicles, were searched and not in all cases. At dusk Amnesty International representatives encountered a group of men in military uniform and was told by one of them, who appeared to be a Russian army officer from North Ossetia, not to report having met them there. When asked why they were not taking action to extinguish fires in the village, they answered "that's the policy" ("*politika takaya*").

GEORGIAN-MAJORITY VILLAGES INSIDE SOUTH OSSETIA UNDER DE FACTO SOUTH OSSETIAN ADMINISTRATIVE CONTROL UNTIL THE CONFLICT

Amnesty International observed a very different situation in Georgian-populated villages under the control of the *de facto* South Ossetian authorities. On 26 August, representatives of the organization visited the villages of Nedalti and Akhalsheni in the Znaur district, to the west of Tskhinvali, which saw much less fighting. Akhalsheni has the only Georgian language school operational in South Ossetian-controlled territory. Amnesty International representatives met representatives of the Georgian community of Akhalsheni, who said that while most of the village's population had left for Georgia on the eve of the conflict, not one house had been damaged or looted nor had there been any casualties in the village. Amnesty International representatives did not observe any damage in the town during their visit. According to Georgians in Akhalsheni when looters had attempted to enter the village Znaur district administration officials had prevented them from doing so. However, the village population had serious concerns regarding water supplies, their capacity to harvest their crops and the absence of telecommunications links with Georgian networks, leaving them without direct connections to neighbouring villages.

According to international observers who visited Akhagori (known as Leningori to Ossetians), a town with a mixed Georgian and Ossetian population in the south-east part of South Ossetia, little destruction or looting appears to have taken place there. UNHCR was able to visit Akhagori for the first time on 29 August and was informed by the local military commander that some 40 per cent of the population, including both Georgians and Ossetians, had been displaced; other estimates given to UNHCR put the figure at 80 per cent.⁵³ According to information in official Georgian sources, as of 26 September 2,254 ethnic Georgians had been displaced to Gori out of Akhagori's total pre-conflict population of 7,894.⁵⁴ Overall, however, the relatively calm situation in Akhagori appears to reflect the fact that large-scale, targeted pillaging and arson has been limited to the areas close to Tskhinvali under *de facto* pro-Georgian administrative control prior to the current conflict.

GEORGIAN VILLAGES OUTSIDE OF SOUTH OSSETIA IN THE "BUFFER ZONES"

Ethnic Georgian villages beyond the boundaries of the former South Ossetian autonomous region also suffered extensive looting, but less widespread arson and destruction, in the aftermath of military hostilities. Initially limited to opportunistic raids as the Russian army advanced deeper into Georgia, the looting and pillaging by South Ossetian militias appears to have taken on a more regular character in the weeks following the formal cessation of hostilities, particularly in the villages closest to South Ossetia, as Russian forces assumed full control of the "buffer zone". Amnesty International received numerous independent reports in Gori on 29 and 30 August that the security situation in the "buffer zone" between the village of Karaleti, some 6km to the north of Gori and South Ossetia, had deteriorated in the previous few days. Amnesty International was denied access to Karaleti and the villages beyond it by Russian soldiers on two consecutive days on August 29 and 30. Georgian villagers from Karaleti, Tqviavi, Pkhvenisi and Shindisi informed Amnesty International that on the basis of reports from elderly relatives remaining in the villages or those of other relatives visiting on a daily basis, they feared return due to reports of South Ossetian militias in the area and the presence of unexploded ordnance.

UNHCR reported a new influx into Gori of displaced persons from 26 August, consisting in part of those returning from Tbilisi but unable to access their homes in the "buffer zone" and

in part of those who had previously remained in the “buffer zone”, but who were now fleeing in the face of a fresh wave of intimidation by South Ossetian forces and militias. These displaced people told UNHCR that the numbers of Ossetian militias in Georgian villages and the extent of their attacks had significantly increased since 24 August.⁵⁵ UNHCR also reported that villagers attempting to return home from Gori to villages in the “buffer zone” were not able to do so, being stopped at Russian checkpoints and advised not to proceed due to lawlessness.⁵⁶

Russia and the South Ossetian administration are responsible for the safety and security of everyone in the areas over which they have control. The serious abuses that have resulted in extensive destruction of homes and property, beatings and even killings are a clear indication that they have failed to live up to this obligation.

The destruction or seizure of property of an adversary is prohibited by international humanitarian law, unless required by imperative military necessity (which clearly was not the case in the cases described above) and can constitute a war crime⁵⁷. Pillage (the forcible taking of private property by an invading or conquering army from the enemy’s subjects for private or personal use] is also prohibited in both international and non international armed conflict⁵⁸ and can also constitute a war crime.⁵⁹

4. CIVILIAN DETAINEES AND PRISONERS OF WAR

POWS

Small numbers of prisoners of war (POWs) were held by both the Russian and the Georgian forces. According to the Georgian authorities⁶⁰, Georgia detained five Russian POWs, 27 members of South Ossetian armed forces, and one combatant from the Russian Federation, whilst 39 Georgian servicemen were taken captive by Russian and South Ossetian forces. The Russian and *de facto* South Ossetian authorities did not reply to questions addressed to them by Amnesty International regarding the number and treatment of POWs.

Amnesty International representatives met with one of the Georgian former POWs recovering in hospital in Tbilisi from injuries sustained in the course of the conflict, who stated that he had been taken captive by Russian forces and well treated during his captivity. Amnesty International is not aware of any allegations that Russian or South Ossetian POWs were treated without due regard for their rights by the Georgian authorities.

