



Handbook for the European Union Monitoring Mission in Georgia



**Handbook
for the European Union
Monitoring Mission
in Georgia**

Directorate General of Human Rights
and Legal Affairs

Council of Europe
F-67075 Strasbourg Cedex

© Conseil de l'Europe, 2009

TABLE OF CONTENTS

| | |
|--|----|
| List of abbreviations | 5 |
| Introduction | 7 |
| A. EUMM Georgia and ESDP | 11 |
| A.1 The EUMM Georgia – Legal Basis and Monitoring Mandate | 13 |
| B. Applicable International Law | 15 |
| B.1 Human Rights | 15 |
| Absolute, Qualified and Derogable Rights | 20 |
| B.2 International humanitarian law | 26 |
| C. Understanding and applying international law | 30 |
| C.1 Application of international law in Georgia | 30 |
| The relationship between national law and international law | 31 |
| Constitution of Georgia | 33 |
| Criminal law in Georgia | 33 |

| | |
|--|-----|
| C.2 Selected human rights | 35 |
| Right to life | 35 |
| Prohibition on Torture | 37 |
| Liberty and security of person | 40 |
| C.3 Human rights and Particular Groups | 44 |
| Refugees and Internally Displaced Persons (IDPs) | 44 |
| Trafficking in persons | 49 |
| Minority rights | 51 |
| Children in armed conflict | 55 |
| C.4 Non-discrimination in the enjoyment of rights | 56 |
| Gender mainstreaming | 57 |
| D. Human Rights Monitoring | 59 |
| Who monitors | 62 |
| What is monitored | 63 |
| The Cycle of Monitoring | 65 |
| Core principles of monitoring | 70 |
| Interviewing in the context of monitoring | 77 |
| Checklist for human rights reporting | 88 |
| E. Glossary | 91 |
| F. Selected Web Resources on International Humanitarian Law/Human Rights and Monitoring | 105 |

LIST OF ABBREVIATIONS

| | |
|--------|---|
| CERD | Convention on Elimination of All forms of Racial Discrimination |
| CoE | Council of Europe |
| CPT | European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment |
| ECHR | European Convention on Human Rights |
| ECtHR | European Court of Human Rights |
| ESDP | European Security and Defence Policy |
| EUMM | European Union Monitoring Mission |
| FCNM | Framework Convention for the Protection of National Minorities |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ICRC | International Committee of the Red Cross |
| IDPs | Internally Displaced Persons |
| ILO | International Labour Law |
| MRA | Ministry of Refugees and Accommodation, Georgia |
| OSCE | Organisation for Security and Co-operation in Europe |
| UDHR | Universal Declaration of Human Rights |
| UN | United Nations |

INTRODUCTION

This handbook is commissioned by the *CoE* and developed by the International Human Rights Network (IHRN) for use by EUMM Georgia monitors. The aim is to provide Mission monitors with an overview of core international law applicable in Georgia, in particular CoE standards, relevant to the EUMM, and an introduction to key elements of monitoring practice. The monitoring illustrations are drawn from lessons learned by a range of monitoring organizations and missions in recent decades. While seeking to be illustrative rather than exhaustive in the issues it covers the handbook is intended to be used in the context of Mission operating procedures and instructions to monitors.

The CoE's aim in its 47 member states, including Georgia is:

- to protect human rights, pluralist democracy and the rule of law;
- to promote awareness and encourage the development of Europe's cultural identity and diversity;
- to find common solutions to the challenges facing European society: such as discrimination against minorities, xenophobia, intolerance, bioethics and cloning, terrorism, trafficking in human beings, organised crime and corruption, cybercrime, violence against children;

- to consolidate democratic stability in Europe by backing political, legislative and constitutional reform.

The current CoE's political mandate was defined by the third Summit of Heads of States and Government, held in Warsaw in May 2005.

The monitoring illustrations are drawn from lessons learned by a range of monitoring organisations and missions in recent decades. While seeking to be illustrative rather than exhaustive in the issues it covers, this handbook is intended to be used in the context of Mission operating procedures and instructions to monitors.

The term 'monitoring' is used in this handbook to encompass a sequence of connected functions carried out by a range of Missions and organisations, and involving personnel based in Head Quarters, field offices and mobile teams. The various inputs into the monitoring cycle range from prioritising and planning, direction of information gathering, gathering and cross-checking of information, reporting, analysis of information and follow-up action.

The handbook draws on a range of IHRN materials developed for use in its annual Human Rights Fieldwork Training Programme, as well as input from EUMM Georgia HQ staff and from monitors during CoE training delivered during November-December 2008. The handbook and parts thereof may be used and circulated freely with ac-

knowledge of the source. The contents of the handbook do not necessarily represent the views of the EUMM Georgia or the CoE.

Patrick Twomey
IHRN

A. EUMM GEORGIA AND ESDP

The EUMM in Georgia is an autonomous mission led by the EU under the ESDP. EUMM Georgia was deployed on 1 October 2008, in accordance with the arrangements set out in the Agreement of 8 September 2008. The EUMM objectives are to contribute to stability throughout Georgia and the surrounding region. In the short term, it is to contribute to the stabilisation of the situation, in accordance with the six-point Sarkozy-Medvedev Agreement of 12 August 2008 and the subsequent implementing measures.

Sarkozy-Medvedev Agreement

- No resort to force;
- A definitive halt to hostilities;
- Provision of free access for humanitarian assistance;
- Georgian military forces must withdraw to the places they are usually stationed;
- Russian armed forces will be pulled back on the line, preceding the start of hostilities. While awaiting an international mechanism, Russian peacekeeping forces will implement additional security measures;
- Opening of international discussions on security and stability modalities in Abkhazia and South Ossetia.

The main EUMM tasks are identified as including:

- monitoring and analysing the situation pertaining to the stabilisation process; centred on full compliance with the six-point Agreement, including reports of violations of human rights and international humanitarian law;
- monitoring and analysing the situation as regards normalisation building, the return of IDPs and refugees;
- contributing to the reduction of tensions through liaison, facilitation of contacts between parties and other confidence-building measures; and contributing to informing European policy and to future EU engagement.

As stated in the Mission mandate, EUMM's monitoring of human rights, flows from applicable international law and various EU cross-cutting legal and policy commitment on human rights. This includes ensuring compliance with human rights and integrating awareness of human rights across the spectrum of EUMM's activities as a fundamental element of ensuring security and conflict prevention.

“ESDP operations are aimed at conflict management, preventing crises from unfolding and stabilizing post-conflict situations. Human rights violations are part and parcel of crises and conflicts. The promotion of human rights, with special emphasis on gender and rights of the child and the rule of law are key to sustainable conflict resolution and to lasting peace and security” – Council of the European Union 2008.

'Today's human rights violations are the causes of tomorrow's conflicts'

UN High Commissioner for Human Rights, Mary Robinson, 1997

"The protection of human rights should be systematically addressed in all phases of ESDP operations, both during the planning and implementation phase, including by measures ensuring that the necessary

human rights expertise is available to operations at headquarter level and in theatre; training of staff; and by including human rights reporting in the operational duties of ESDP missions" – Mainstreaming of Human Rights into ESDP (doc. 11936/4/06 REV4)

A.1 The EUMM Georgia – Legal Basis and Monitoring Mandate

On 15 September 2008, the *Council* of the European Union adopted *Joint Action* 008/736/CFSP on the *EUMM Georgia*. The Joint Action sets out the Mission statement as:

- 1) EUMM Georgia shall provide civilian monitoring of Parties' actions, including full compliance with the six-point Agreement and subsequent implementing measures throughout Georgia, working in close coordination with partners, particularly the UN and the OSCE, and consistent with other EU activity, in order to contribute to stabilisation, normalisation and confidence building whilst also contributing to informing European policy in support of a durable political solution for Georgia.

- 2) The particular objectives of the Mission shall be:
- (a) to contribute to long-term stability throughout Georgia and the surrounding region;
 - (b) in the short term, the stabilisation of the situation with a reduced risk of a resumption of hostilities, in full compliance with the six-point Agreement and the subsequent implementing measures.

The Joint Action and other instruments relating to the legal basis of EUMM Georgia can be found at: www.eumm.eu/en/about_eumm/legal_basis

B. APPLICABLE INTERNATIONAL LAW

B.1 Human Rights

International human rights law is founded on the concept that every human being has inherent rights, regardless of where they live or factors such as their ethnicity and nationality. Legally, human rights form part of international law, which is made up of a range of treaties, decisions by international tribunals and customary practice established over the years. States human rights law obligations mean that they are committing themselves to comply with the various standards involved in their domestic constitution, laws, policies and practices.

The importance of human rights lies in their core qualities of being *inalienable*, *universal* and *interdependent*.

The concept that **human rights are inalienable** means that they cannot be given away. Importantly, a human right belongs to a person even if the law of their country does not recognise that right or even if domestic law makes the exercise of that right illegal.

The universal nature of human rights means that they apply globally to all. This means, for example, that human rights do not just refer to the poor and unprivileged, women or minorities. Some groups may be more likely to have their human rights violated but the starting point is that human rights belong just as much to the wealthy, to men and to the majority.

Human rights are interdependent. Rights do not exist in isolation from each other and ensuring that one right is protected often depends on the protection of other rights. The right to life, for example, is dependent upon other rights being protected (security, health, food, shelter, clean water). The enjoyment of the right to health is dependent on the right to housing, the right to education (e.g. regarding diet/lifestyle, hygiene, HIV/Aids) and of course torture or other inhuman or degrading treatment also represents a denial of the right to health. The right to equality underscores all other rights as a cross-cutting entitlement of each individual.

Human rights are often classified in two groups, civil and political on the one hand, and economic, social and cultural on the other hand. Civil and political rights (such as the right to life and the right to personal liberty) are often matters that most readily spring to mind when human rights are raised. However, economic, social and cultural rights are likewise protected by international law and are of equal legal standing. The proper use of the term *human rights* therefore refers to the *full spectrum* of internationally recognised human rights standards – civil, cultural, economic, political, and social.

Civil and political rights include:

- the right to life;
- the right to freedom from torture or cruel, inhuman or degrading treatment or punishment;

- freedom from slavery;
- freedom from arbitrary arrest and detention;
- the right to humane treatment when deprived of liberty;
- freedom of movement and liberty to choose one's place of residence when lawfully within the territory of a state;
- freedom to leave any country, and to enter one's own country;
- equality before the courts and tribunals;
- equal protection of the law;
- the right to be recognised as a person before the law;
- freedom from arbitrary and unlawful interference into one's privacy, family, home or correspondence, or unlawful attacks on one's honour and reputation;
- freedom of thought, conscience and religion;
- the right to hold opinions without interference;
- freedom of expression, including the freedom to seek, receive and impart information;
- the right of peaceful assembly, freedom of association, including the right to form and join trade unions;
- the right to marry and found a family;

- the right to take part in the conduct of public affairs, directly or through freely chosen representatives;
- the right of minorities to enjoy their own culture, profess and practice their own religion, or to use their own language.

Economic, social and cultural rights include:

- the right to work;
- the right to just and favourable conditions of work;
- the right to form and join trade unions;
- the right to social security, including social insurance;
- the right to the protection of the family;
- the right to an adequate standard of living;
- the right to enjoy the highest attainable standard of physical and mental health;
- the right to education;
- the right to take part in cultural life.