A number of the Georgian soldiers that were taken captive by South Ossetian forces have alleged that they were tortured and ill-treated during their captivity. Amnesty International delegates spoke to two Georgian soldiers who were recovering from injuries in a hospital in Tbilisi. The index fingers of their right hands had been burnt to the bone. The first, a private, "Malkhaz", alleged that he had been taken captive on 8 August in Tskhinvali and was held together with five other soldiers for nine days by Ossetian militia before being transferred to Russian custody and exchanged. During his captivity he alleged that he was moved and handed over to different captors four times. At one stage, two other captives were also brought in, one of whom he maintained was shot in a next door room and left to lie there for two days before he and his fellow captives were forced to clean the room and bury him. "Malkhaz" reported being transferred to Russian custody, where he was given medical treatment before being hand over to the Georgian authorities. The Georgian authorities allege that two other Georgian servicemen were executed by their South Ossetian captors. Amnesty International has not received any further information regarding the names or service numbers of these three soldiers, nor the results of any investigation into the circumstances of their deaths.

CIVILIAN DETAINEES

Civilians were detained by both the Georgian and the *de facto* Ossetian authorities in the wake of the conflict.

The Georgian authorities report that 159 Georgian civilians were held by the *de facto* South Ossetian authorities⁶¹. These were held in the main police station in Tskhinvali for periods of

between three and 10 days before being transferred to the Georgian authorities between 19 and 27 August. On 21 August, Amnesty International delegates spoke to a number of the first group of Georgian detainees to be released. From their accounts, it would appear that the earliest civilian detainees were taken captive around 10 August whilst the hostilities were still ongoing. These were mostly young men. The majority of civilian detainees, however, would appear to have been taken captive after 13 August, that is, after the formal cessation of hostilities and whilst the looting and destruction of the Georgian villages near Tskhinvali was taking place. Most of these later detainees were elderly residents who had not fled during the conflict. Whilst it is arguable that these detainees were removed from their homes for their own safety, the danger attendant on their remaining arose from the criminal actions of Ossetian forces, militia and private citizens engaged in the burning and pillaging of Georgian villages.

From the accounts of detainees, it would appear that they were provided with basic food and tea during their captivity. They were kept, without bedding or blankets, in four cells opening on to an open exercise yard, which became progressively more overcrowded as new detainees arrived. Whilst the detainees spoken to alleged frequent verbal abuse, they did not suggest that they were physically ill-treated during their captivity beyond the obvious hardship, especially for the many elderly captives, of their cramped, hot and uncomfortable accommodation. It was alleged, however, that the more able-bodied detainees were taken from the police station during the day, beaten and made to work on the removal of debris from streets of Tskhinvali.

Amnesty International is aware of a small number of civilians being held by the Georgian authorities. Amnesty International representatives spoke to a young Ossetian man from the village of Khetagurovo, who reported that he had been held together with his wife and mother for three days in Gori and Tbilisi, following his arrest by Georgian soldiers on the 9 August outside his house. The young man maintained that he had not been ill-treated in any way during the course of his detention.

5. DISPLACEMENT

NUMBERS OF THOSE DISPLACED

According to UNHCR some 192,000 people were initially displaced by the conflict, including approximately 127,000 within Georgia, 30,000 within South Ossetia and 35,000 who fled northwards from South Ossetia into North Ossetia in the Russian Federation.⁶² The direction of flight divided largely, though not exclusively, along ethnic lines, with Ossetians having fled northwards to the Russian Federation and ethnic Georgians having fled southwards into other regions of Georgia.

DISPLACEMENT TO THE RUSSIAN FEDERATION

According to information supplied to Amnesty International on 27 August by the Russian Federal Migration Service (FMS) 33,000 people were registered as crossing into Russia as a result of the conflict. Reportedly, several hundred women and children had left South Ossetia prior to 7 August due to increased tensions and incidents around Tskhinvali; most fled South Ossetia after the Georgian military action of 7-8 August. Some of those displaced returned to South Ossetia in the immediate aftermath, so that the figure of 33,000 represents a higher end figure for the conflict at its height.

Most of those fleeing northwards into the Russian Federation held Russian passports; others had Georgian or old Soviet passports. Amnesty International was able to confirm that Georgian passport-holders were also offered humanitarian aid and shelter in North Ossetia. During the last week of August, the FMS and the Ministry of Emergency Situations (EMERCOM) tried to return most of the displaced population back to South Ossetia. Those staying in public buildings, such as a rehabilitation centre for the children of Beslan, were told they had to leave this accommodation on 24-25 August. Transport to South Ossetia was organized by EMERCOM. As of early September, all temporary accommodation centres within the Russian Federation had been closed and the majority of the Ossetians who had fled to the Russian Federation during the conflict had returned. UNHCR reported on 2 September that the "vast majority" of those who had fled to the Russian Federation had returned to their places of origin in South Ossetia.⁶³ Those who wanted to stay in North Ossetia were able to do only if they had alternative options, such as staying with relatives: some 6,800 are reported by the Russian emergency services to have remained with friends and relatives in North Ossetia.⁶⁴

Amnesty International's observations indicated that the immediate medical and material needs of those temporarily accommodated within the Russian Federation were well met by the Russian emergency services. On their return, the great majority were able to go back to their own homes, which were either still intact or required only minor work such as the replacement of windows. At the time of writing those whose houses in South Ossetia were completely destroyed have been accommodated in a small number of public buildings, or are staying with friends pending further reconstruction work. Reconstruction work and assistance

has already begun, with large amounts of material and many reconstruction workers having arrived from across the Russian Federation. Concerns remain, however, regarding the speed with which badly damaged houses can be made sufficiently habitable as winter approaches.



Beds in a refugee centre in North Ossetia, Russian Federation, 24 August 2008. © Amnesty International

DISPLACEMENT WITHIN GEORGIA

The Civil Registry Agency of the Georgian Ministry of Justice had registered a total of 131,169 internally displaced persons as of 2 October.⁶⁵ As of 23 October around 24,000 internally displaced persons were still unable to return to their former places of residence in South Ossetia and just under 2000 were still displaced from Upper Abkhazia. About 10,000 had not yet returned to their homes in the former buffer zone, owing to the destruction of their homes or continuing security concerns.⁶⁶ Additionally, some 220,000 persons displaced in the early 1990s remain in Georgia, many of whom still live in collective shelters.⁶⁷

The overwhelming majority of displaced Georgians, from both South Ossetia and its surrounding areas and from the Kodori gorge in Abkhazia, were initially accommodated in public buildings in the Georgian capital, Tbilisi. Others were temporarily accommodated in other parts of Georgia, such as Batumi. Most were accommodated in schools and different kinds of institutes, housing between 50 and 200 displaced persons, with one or two families typically sharing a single room. A minority of displaced persons were temporarily accommodated in tented camps and disused public buildings with no running water. Amnesty International observed at the end of the month of August that the distribution of food, clothing and basic medicines was, for the most part, rapid and well organized, with many private individuals and companies being particularly generous with their support. Within a week of the beginning of the conflict most centres were well stocked with

medication for those with special needs, such as diabetes, asthma and low blood pressure.



A camp for displaced people near Gori, Georgia, 29 September 2008. © Amnesty International

Whilst the initial response to the large wave of displacement between 8 and 12 August was generally adequate, serious concerns remain as to the long-term situation of those who remain unable to return. These concerns are focussed on the town of Gori and its surrounds, where, according to Georgian government statistics, 248 tents currently provide shelter for a total of 2 300 internally displaced persons, including over 700 children under 17.⁶⁸ Amnesty International representatives visited Gori on 29-30 August, observing conditions in a tent camp established by UNHCR on a football pitch in the centre of town and visiting some of the schools and kindergartens used to provide shelter to those displaced. According to Amnesty International's observations the minimum needs of people sheltered in these locations were being met: representatives observed the distribution of ample quantities of a variety of foodstuffs, and displaced people interviewed indicated that their primary needs were being met. There was concern, however, over growing numbers of displaced persons and the need for longer-term accommodation in view of the imminent beginning of the school year and the onset of autumn and winter weather conditions.

A number of factors accounted for the steady increase in numbers of displaced people concentrated in Gori. During the last week of August there were new arrivals from the "buffer zone" fleeing their homes on account of increased attacks by South Ossetian militia groups. Second, those initially displaced to Tbilisi who sought to return to homes in the "buffer zones" and were unable to do so, remained in Gori. Third, host fatigue in Tbilisi led some displaced persons to return to Gori. Fourth, some of those in Tbilisi returned to Gori in order to find relatives and friends and find accommodation near them. According to UNHCR the

internally displaced population numbered 6,400 on 5 September: of these 1,600 were residing in a tented camp, some 2,400 were staying with host families, with a further 2,400 in collective centres.⁶⁹ According to official Georgian sources there were over 10,600 internally displaced persons in Gori as of 2 October (2,300 accommodated in tents; 2,300 accommodated in administrative buildings and kindergartens and 6,000 accommodated in some 1,200 private apartments).⁷⁰ By the end of October, however, the tented camp had been dismantled and the number of internally displaced persons in collective shelters in Gori had fallen to around 2700 persons, with about 500 still living with host families. The vast majority of the remaining persons displaced by the recent conflict were still living in Tbilisi, with some 20,000 in collective shelters and a further 10,000 with host families.⁷¹

Whilst the return of all displaced persons to their original places of residence must remain a priority, solutions must be found for those who remain accommodated in Gori, Tbilisi and elsewhere, and who continue to be unable to return. Amnesty International recognizes the right of every internally displaced person to return to their original place of residence in conditions of safety and dignity, under conditions that allow returnees to live without threats to their security and under economic, social and political conditions compatible with the requirements of human dignity. Any decision to return must be voluntary, free from coercion and based on an informed choice, where the alternatives of local integration or resettlement in another part of the country are available and acceptable. Furthermore, the fulfilment of economic and social rights cannot be put on hold until return becomes politically viable, in particular the Georgian government must ensure that the rights of the displaced to an adequate standard of living, as well as rights to health and education, are fulfilled and respected, while waiting for the moment when return in safety and dignity becomes possible. It is the responsibility of national authorities to ensure that these rights are progressively fulfilled for the duration of displacement without discrimination.

As highlighted repeatedly by the UN Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, three elements must be in place for successful return operations: “(i) ensuring safety for the life and limb of returnees, (ii) returning property to the displaced and reconstructing their houses, and (iii) creating an environment that sustains return and re-integration, that is, which allows life under adequate conditions, including income generation opportunities, non-discrimination and possibilities for political participation.”⁷²

Some 2,500 people were displaced from the Upper Kodori valley in Abkhazia, the only part of Abkhazia under Georgian control at the outset of hostilities in South Ossetia, as a result of military hostilities between Georgian and Abkhaz forces in the area. UNHCR was not able to gain access to the area until 7 September due to security concerns and advised at that time against return to the area in the light of worsening weather conditions and a lack of subsistence.

Prospects for return may be seen as sharply distinguished between areas falling within the 1990 boundaries of the South Ossetian autonomous region and areas beyond, falling in the so-called “buffer zones”. Return to the former, above all to those areas formerly associated with the Tbilisi-backed Dmitri Sanakoev administration, is extremely unlikely. Villages in those areas were subjected to a high level of destruction and pillaging.