The detailed content and specific application of these rights (to specific groups, such as children, prisoners etc. and in specific contexts, e.g. time of war) has been elaborated over decades, by international tribunals and courts. This greatly facilitates monitoring by providing benchmarks and indicators for measuring whether an election is “free and fair”, whether treatment of detainees is “humane”, whether the

“highest attainable standard of physical and mental health” is being guaranteed, etc.¹

Who has human rights obligations?

A state's obligations with regard to human rights are threefold: to respect, to protect and to fulfil.

Having voluntarily ratified international treaties, it is the State, as opposed to individuals, which has the primary obligation to meet the standards in those treaties, even if they delegate day-to-day authority to agents such as the local authorities or private organisations.

Respecting human rights: The duty of the State to respect human rights means it must not interfere directly or indirectly with the exercise of human rights.

Protecting human rights: The duty of a state to protect human rights requires that it prevent third parties (private individuals, associations, companies etc.) from interfering with the human rights of others. It is not always possible for a state to foresee and prevent all violations of human rights, the test is whether a state has taken reasonable care to prevent violations taking place (training, education, having accountability mechanisms in place etc.).

-
1. The UN defines human rights indicators as “specific information on the state of an event, activity or an outcome that can be related to human rights norms and standards; that address and reflect human rights concerns and principles; and that are used to assess and monitor promotion and protection of human rights.”

Fulfilling human rights: This is the most positive of a state's obligations. It means that each state must adopt appropriate means to facilitate the full realisation of human rights, including developing policies, plans, but also budgeting for proper policing, education, health care etc.

Example of a State's Positive Human Rights Obligations: Domestic violence

Georgia has informed the UN Committee on the Elimination of Discrimination against Women that "family violence is one of the most widespread problems in Georgia".² State agents have frequently shown reluctance to act against domestic violence, seeing it as a matter to be resolved within the family.

To *fulfill* its human rights obligations, Georgia is required not only to refrain from violence against women, but must also to *protect* women from violence at the hands of others. Meeting that requirement includes the step taken in 2006, when the Georgian Parliament adopted the Law on Combating Domestic Violence, Prevention and Support of its Victims.

Absolute, Qualified and Derogable Rights

Another classification of human rights is their status as absolute, qualified (*i.e.* subject to restriction) or derogable rights.

2. Responses to the list of issues and questions with regard to the consideration of the combined second and third periodic reports. Georgia, 13 July 2006, U.N. Doc. CEDAW/C/GEO/Q/3/Add.1, p. 7.

Absolute rights cannot be interfered with, curtailed or suspended in any circumstances. Such rights include the prohibition on torture, and the prohibition on slavery. This means there is never a justification for conduct or treatment that violates this prohibition.

Balancing of Rights

In Hatton v UK (2003), the applications complained that their ECHR Article 8 rights (respect for home and family life) were denied by night flights at Heathrow causing lack of sleep. The Court of Human Rights however, found that the UK government had struck a "fair balance between the right of the individuals affected by those regulations to respect for their private life and home and the conflicting interests of others and of the community as a whole."

Non-absolute or **qualified** rights are rights that may in certain circumstances be subject to limitation by the State. *Qualified rights* are rights which international law expressly recognises may sometimes need to be restricted for the greater good of society. For example, under the ECHR the right to manifest one's religion may be restricted in the interests of public safety, for the protection of public order,

health or morals, or for the protection of the rights and freedoms of others.

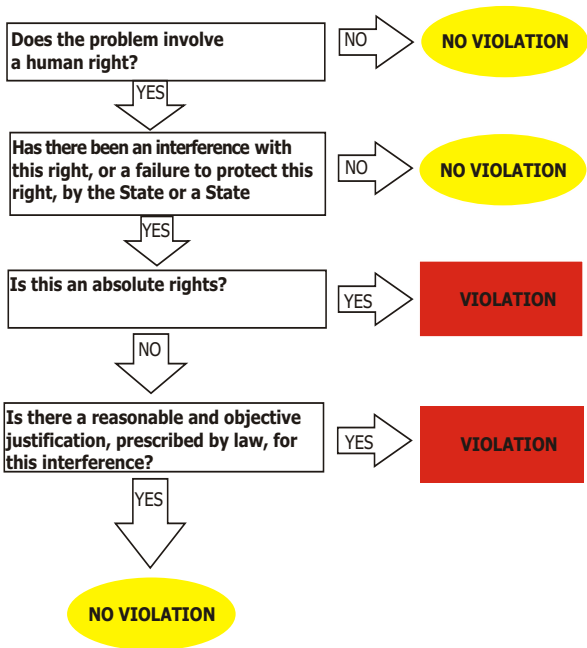
Any restriction with an individual's human rights is only permissible if it is not excessive. This requires that the limitation be proportionate, with the State properly striking a fair balance between the rights of the individual and the wider public interest and rights of others and interfering with the right no more than is necessary.

In addition, some non-absolute rights are also **derogable**. This means that these rights can be suspended in time of war or certain public emergencies. This might include for example, allowing longer periods of detention for questioning. These limits cannot be arbitrary but must be **prescribed by law**. In addition these derogations are not automatic or unlimited. The ‘emergency’ must be **notified** to the international treaty body that monitors the treaty concerned e.g. the CoE.

Establishing whether a human right has been violated

Deciding if a state has violated any particular right requires knowledge of the applicable international legal standard as well as knowledge of the specific situation in the country concerned.

The sequence of questions below illustrates the general process of determining whether there has been a violation of a human right. This process of investigation is illustrated in the example below, concerning the right to freedom of expression.



Example: Freedom of expression

1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.* **Article 10, ECHR**

Freedom of expression is guaranteed by Article 10 of the ECHR, and is also recognised in the Georgian Constitution which provides that: “citizens...have the right to express, distribute, and defend their opinions via any media, and to receive information on questions of social and state life. Censorship of the press and other media is not permitted.”

The right applies to individuals but commonly arises in the

context of the functioning of the press and electronic media, In monitoring an incident or practice to determine whether there has been a human rights violation, the starting point is to determine whether or not the issues in-

volve a human right. For example, if someone complains that the State is refusing to provide them with the funds needed to establish a radio station there is likely to be no human rights at stake.

However, if the facts mean that there is a human rights issue involved (e.g. restriction on the functioning of radio station) then the monitoring is likely to focus on whether there has been an interference with this right.

As is clear from the text freedom of expression is not an absolute right, legitimate reasons for restriction are laid out in the second part of Article 10. To be valid resort to any of these restrictions must be **prescribed by law** and must meet the additional test of being **necessary in a democratic society**. For an interference to be necessary in a democratic society it must: fulfil a pressing social need, and must be proportionate to the legitimate aim relied upon. In other words a State cannot simply give “national security” as a blanket reason for closing down any radio station it chooses. It must follow legal procedures and show good cause for the interference.

An example from 2000 saw the ECtHR examine the case of *Filatenko v Russia*. Filatenko was a journalist who during the course of a live broadcast in the Russian Republic of Tyva, relayed a question from a viewer about an incident in which the Tyvan flag had been torn from a car. It was claimed that *Filatenko* had implied that the flag had

been torn off and stamped on by members of an opposition party. He was successfully sued for defamation by the opposition party.

In examining the case, the ECtHR conceded that the interference with the right to freedom of expression was prescribed by law, and corresponded to one of the legitimate needs in Article 10(2): namely, the protection of the reputation of others. However, it concluded that the interference was *not* necessary in a democratic society, given that the incident occurred during a live debate, in the run up to a general election. Hence, the ECtHR found that the interference with Filatenko's freedom of expression was a violation of Article 10.

B.2 International humanitarian law

Also known as the “laws of war”, **International humanitarian law** is another category of international law. While human rights law applies at *all* times; in times of peace and in times of armed conflict, International humanitarian law has the specific aim of ensuring respect for human rights in international and internal armed conflict. It comprises principles and rules that seek to mitigate the effects of war by limiting the means and methods of conducting military operations. The laws also oblige combatants to spare civilians and those who no longer actively participate in hostilities (including, for example, soldiers who have been wounded or have surrendered). The main sources of international humanitarian law are:

1. the four Geneva Conventions (1949);
2. the two Additional Protocols to the Geneva Conventions (1977);
3. treaties prohibiting or restricting the use of specific weapons, e.g. Convention on Certain Conventional Weapons and its protocols (1980);
4. the Convention on Protection of Cultural Property in the Event of War (1954).

As armed groups are not parties to human rights treaties, humanitarian law has particular relevance in providing standards that bind them in conflict situations.

The core principles of international humanitarian law, which provide a framework for monitoring, are that:

- Persons *hors de combat* and those not taking part in hostilities shall be protected and treated humanely;
- It is forbidden to kill or injure an enemy who surrenders or is *hors de combat*;
- Wounded and sick shall be cared for and protected by the party to the conflict which has them in its power. The emblem of the red cross or the red crescent must be respected;
- Captured combatants and civilians must be protected against acts of violence and reprisals. They shall have the right to correspond with their families and to receive relief and protection against acts or threats of violence, starvation as a method of combat, and forced movement;
- As soon as circumstances permit, and at the latest at the end of hostilities, each party to the conflict shall search for persons reported missing and report all relevant information to their opponents;
- No one shall be subjected to torture, corporal punishment or cruel or degrading treatment;
- Hostile acts against historic monuments, works of art, or places of worship or their use in support of military aims are prohibited;

- Parties to a conflict and members of their armed forces do not have unlimited choice of methods and means of warfare; specifically prohibited is warfare which: fails to discriminate between combatants and civilians; causes superfluous injury or unnecessary suffering; cause severe or long-term damage to the environment;
- Parties to a conflict shall distinguish between the civilian population and combatants. Attacks shall be directed solely against military objectives;
- States have an obligation to teach its rules to armed forces and general public and must prevent and punish violations;
- States must enact laws to punish the most serious violations of the Geneva Conventions and Additional Protocols, which are regarded as war crimes;
- States must pass laws protecting the red cross and red crescent emblems.

C. UNDERSTANDING AND APPLYING INTERNATIONAL LAW

C.1 Application of international law in Georgia

Georgia's human rights obligations stem from the international human rights treaties to which it is a party – the European Convention on Human Rights and the various UN treaties listed below.

The standards to be monitored by EUMM Georgia derive from applicable international law – customary international law and the treaties to which Georgia is a party. As a member of the CoE, Georgia is a party to

the organisation's various human rights treaties. These include the ECHR, the European Social Charter, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the FC-NM.

The principal UN treaties are the ICCPR and the ICESCR. Other UN treaties cover specific rights or groups in more details, e.g. the Convention Against Torture and Convention for the Elimination of Discrimination against Women.

International human rights treaties applicable to Georgia

The relationship between national law and international law

Key European human rights treaties

- European Convention for the Protection of Human Rights and Fundamental Freedoms (Georgia has also signed and ratified all subsequent protocols to the European Convention)
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- FCNM
- European Social Charter

Other international human rights treaties

- ICESCR
- ICCPR
- Optional Protocol to the ICCPR
- Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty
- Convention on the Rights of the Child
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Optional Protocol to CEDAW
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- International Convention on the Elimination of All Forms of Racial Discrimination
- The Convention relating to the status of Refugees

Additional treaties concerning international criminal law

- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity
- Convention on the Prevention and Punishment of the Crime of Genocide
- Statute of the International Criminal Court

By becoming a party to an international treaty, a state is asserting to the global community not only that it *will*, but that it *is*, complying with all of the standards contained in that treaty. This means that it is applying the treaty standards in its domestic law and practice. Monitoring compliance with treaties therefore necessarily includes examination of a combination of laws, policies, practices etc.