With regard to the so-called “buffer zones” adjacent to South Ossetia, although Russia agreed to withdraw its forces to pre-conflict positions in the ceasefire agreement of 13 August, Russian forces and Russian-controlled checkpoints still remained in place by the beginning of September. On 8 September Russian President Medvedev agreed to withdraw Russian forces from Georgian territory outside of South Ossetia (and Abkhazia) within one month upon the deployment of monitors provided by the European Union. By mid-September UNHCR was reporting substantial rates of return to those settlements within the “buffer zone” nearer to Gori; for example, 80 per cent of the inhabitants of the village of Karaleti had returned by 12 September. Return rates in settlements in the northern part of the “buffer zone” were much lower, with, for example, less than 10 per cent having returned to Kitsnisi.⁷³ On 19 September UNHCR announced that its operation in Georgia was no longer defined as an emergency response, and had shifted to a “stable operational phase”.⁷⁴ On 14 October UNHCR reported that up to 20,000 people had returned to their homes in the buffer zones following the Russian withdrawal.⁷⁵ This brought the total number of Georgians who had returned to their homes to around 80,000. However, UN Representative on the Human Rights of Internally Displaced Persons, Walter Kälin, visited Georgia in early October and expressed his concern at the lack of effective protection of the population in the “buffer zone”.⁷⁶

Two principal security risks impede the fulfilment of the right of return. As noted above, many Georgians seeking to return to homes in the “buffer zone” were prevented from doing so on account of reported lawlessness and pillaging by South Ossetian militias. This appeared to remain a live threat throughout September in some areas. A further security risk for those seeking to return is the continued presence of unexploded ordnance devices in areas affected by the conflict. Cluster bomb submunitions in particular present a threat to civilians long after their deployment. Accurate information regarding the locations of their use is urgently required in order to facilitate the clearing of these munitions.

A number of humanitarian organizations reported problems with access to the “buffer zones” during August. On 26 August, and again on 29 August, UNHCR reported not being given access to the “buffer zone”; the ICRC also did not have access to those areas for one week.⁷⁷ The ICRC reported being able to visit villages around Gori from 27 August.⁷⁸ On 4 October, UN Representative Walter Kälin, deplored the lack of unimpeded humanitarian access to Tskhinvali and conflict-affected areas, urging all relevant actors to grant unimpeded access to all areas to humanitarian actors so that they may reach internally displaced persons and other civilians at risk without further delay, and to refrain from any steps that may further impede such access.⁷⁹



Displaced people at a former military institution in Tbilisi that has been turned into a centre for internally displaced persons, Tbilisi, 20 August 2008. © Amnesty International

6. INTERNATIONAL MONITORING MISSIONS

Prior to the conflict the only international observers in South Ossetia were eight OSCE military observers based in Tskhinvali. These left early in the conflict and had not been able to return by mid-October. The 134 UN military observers operating in Abkhazia as part of the United Nations Observer Mission in Georgia (UNOMIG) remained in the region throughout the conflict. Their six-month rolling mandate was renewed on a technical basis on 9 October for four months until 15 February 2009.⁸⁰ Discussions on revising the format and mandate of UNOMIG in the light of the conflict and the significantly increased Russian military presence are ongoing.

Following the French-brokered six-point ceasefire agreement, the international community invested considerable effort in negotiating the deployment of international observers to areas affected by the conflict. On 19 August the Permanent Council of the OSCE authorized the deployment of a further 20 military observers (in addition to the original eight) to the area adjacent to South Ossetia under Russian control, with the possibility of raising the total number to up to 100 in the weeks to come.⁸¹ On 18 September talks on extending the deployment of OSCE observers to South Ossetia itself and increasing their number finally broke down in the face of a Russian veto.

On 15 September, the member States of the European Union approved an observer mission to be deployed to Georgia by 1 October as previously agreed between the Russian, French and Georgian governments. The number of EU observers deployed as of the second week of October stood at over 200, with recruitment still ongoing at the end of October. The agreement did not provide for the access of EU monitors to South Ossetia itself and they are currently operating only in neighbouring areas, with a mandate to monitor the situation on the ground and promote confidence-building measures. Though the focus of the mission is to monitor the security situation and the implementation of the six principles of the ceasefire agreement, the EU observers were also specifically mandated to monitor the respect for human rights, the rule of law and the return of displaced people and refugees. The mission includes a small number of human rights experts. Neither the OSCE nor the EU missions were required to report publicly on their findings.

Given the ongoing human rights concerns in the areas affected by the conflict, Amnesty International considers it essential that international monitoring missions enjoy access to all areas, including South Ossetia and Abkhazia, and that human rights monitoring and regular periodic public reporting should constitute a prominent part of their mandate.

Other international organizations have deployed a number of *ad hoc* missions to Georgia in response to the conflict. The Secretary-General of the United Nations sent a humanitarian assessment mission to Georgia 17-20 August, led by the UN Office for the Coordination of Humanitarian Affairs and comprising experts from UNHCR, the United Nations Development Programme and the Office of the High Commissioner for Human Rights, which focused on current humanitarian and human rights concerns. The UN Secretary-General's representative on the human rights of internally displaced persons visited Georgia on October 1-4.

The Secretary General of the Council of Europe and the Chairman of the Committee of Ministers, the Swedish Minister of Foreign Affairs, travelled to Tbilisi from 11-13 August. The Council of Europe Commissioner for Human Rights travelled twice to the region, including both North and South Ossetia, in August and September, focusing on the exchange of detainees, and elaborating six principles for urgent human rights and humanitarian protection.⁸² The Parliamentary Assembly of the Council of Europe sent a fact-finding mission 22-25 September, resulting in Resolution 1633 calling, among other things, for “an independent international investigation” into the circumstances surrounding the outbreak of the conflict and the conduct of hostilities by all parties.⁸³ The Parliamentary Assembly's Monitoring Committee will report on the implementation of the Resolution at the Assembly's January 2009 part session, while the Committee on Migration, Refugees and Population will report on the humanitarian consequences of the war between Georgia and Russia.