In cases where human rights can be limited, such limitations must be for an legitimate purpose, e.g. public safety, and must be **prescribed by law**. Thus, examination of national law is central to determining whether an interference is permissible or violates a human right.

However, the mere fact that a practice is permitted by national law does not automatically mean that a human right has not been violated – it may be that the domestic law itself is in violation of international law. International human

rights law takes precedence over domestic law, including the national Constitution.

Constitution of Georgia

According to the Constitution of Georgia adopted on 24 August 1995, the constitution is ‘the supreme law of the state’ and takes precedence over all other domestic laws. The Constitution also provides that the provisions of an international treaty defining specific rights and obligations do not require adoption of further domestic legislation, but are *directly applicable* in Georgia.

Article 7 of the Constitution specifically recognises fundamental rights and freedoms. Chapter II (Articles 12- 47) elaborates on these rights. Crucially, Article 39 specifies that the right listed do not exclude other fundamental freedoms that are not explicitly stated, but which are ‘the natural outcome of the principles stated within the Constitution’.

Criminal law in Georgia

A central legal framework relevant to monitoring human rights in any country is domestic criminal law, as the principle (but not the only) law that regulates individual freedom. Criminal law in Georgia is codified in the Criminal Code and Criminal Procedure Codes. The current Criminal Code of Georgia entered into force in 2000. It establishes the grounds for criminal responsibility, determines which acts shall be considered crimes and sets out what punishments can be imposed.

The Code of Criminal Procedure deals with the prosecution of criminal acts and the rights of those on trial. At time of writing, the current Code is the one adopted in 1999 and amended in 2007.

Other Georgian laws on the exercise of authority within the criminal justice system include the Laws on Non-custodial Penalties and Probation; on Imprisonment; Police Powers and Border Police of Georgia. A range of other Georgian laws deal with specific crimes, such as the Law on the Fight Against Trafficking in Persons.

In addition to a Constitutional equality guarantee, the Criminal Code of Georgia, provides a cross-cutting requirement in the context of criminal law that “everyone is equal before the law and the court irrespective of race, nationality, sex, social origin, property and position, place of residence, religion, faith and other circumstances.”

C.2 Selected human rights

Right to life

1. *Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*

2. *Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:*

a. *in defence of any person from unlawful violence;*

b. *in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*

c. *in action lawfully taken for the purpose of quelling a riot or insurrection."* **Article 2, ECHR**

In the context of Article 2 of the ECHR, the state's obligations include a *negative duty to refrain from the intentional and unlawful taking of life*; a *positive duty to protect the lives* of those within its jurisdiction; and a duty to ensure that suspicious deaths or those caused by State agents are the subject of an *effective official investigation*.

In addition to the treaty standards concerning the right to life, case-law provides more detail regarding what a state must do to protect the right. For example, in *Oneryildiz v Turkey*, the ECtHR found a violation of Article 2 where methane explosions in a rubbish tip caused a landslide which engulfed a nearby slum, causing the deaths of 39 people. While the Turkish authorities had not directly caused the deaths, they were found to have been negligent in failing to implement preventative measures and failing to properly inform people

who lived in the slum about the possible dangers. This case illustrates the state's *positive duty to protect life*.

Kaya v Turkey, another ECtHR case, provides an illustration of how the failure to conduct an effective investigation can lead to a violation of the right to life. In *Kaya*, the applicant complained that his brother was unlawfully shot by the security forces. Turkey contended that the victim was a terrorist and was shot after engaging the security forces. Due to the contradiction of these reports, and the lack of any other evidence, it was found that there was no basis to conclude, beyond reasonable doubt, that the victim had been intentionally killed without provocation. The same lack of evidence led the ECtHR to conclude that the State's failure to conduct a proper investigation into the shooting was itself a violation of the right to life. Another key source of for formulating monitoring questions in this context, are the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions 1989: www.unhchr.ch/html/menu3/b/54.htm

Prohibition on Torture

“No-one shall be subjected to torture or to inhuman or degrading treatment or punishment”. **Article 3, European Convention on Human Rights**

*“For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. **Extract from Article 1, the UN Convention against Torture***

The prohibition of torture is an *absolute* human right. This means that no limitations or derogations are permitted in any circumstances. Prior to 2005 the definition of torture in the Georgian Criminal Code did not satisfy the requirements of Article 1 of the UN Convention Against Torture. In February 2005, the UN Special Rapporteur on Torture, Manfred Nowak, visited Georgia and made a series of recommendations including the need for the Georgian definition of the crime of torture to include mental (and not only physical) suffering, and to include the requirement of intentional infliction of severe pain or suffering for a specific purpose (such as obtaining a confession, intimidation, or punishment).

Later that year, the Georgian Parliament amended the Criminal Code to redefine torture so that it complied with

Georgia's treaty obligation, to read: "any act against any person, his/her relative or financially or otherwise dependant person, by which severe pain or suffering, whether physical or mental, is intentionally inflicted to a person for such purposes as obtaining from him/her or a third person information or a confession, punishing him/her for an act he or a third person has committed or is suspected of having committed."

The CoE's CPT conducts periodic visits to Member States. Its mandate set down by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is to "examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment."

The most recent visit to Georgia by the CPT took place in March/April 2007. The report noted a number of positive changes and also made a number of recommendations aimed in particular at strengthening the formal safeguards against ill-treatment, overcrowding and management of custodial staff etc.³

A common feature of conflict is enforced disappearances. To forcibly make someone disappear violates a number of rights (liberty, due process etc.) and is also deemed by international law to be a form of torture and where it is systematic to be a crime against humanity.

3. The report is available at the CPT website <http://www.cpt.coe.int>

In Kurt v Turkey (1998) the applicant brought the case of her missing son to the European Court of Human Rights. The Court ruled that "the uncertainty, doubt and apprehension suffered by the applicant over a prolonged and continuing period of time caused her severe mental distress and anguish" was a violation of the prohibition of torture in Article 3 of the ECHR.

Enforced disappearances (distinguished from the crime of kidnapping for example) means "*the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, and a refusal to acknowledge the deprivation of liberty or by*

concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law." (UN Convention for the Protection of All Persons from Enforced Disappearances, Article 2).

The fact that Georgia has not ratified the Convention on Enforced Disappearances does not mean that disappearances may not be a violation of human rights. The UN Human Rights Committee has repeatedly stated that enforced disappearance is a violation of the prohibition of torture, inhuman and degrading treatment, of both the disappeared person and their relatives.

Particularly in situations of conflict, even where there is no evidence that the State is directly involved in the disappearance of the victim, the State's duty to protect the right to life includes a duty to provide a complete investigation.

Protection from disappearances is also addressed by international humanitarian law in the case of conflict, including specific rights of families to be informed of the fate of missing relatives, and the duty of parties to a conflict to search for missing persons reported by an adverse party. For more details, see: www.icrc.org/web/eng/siteeng0.nsf/htmlall/section_ihl_missing_persons

Liberty and security of person

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law...
Extract from Article 5, ECHR

Georgia's Constitution guarantees the right to liberty and personal security in Article 18. The grounds on which a person can be deprived of their liberty in

Georgia are established in the Criminal Code. For example, according to the Code, life imprisonment may only be imposed for grave crimes that are deliberate and intentional.

The law on arrest and detention in Georgia is governed largely by the Criminal Procedure Code and the Law of Georgia on Imprisonment. The Code states that a detainee or arrestee shall be informed promptly about the reasons, ground of his detention or arrest and the offence of which commission he is suspected and with which he is charged. This draws upon the human rights principle that no-one should be deprived of his personal liberty without reasonable cause and in accordance with a set procedure. The Code

permits up to 72 hours detention of a suspect before being brought before a Court.

A key requirement in the context of detention is that a suspect be ‘promptly’ brought before a judicial authority. The time interval between detention and judicial supervision should not be longer than is needed to ‘process’ a suspect, but it can be longer if the extra time can be shown to be a necessary consequence of particular circumstances. The guiding rationale for this requirement of promptness is, in the words of the ECtHR, to ensure “judicial control of interferences by the executive with the individual’s right to liberty”.

In November 2007, the ECtHR found a violation of Article 5 of the ECHR in the case of *Patsuria v. Georgia*, where the applicant was held on remand pending investigation for more than 9 months. ECtHR noted that regardless of the gravity of the charges against Patsuria, the length of detention was excessive because the detaining authorities did not consider the specific circumstances of his case or consider alternative pre-trial measures.

Limiting excessive detention periods are important not only to guarantee the right to liberty, but also with regard to the prevention of torture. Torture or ill-treatment is far more likely to occur where due process is not followed with regard to arrest and detention, hence the emphasis placed on the accurate register by prison authorities (and by police stations) mentioned above. Further guidelines concerning detention are provided by the UN Code of Conduct for

Law Enforcement Officials, and the UN Standard Minimum Rules for the Treatment of Prisoners, UN Guidelines for the Prevention of Juvenile Delinquency, Reports of the UN and CoE⁴ Torture Committees etc.

*“The Committee for the Prevention of Torture attaches particular importance to three rights for persons detained by the police: the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate); the right of access to a lawyer; and the right to request a medical examination by a doctor of his choice (in addition to any medical examination carried out by a doctor called by the police authorities. They are, in the CPT’s opinion, three fundamental safeguards against the ill-treatment of detained persons which should apply as from the very outset of deprivation of liberty, regardless of how it may be described under the legal system concerned (apprehension, arrest, etc.)”. **European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1991.***

There is an absolute prohibition against torture, inhuman and degrading treatment in international human rights law. The laws of Georgia governing arrest and detention reflect that principle, specifically in Article 12 of the Criminal Procedure Code and Article 30 on the Law on Imprisonment. A range of treatment and conditions (physical violence, extended solitary confinement, failure to provide prompt medical treatment etc.)

have all been found to be inhuman treatment in cases before the ECtHR.

4. For substantive sections of the General Reports the CoECPT see www.cpt.coe.int/en/docsstandards.htm

The following are a list of key concerns central to monitoring places of detention:

- detainees are protected against torture, cruel, inhuman or degrading treatment or punishment, beatings, psychological pressures (threats, intimidation) or any form of mistreatment, physical or mental;
- persons are not arbitrarily or illegally detained;
- conditions ensure adequate standards of hygiene, health care, education, privacy, sanitation, respect for religion and culture safety, etc.;
- victims of beatings, ill treatment or torture, receive medical treatment immediately;
- prison authorities maintain an accurate register of detainees, including names, date arrival at the place of detention, legal status of detainees and the date of the next court appearance;
- access to lawyers, visitors and correspondence;
- adult male and female detainees are kept in separate facilities or units;
- all detained juveniles are separated from adults (except in the case of young infants and their mothers);
- adequate supervision and complaints mechanisms are provided;
- treatment in detention is consistent with the aim of reform and social rehabilitation of the detainee.

C.3 Human rights and Particular Groups

As outlined above, human rights are universal, and apply equally to all human beings. However, human rights law also recognizes that some groups in society (and in particular in conflict) are more vulnerable to violations than others, and thus particular measures are put in place to protect such groups. Below, some such groups in the Georgian context: Refugees/internally displaced people, minorities and children in armed conflict are briefly examined.

Refugees and Internally Displaced Persons (IDPs)

Refugees are people who have fled from their country due to fear of persecution, while IDPs are those who have been forced to move from their homes but who have *not* left their country's territory.