7. ACCOUNTABILITY FOR VIOLATIONS OF INTERNATIONAL HUMANITARIAN HUMAN RIGHTS LAW

NATIONAL INVESTIGATIONS AND INQUIRIES

The primary responsibility for investigating alleged violations of international humanitarian and human rights law resides with the parties to the conflict. The information presented in this report, together with that from other sources indicates that serious violations of international humanitarian and human rights law were committed by all parties, both during the course of the conflict and in its aftermath. Amnesty International therefore calls on all parties to the conflict to ensure that independent, impartial, prompt and thorough investigations are conducted into all allegations of serious violations of international human rights and humanitarian law committed by any and all forces. Those responsible should be brought to justice in proceedings which meet international standards of fairness and victims must receive adequate reparations.

Both the Georgian and the Russian Prosecutor's Offices have opened investigations into alleged violations committed in the course of the conflict. Neither investigation has as yet resulted in any charges being brought.

On 9 August 2008, the Georgian Office of the Prosecutor announced that it was launching an investigation into the conduct of hostilities under Articles 411 and 413 of the Georgian Penal Code covering deliberate violations of international humanitarian law, including the illegal acquisition and destruction of civilian property. The Office of the Prosecutor has insisted that the investigation is not directed against any one side in the conflict, but covers all allegations of illegal acts regardless of the perpetrator. The Georgian government has stated its intention to co-operate with all national investigations into the conduct of hostilities.

On 14 August 2008, the Russian Investigative Committee of the General Prosecutor's Office announced that it was initiating "a genocide probe based on reports of actions committed by Georgian troops aimed at murdering Russian citizens - ethnic Ossetians - living in South Ossetia."⁸⁴ Later in August, Amnesty International was informed that the General Prosecutor's office had opened two cases – the first regarding violations against the civilian population and the second concerning crimes against the Russian military. There has been no indication to date that Russian Prosecutors are also investigating possible violations of international humanitarian and human rights law by Russian forces during the course of the conflict.

The Georgian Parliament established a commission to investigate all aspects of the war, including both its causes and the conduct of all parties to the hostilities on 26 September 2008. The Georgian government has committed itself to being guided by the Commission's findings. In Russia, the Public Chamber, a state institution composed of civil society representatives, created a Public Investigation Commission on War Crimes in South Ossetia and Civilian Victims Aid on 12 August 2008.

INTERNATIONAL INVESTIGATIONS

Given the allegations of serious violations of international law by all parties to the conflict, and the mutual recriminations that may affect the impartiality of national investigations, Amnesty International has also called on them to agree to, and the international community to deploy, a full fact-finding mission to carry out a thorough investigation of all allegations of serious violations of human rights and humanitarian law in the course of the conflict and to report publicly on its findings.

The Parliamentary Assembly of the Council of Europe has also called for an "independent international investigation" into the circumstances surrounding the outbreak of the conflict and the conduct of hostilities by all parties.⁸⁵

Amnesty International welcomes the fact that the Georgian authorities have stated that they will co-operate with international investigations into all aspects of the war's outbreak and conduct⁸⁶. At least one Russian official has stated that the Russian authorities would not oppose objective and independent investigations into all the circumstances of the conflict⁸⁷.

Amnesty International considers that an international fact finding team should be deployed without further delay. The fact-finding team should carry out its investigations and reporting on the basis of relevant international humanitarian law and human rights standards. In addition, the report of the mission's findings should include recommendations aimed at ending and preventing further violations of international law and at ensuring reparation, including justice for the victims. Such a mission should be adequately resourced. The expert fact-finding team must be given access to all relevant information and persons. All persons who provide information to the investigation should be protected from reprisals. Given the range of human rights abuses alleged to have occurred and complexity of the factual and legal issues involved, members of the fact-finding team should be sufficiently equipped and supported to enable them to carry out a thorough and authoritative inquiry. Among other things the team should be supported by adequate numbers of: experts in both international humanitarian and human rights law; military and criminal justice investigators; weapons and ballistic experts; forensic experts; and experts in the protection of victims and witnesses, including women and children.

Although the Secretary-General of the United Nations has raised the possibility of an in depth UN fact-finding mission to the region⁸⁸, as of mid October 2008, Amnesty International was not aware of any concrete proposals for an independent international investigation that had been made public by the UN or any other international organization or mechanism.

PROCEEDINGS BEFORE INTERNATIONAL COURTS

A number of complaints alleging violations of international human rights law in the context of the conflict have been filed in international courts.

On 12 August 2008 Georgia lodged a complaint against Russia with the International Court of Justice (ICJ) alleging violations of the International Convention on the Elimination of all forms of Racial Discrimination by supporting the ethnic cleansing of Georgians during the present conflict and during the 1990s. Two days later, Georgia submitted a request for the indication of provisional measures. On 15 October the ICJ ordered provisional measures to be taken by both the Russian Federation and Georgia to refrain from engaging in, or sponsoring, any act of racial discrimination and to protect the property and ensure the security and freedom of movement all persons regardless of the national or ethnic origin. The case remains pending.

On 11 August Georgia applied to the European Court of Human Rights (ECtHR) with a request for interim measures to the effect that the Russian government should refrain from taking any measures which may threaten the life or state of health of the civilian population. On 12 August 2008, considering that the situation gave rise to a real and continuing risk of serious violations of the ECHR and with a view to preventing such violations the President of the Court called upon both Georgia and Russia to comply with their obligations under the ECtHR, particularly in respect to their obligations to respect the right to life and the prohibition against torture and other inhuman or degrading treatment or punishment. The President of the Court also requested both parties to provide the Court with information relating to their Convention obligations. The interim measures were prolonged twice by the Court, on 26 August and 16 September respectively. The Georgian authorities have indicated that they are preparing an inter-state application to the ECtHR against Russia alleging that Russia has violated its obligations under the ECHR. On 6 October the President of the ECtHR announced that the court had received around 2,000 individual complaints from South Ossetians alleging human rights violations by the Georgia authorities in the course of the conflict.⁸⁹

All of these proceedings concern state liability and not the individual criminal responsibility of leaders, commanders or combatants for specific violations of international humanitarian or human rights law. International humanitarian law and international human rights law also require that those responsible for such abuses be brought to justice in fair proceedings.