A refugee is "any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable, or owing to such fear, is unwilling to return to it." Article 1 of the 1951 UN Convention on the Status of Refugees

The fundamental principle of refugee law is the principle of *non-refoulement*: no one may be sent to a place where they are at risk of torture or other forms of ill-treatment. If they are in a State involved in an armed conflict, refugees are also protected by international humani-

tarian law. Apart from the general protection afforded by international humanitarian law to civilians, refugees also receive special protection under the Fourth Geneva Convention and Additional Protocol I. This additional protection recognizes the vulnerability of refugees as aliens in the hands of a party to the conflict who lack the protection of their State of nationality.

IDPs are distinguished from refugees by the fact that they have not left their country of origin by crossing an international border.

IDPs are defined as: “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.”
Guiding Principles in Internal Displacement, 1998.

A key reference point for monitoring the situation of IDPS are the *Guiding Principles on Internal Displacement*, which bring together the standards of protection that apply to IDPs, many of which are legally binding standards drawn from treaties

and customary law. The Principles can be accessed in English, Russian and Georgian at www.brookings.edu/topics/internal-displacement.aspx).

If IDPs are in a State involved in an armed conflict, and do not take an active part in the hostilities they are entitled to the protection afforded to civilians under humanitarian law.

Amongst other provisions humanitarian law expressly prohibits:

- the compelling of civilians to leave their places of residence unless their security or imperative military reasons so demand and also prohibits;
- attacks on civilians and civilian objects or the conduct of hostilities in an indiscriminate manner;
- starvation of the civilian population and the destruction of objects indispensable to its survival;
- collective punishments such as destruction of dwellings.

Once displaced, the humanitarian law requires that all parties to a conflict allow humanitarian relief to reach civilian populations in need.

Example: IDPs in Georgia

Because of the various factors that lead to people moving within their country, statistics regarding those who are IDPs can vary. UN estimates in September 2008 suggest that IDPs in Georgia comprise:

New caseload: 158,000 ethnic Georgians and Ossetians displaced by conflict in August 2008, with ethnic Ossetians seeking refuge in other parts of South Ossetia and ethnic Georgians displaced to other parts of Georgia. As of mid-September, some 68,000 IDPs were estimated to

have returned home, leaving 59,000 displaced by the August 2008 crisis.

Old caseload: 300,000 people displaced from Abkhazia and South Ossetia in the early 1990s. Some 45,000 of them returned to Gali, Abkhazia previously. In 2004-2005, the Georgian MRA undertook, with the support of UNHCR and of the Swiss government, a verification exercise to update the number of IDPs. Some 221,000 people were verified, but this number has not been endorsed by Georgian authorities, who used the estimate of 247,000 as of 2007.

Of particular concern to refugees and IDPs are the human rights concerning property (house, land, possessions etc.). Property rights are protected in Article 1 of the Protocol to the ECHR, and the ECtHR has dealt with several cases concerning the right of refugees to return to peaceful enjoyment of their property, notably in occupied Cyprus. Again, it is important to bear in mind the sequence for determining a violation of a human right as laid out above. The right to property must first be established; next, it must be shown that there has been an interference with that right; then determine whether the reason given for the interference is legitimate; i.e. prescribed by law and necessary in that it strike a fair balance between the general interest of the community and the individual's rights. As a general rule taking of property by the state without appropriate compensation

will normally constitute a disproportionate interference with the right to the enjoyment of property.

A useful monitoring tool concerning the right to property of IDPs and refugees are the *Pinheiro Principles* (called after the UN Special Rapporteur on Housing and Property Restitution for Refugees and IDPs). These Principles elaborate what States are required to do in terms of housing and property restitution, stressing the importance of consultation and participation in decision-making by displaced persons, and outlining approaches to issues of housing, land and property records, the rights of tenants and other non-owners and the question of secondary occupants. The Principles can be accessed at www.cohre.org/store/attachments/Pinheiro%20Principles.pdf

The house of a refugee or displaced person is not just a matter of property – it is also commonly the family home and as such qualifies for specific protection under human rights law. Article 8 of the ECHR provides a right to respect for one’s “private and family life, his home and his correspondence”, subject to certain restrictions that are “in accordance with law” and “necessary in a democratic society”. This protection applies no less to any accommodation that the displaced may be provided with following their displacement.

Freedom of movement in the context of refugees and IDPs is also of crucial importance and a central monitoring priority. Freedom of movement is closely related to the right liberty, the difference being one of degree. Forced confinement to a particular area such as a village or region

is much more likely to be regarded as an interference with freedom of movement while confinement within a building or camp would constitute deprivation of liberty. The freedom of movement of refugees and IDPs is, by definition, compromised, in that they are prevented by conflict or fear of persecution from returning to where they have lived. In such cases, a balance must be struck between facilitating their freedom to return, and physical security, which might be compromised by return. However, this should not prevent them from otherwise exercising freedom of movement, including the right to leave the country and the right to move in and out of camps and other settlements and to receive necessary document to exercise this right.

Guidance on the monitoring of human rights and refugees can be found in the 2001 UN Training Manual on Human Rights Monitoring at www.ohchr.org/english/about/publications/docs/train7_e.pdf

Trafficking in persons

Trafficking in persons is defined in international law as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for

the purpose of exploitation.”⁵ Trafficking affects particularly vulnerable groups in society: women, children and the poor and vulnerability to being trafficked increases when people are displaced by conflict.

Trafficking is prohibited under several international human rights treaties. These include the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) calls for all parties to take measures “to suppress all forms of traffic in women and exploitation of prostitution of women.” The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography contains detailed standards specifically concerning trafficking of children.