As noted above, the primary responsibility for bringing individual perpetrators of war crimes to justice lies with the authorities of the warring parties. Any war crimes and crimes against humanity committed during the conflict fall within the jurisdiction of the International Criminal Court. Under Articles 15 and 17 of the Rome Statute of the International Criminal Court (Rome Statute), the Prosecutor can seek to open an investigation of these crimes committed on the territory of Georgia, whether committed by Georgians or by Russians, even though Russia has not yet ratified the Rome Statute, if national police and prosecutors are not able and willing to investigate and prosecute these crimes genuinely.⁹⁰ Based on the information that the Prosecutor has received so far, including thousands of allegations of crimes forwarded by the Russian Ministry of Foreign Affairs, the Prosecutor has begun a preliminary analysis.⁹¹ This is the first step in making a determination whether to seek authorization from the Pre-Trial Chamber to open a formal investigation. He stated that the

Office of the Prosecutor “will proceed to seek further information from all actors concerned”. Amnesty International believes that whenever there is evidence of crimes of the magnitude of those committed in Georgia then, if states are unable or unwilling genuinely to investigate and prosecute them, the Prosecutor should use his powers to seek authorization to open an investigation. In addition, Amnesty International notes that all states which are party to the Geneva Conventions of 1949 have an obligation to exercise universal jurisdiction over any person suspected of committing a grave breach, regardless where it was committed.

8. CONCLUSIONS AND RECOMMENDATIONS

The five-day war between Georgian, Russian and South Ossetian forces caused large-scale destruction of Ossetian- and Georgian-majority settlements in the conflict zone. Civilians paid a heavy price for military operations in terms of deaths, injuries, displacement and the destruction of infrastructure and property.

Based on its research and analysis Amnesty International is concerned that all parties to the conflict may have committed serious violations of international human rights and humanitarian law. Amnesty International is concerned that Georgian forces do not appear to have adopted necessary precautionary measures to protect civilians in their 7 August assault on Tskhinvali, using weapons known for their limited accuracy to attack areas with concentrations of civilians and civilian objects. Dozens of civilians died and many more were injured in these attacks, which also caused extensive damage to civilian homes and property. The Georgian government has admitted using cluster munitions on military targets, but in areas and at a time with a high risk of affecting civilians. Cluster munitions also create an enduring hazard for civilians requiring operations to clear the relevant areas from unexploded ordnance.

Russian attacks on Georgian settlements may have failed to distinguish between military objectives and civilians, causing civilian deaths and the destruction of civilian objects. Certain attacks by the Russian military, such as the bombing of the town centre in Gori and other attacks recorded in this report, do not appear to have targeted particular military objectives, raising concerns that civilians and civilian objects may have been directly attacked. The strong evidence pointing to the use by Russian forces of cluster munitions in civilian populated areas is also a serious concern.

Armed groups of disparate and unclear composition but loyal to the *de facto* administration of South Ossetia attacked ethnically Georgian-majority settlements in South Ossetia that had been under *de facto* pro-Georgian administrative control until the onset of the conflict and were under Russian military control at the time. Militia groups carried out targeted pillaging and arson of Georgian homes, particularly in those villages associated with the Tbilisi-backed alternative *de facto* administration headed by Dmitri Sanakoev. In some cases reported to Amnesty International by eye-witnesses Georgian civilians were also beaten and killed by South Ossetian militia groups. These attacks violated the prohibition under international humanitarian law on wilful killing, wanton destruction of property, and pillage. The Russian armed forces took control of territory administered by the pro-Georgian *de facto* authority in South Ossetia, as well as undisputed Georgian territory in the so-called "buffer zones". As the occupying power, Russian armed forces failed to ensure and protect the human rights of the ethnic Georgian populations living there. Russian military forces did not uphold their

obligation to maintain law and order and prevent looting by South Ossetian militia groups in areas under their control, and Russia must assume responsibility for human rights violations committed in these circumstances.

The conflict further resulted in the displacement of over 190,000 people. On the whole the Russian and Georgian authorities appear to have responded effectively to the immediate needs for shelter, food and water of the displaced. However, although many have already returned to their former places of residence tens of thousands have been unable to do so, and in the light of the deliberate destruction of their homes and property in some areas many Georgians face no prospect of return for the foreseeable future. Providing for the economic, social and cultural rights of those displaced by this conflict over the long-term will remain an enduring concern in Georgia.

The fact that information documented by Amnesty International and others indicates that serious violations of international humanitarian law have been committed by Georgian and Russian forces, and by groups loyal to South Ossetia, demands investigation and remedial action. Georgia and Russia are conducting investigations into alleged violations of international humanitarian law. Amnesty International is calling for these investigations to cover all illegal acts and omissions and to be conducted promptly, independently, impartially and thoroughly, in accordance with international standards for such investigations. The results of these investigations must be made public, and perpetrators of serious violations of international humanitarian law be brought to justice. Amnesty International further calls upon the South Ossetian authorities to ensure the independent, impartial and transparent investigation of alleged violations of international humanitarian law perpetrated by their armed forces.

RECOMMENDATIONS

Amnesty International calls upon the Georgian and Russian governments:

- To ensure the security of all those residing in areas affected by the conflict and those displaced and wishing to return to territories under their effective control, without regard for their ethnic affiliation;
- To ensure the prompt, independent, thorough and impartial investigation, in accordance with international standards, into allegations that their respective forces committed serious violations of international human rights and humanitarian law during the conflict, including war crimes. This should include crimes of omission, for instance, the failure to prevent killings, beatings looting, and arson in areas under their control;
- Wherever there is sufficient admissible evidence, to ensure prosecution of anyone suspected of violations of national and/or international law in proceedings which comply fully with international fair trial standards;
- To provide without delay detailed maps of all areas affected by the conflict into which cluster bombs were fired, so as to facilitate the clearance of cluster weapon munitions and make these areas safe for civilians; both governments should also ensure that the public is made aware of the dangers of unexploded ordnance through public information campaigns. Where appropriate consideration should be given to closing off areas where such ordnance may be located until it has been cleared;

- To announce a moratorium on the use of all cluster weapons; and ratify the Cluster Weapons Convention;
- To agree to the deployment of and co-operate fully with any international investigation of violations of international human rights and humanitarian law during the conflict and its aftermath;
- To agree to the establishment of, and fully co-operate with, a mechanism which determines the form of, and ensures, full reparations for unlawful acts and omissions, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition;
- To provide full reparations to victims of human rights violations for the consequences of unlawful acts and omissions of their respective forces;
- To co-operate fully with any international monitors of human rights deployed in the region.

In addition, Amnesty International calls upon the Georgian government:

- Ensure that internally displaced persons are fully informed as to their rights to return or to resettlement or integration with local society if they so wish;
- To take steps to ensure the right of those internally displaced by the conflict to genuinely participate in decisions affecting the exercise of their human rights;
- To ensure that the internally displaced are also availed of their rights to integration or permanent resettlement elsewhere in the country, as according to each individual's voluntary choice.

In addition, Amnesty International calls upon the Russian government:

- To co-operate fully with all international monitoring force(s)/teams deployed in the area so as to facilitate the prompt return of all displaced persons as soon as possible in conditions of dignity;
- To facilitate the access of international human rights monitors to all conflicted affected areas;
- To ensure the rights of refugees displaced from conflict zone to the Russian Federation are fully respected and provided for;
- As long as Russian armed forces continue to exercise effective control in South Ossetia, to ensure that these forces comply with international human rights law and take appropriate measures to protect human rights.

Amnesty International calls upon the South Ossetian administration:

- To take all necessary lawful action- including through public statements and law enforcement measures conducted in a manner that respects and protects human rights, to ensure that there are no further attacks, including the unlawful seizure and destruction of property and looting, against ethnic Georgians on the territory of the former South Ossetian autonomous region under *de facto* pro-Georgian administrative control prior to the conflict;

- To investigate violations and abuses of international human rights and humanitarian law committed by all South Ossetian forces, militia and individuals;
- To agree to the deployment of and co-operate fully with international investigations of alleged violations of international human rights and humanitarian law which occurred during the conflict and its aftermath;
- To agree to the deployment of international human rights monitors to South Ossetia, and to co-operate fully with them;
- To agree to the establishment of, and fully co-operate with, a mechanism which determines the form of, and ensures, full reparations for unlawful acts and omissions, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition;
- Provide full reparations for the consequences of the unlawful acts and omissions carried out by South Ossetian forces;
- To ensure the safe, durable return in dignity of all those displaced from the territory of the former South Ossetian autonomous region now under its control in conditions of dignity and security, and publicly affirming the right of return of those displaced;
- To ensure the adequate and equal access to rehabilitation assistance and aid, both material and financial, to all residents without discrimination.

Amnesty International calls upon the international community:

- To ensure that an international team with necessary expertise, resources and authority is established and mandated to investigate allegations of violations of international human rights and humanitarian and law committed by all parties during the conflict and its immediate aftermath; the team should make recommendations for addressing impunity for violations and preventing violations in the future;
- To ensure that a mechanism is established to determine the form of, and ensure reparations for violations, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition;
- To end the use, stockpiling and transfer of all cluster weapons, by private companies and individuals as well as states, and support the Cluster Weapons Convention;
- To ensure that states exercise jurisdiction, including, where necessary, universal jurisdiction, over suspects of crimes under international law, including war crimes committed in the context of this conflict;
- To ensure full deployment of human rights monitors throughout South Ossetia and Georgia.

¹ A bi-lateral agreement between Russia and Georgia was signed in Sochi in June 1992 setting the terms of the ceasefire in South Ossetia. The Sochi agreement set up a Joint Control Commission (JCC) to monitor its observance. The JCC was a quadrilateral body with Georgian, Russian, North and South Ossetian representatives, plus participation from the Organization for Security and Co-operation in Europe (OSCE). It provided for the creation of Joint Peacekeeping Forces composed of Russian, South Ossetian and Georgian battalions of no more than 500 men each. Georgia had long expressed its dissatisfaction with the format of the JCC, and since 2004 the structure's decisions have not been implemented by either side. Georgia sought to change the format of the negotiating structure to introduce direct bilateral talks between Georgia and South Ossetia, a format opposed by the South Ossetians.

² For background see the following reports published by the International Crisis Group: *Georgia's South Ossetia conflict: Make haste slowly*, Europe Report No. 183, 7 June 2007; *Georgia: Avoiding War in South Ossetia*, Europe Report No. 159, 26 November 2004.

³ Other states, such as Venezuela, have indicated their approval of Russia's recognition of South Ossetia and Abkhazia, but have, so far, stopped short of formally recognizing them as independent.

⁴ Georgia, *Russian Invasion of Georgia. Facts and Figures October 2 2008*, p.9; available at <http://georgiaupdate.gov.ge>

⁵ In 2006 Dmitri Sanakoev won an alternative presidential election held in those parts of South Ossetia under Georgian control, and, with Tbilisi's endorsement, administered the Georgian-controlled districts of South Ossetia.

⁶ Dmitri Solovyov, "Russia urges Georgia to halt clashes in regions", Reuters, 4 July 2008; *RFE/RL Newswire*, "Four Georgian soldiers being held in South Ossetia", 8 July 2008; *RFE/RL Newswire*, "Georgia says Russian jets violated airspace", 9 July 2008.

⁷ The JCC is composed of representatives from Georgia, Russia, South Ossetia and North Ossetia. Since 2004 the Georgian side has sought to revise this format, which it sees as biased against Georgia.

⁸ "Countdown in the Caucasus: Seven days that brought Russia and Georgia to war", *Financial Times*, 26 August 2008.

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¹⁰ "Six dead in Georgia standoff", *Financial Times*, 4 August 2008.

¹¹ "Evacuees from South Ossetia arrive at Russian border", *ITAR-TASS*, 3 August 2008.

¹² Dmitry Avaliani, Sopho Bukia, Alan Tskhurbayev and Thomas de Waal, "How the Georgian war began: IWPR-trained reporters investigate the tragic sequence of events that triggered a war in South Ossetia", Institute for War and Peace Reporting, *Caucasus Reporting Service*, No. 456, 22 August 2008.

¹³ *Financial Times*, "Countdown in the Caucasus".

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- ¹⁶ Caucasian Knot, "Authorities of South Ossetia report about 1492 casualties of Georgia's attack", <http://eng.kavkaz-uzel.ru/newstext/engnews/id/1227624.html>
- ¹⁷ Peter Wilson, "Death toll in South Ossetia a tenth of initial Russian claims", *The Australian*, 22 August 2008, <http://www.theaustralian.news.com.au/story/0,25197,24219963-2703,00.html>
- ¹⁸ Interview with Alexander Bastrykin, Head of the Investigative Committee of the Office of General Prosecutor of the Russian Federation; *Sueddeutsche Zeitung*, 12 October 2008, available at <http://www.sueddeutsche.de/politik/746/313652/text/>
- ¹⁹ "Georgian government publishes latest data on casualties during Russian invasion", *Kavkas-Press*, as reported by the BBC, 12 September 2008.
- ²⁰ [Information](#) supplied to Amnesty International by the Georgian Ministry of Foreign Affairs, 7 October 2008.
- ²¹ "Georgian government publishes latest data on casualties during Russian invasion", *Kavkas-Press*, as reported by the BBC, 12 September 2008. The total number of wounded is consistent with information supplied to Amnesty International by the Georgian Ministry of Foreign Affairs as of 7 October 2008.
- ²² See Jean-Marie Henckaerts and Louise Doswald Beck, *Customary International Humanitarian Law*, ICRC, 2005.
- ²³ Article 8(2)(b)(i).
- ²⁴ The authoritative ICRC Commentary on the Additional Protocols to the Geneva Conventions interprets the expression "definite military advantage anticipated" by stating that "it is not legitimate to launch an attack which only offers potential or indeterminate advantages."
- ²⁵ Rome Statute of the International Criminal Court, Article 8(2)(b)(iv).
- ²⁶ ICRC, *Customary International Humanitarian Law*, Vol. I: rules; Rule 156, p.589. Article 8(2)(b)(i).
- ²⁷ Rome Statute of the International Criminal Court, Article 8(2)(a)(iv).
- ²⁸ UN DOC E/CN.4/1998/53/Add.2
- ²⁹ UN General Assembly GA Resolution A/60/L.1 para 132.
- ³⁰ UN DOC E/CN.4/1998/53/Add.2 Guiding Principles on International Displacement, Principles 28 and 29.
- ³¹ Human Rights Committee, General Comment No. 31 [80] Nature of the General Legal

Obligation Imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para11.

³² Human Rights Committee, General Comment No. 31 [80] Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para10.

³³ Committee on Economic, Social and Cultural Rights, General Comment 7, Forced evictions, and the right to adequate housing (Sixteenth session, 1997), UN Doc. E/1998/22, annex IV at 113 (1997), para4.

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³⁷ Volume I Rules (Cambridge University Press 2005).

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⁴³ Human Rights Watch, "Georgia: Join Treaty Banning Cluster Munitions", 1 September 2008, <http://www.hrw.org/english/docs/2008/09/01/georgi19722.htm>

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⁵¹ American Association for the Advancement of Science and Amnesty International, *High-Resolution Satellite Imagery and the Conflict in South Ossetia*, p.19.

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⁸⁹ Luke Baker, "South Ossetia floods court with Georgia writs", *Reuters India*, 6 October 2008, <http://in.reuters.com/article/worldNews/idINIndia-35825220081006>.

⁹⁰ Russia has, however, signed the Rome Statute and, therefore, is bound not to take any action which would defeat its object and purpose.

⁹¹ The Prosecutor has stated:

"Georgia is a State Party to the Rome Statute" he said. "My Office considers carefully all information relating to alleged crimes within its jurisdiction – war crimes, crimes against humanity and genocide - committed on the territory of States Parties or by nationals of States Parties, regardless of the individuals or groups alleged to have committed the crimes. The Office is *inter alia* analyzing information alleging attacks on the civilians."

"ICC Prosecutor confirms situation in Georgia under analysis", The Hague, 20 August 2008, ICC-OTP-20080820-PR346 ENG.



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CIVILIANS IN THE LINE OF FIRE

THE GEORGIA-RUSSIA CONFLICT

More civilians were killed than soldiers in the five-day war in August 2008 for control of South Ossetia, Georgia. Schools, hospitals and homes were bombed and shelled, and some civilians reported being bombed while fleeing their villages. The conflict displaced nearly 200,000 people and leaves a legacy of long-term displacement for thousands unable to return to their homes.

In their military operations both Georgian and Russian armed forces failed to observe core principles of international humanitarian law, resulting in 350 civilian deaths and thousands of injuries. In the aftermath of the conflict, in territory under Russian military control, militia groups loyal to South Ossetia carried out large-scale pillaging and arson of Georgian-majority settlements.

This report presents the findings of several fact-finding missions conducted by Amnesty International to the conflict zone. Serious violations of both international human rights law and international humanitarian law were reported to Amnesty International's researchers. The organization is calling for thorough investigations of the violations of the laws of war committed by all parties during and after the conflict. Perpetrators of such violations, which include war crimes, must be brought to justice and reparations made to the victims.

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