In February 2008, a CoE Convention on Action against Trafficking in Human Beings entered into force and Georgia was among the first states to become a party. It is a comprehensive treaty that aims to prevent trafficking, to protect the human rights of victims of trafficking, and to ensure prosecution of traffickers. Parties to this treaty undertake a range of obligations regarding: awareness-raising among vulnerable people and discouraging of potential ‘consumers’ of trafficking victims; the recognition of traf-

5. CoE Convention on Action against Trafficking in Human Beings, 2005.

ficked persons as victims; physical and psychological assistance and support for victims of trafficking; the recognition of trafficking as a crime and the prosecution of traffickers; and co-operation with civil society groups.

Example: Trafficking in persons in Georgia

Georgia is both a source country for trafficked persons, and a transit country for trafficked persons from Russia, Ukraine, Moldova and other former Soviet states. Most persons trafficked through or from Georgia end up in the United Arab Emirates, Turkey and other Balkan states. Men are trafficked for the purposes of forced labour; women for the commercial sex trade. Since the institution of the Law on the Fight Against Trafficking in Persons in April 2006 Georgian law provides for funding for victim support and increases the sentences for those convicted of human trafficking.

See: OSCE www.osce.org/item/23499.html and US Department of State, Trafficking in Persons Report 2008 – Georgia, at: www.unhcr.org/refworld/docid/484f9a182.html

Minority rights

As a matter of practice a minority group for international law purposes is one that is smaller than the rest of the population of a state, whose members possess ethnic, religious or linguistic characteristics different from those of the rest of the population and who maintain a sense of solidarity, directed towards preserving their culture, traditions religion

or language. Instruments such as the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities set down a list of state obligations to protect “national, ethnic, cultural, religious and linguistic identity of minorities”.

While human rights are usually seen as being rights which belong to the individual, certain rights can be seen as being collective rights – that is, rights that are enjoyed as part of a group, the collective right of a minority to speak its own language, for example. In addition to reference to discrimination on grounds of race, religion Protocol 12 of the ECHR, also prohibits discrimination on grounds of “association with a national minority”.

Georgia is a party to the UN CERD as well as the CoE FCNM. The FCNM recognised the rights of persons belonging to a national minority, focusing on what it identifies as the ‘essential elements of their identity; namely their religion, language, traditions and cultural heritage.’ The three-fold nature of the state’s obligations regarding human rights (to respect, protect and fulfil) result in a range of obligations in the context of minorities, that in turn raise different monitoring requirements.

For example, Article 10 of the FCNM requires that the state ‘recognise’ the right of persons belonging to a national minority to use their own language – in other words, to ‘respect’ that right. The Article, however, goes on to require that: ‘In areas inhabited by people belonging to a national minorities traditionally or in substantial numbers, if those

persons request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administration'. This is a much more positive obligation on the State to fulfil the linguistic rights of national minorities.

Comprehensive monitoring of the situation regarding Minorities in any particular country entails awareness of a complex array of contexts, institutions and documents.

In Georgia, for example, this entails implementation of minority related treaty commitments, national legislation and domestic policy commitments contained in National Strategy and Action Plan.

In addition, as minority groups are composed of men, women, children, some with disability, others who may be displaced etc. – a range of other legal and policy frameworks also have to be borne in mind when monitoring the situation of minorities.

Example: Minorities in Georgia

| |
|---|
| <p>In addition to the regions of Abkhazia and South Ossetia, Georgia has a significant number of minority groups, including Azeris 285,000 (6.5%), Armenians 249,000 (5.7%) and Russians 68,000 (1.5%).</p> |
|---|

Georgia ‘strengthened its international commitment to minority rights’⁶ in December 2005 by ratifying the CoE *FCNM*, and submitted its first report to that treaty’s Advisory Committee in July 2007. The report states that: ‘In the aftermath of the “Rose Revolution”, full integration of all ethnic minorities in Georgia remains a continuous challenge for the current government.’⁷

According to the international NGO *Minority Rights Group International*, language barriers are a particular problem. ‘Under law, all federal government officials must speak Georgian and laws are only published in Georgian. The government has done little to provide Georgian language training, so minorities tend only to speak their native languages. This dynamic has been a prime cause of minority marginalization.’

The first visit of the Advisory Committee to Georgia took place on 8 – 13 December 2008 after which the Committee produced an Opinion (not yet public at time of writing of this manual) on the situation of national minorities in Georgia. See www.coe.int/t/dghl/monitoring/minorities/default_en.asp

6. See entry on Georgia at www.minorityrights.org/directory

7. Georgia, First report to the Advisory Committee on the Framework for Protection of National Minorities, received 16 July 2007, ACFC/SR(2007)001.

Children in armed conflict

The participation of children in armed conflict is governed by a variety of international laws and standards, including international humanitarian law (Additional protocols to the four Geneva Conventions), ILO (ILO Conventions 138 and 182), and international human rights law (the Convention on the Rights of the Child and the Optional Protocol to the Convention on Children in Armed Conflict.) The Geneva Conventions and the CRC define a child for the purposes of armed recruitment as anyone under the age of 15; the Optional Protocol, however, sets the minimum age for compulsory recruitment as 18, while allowing States to accept volunteers from the age of 16 with proper safeguards. The restrictions on the use of child soldiers apply equally to non-state armed groups, as well as the armed forces, and States are obliged to do all they can to prevent any direct participation by children in hostilities.

Georgia has yet to ratify the Optional Protocol on Children in Armed Conflict. However, both voluntary and compulsory recruitment to the armed forces are restricted to those over 18 under Georgian law.

In 2007, a major international conference on children and war resulted in the drafting of the Paris Principles, which provide guidelines for the protection of children associated with armed forces or armed groups, especially with regard to their demobilization and reintegration into society. The

Principles mention, in particular, the vulnerability of internally displaced or refugee children with regard to recruitment into armed forces, and to their subsequent rehabilitation.

C.4 Non-discrimination in the enjoyment of rights

The obligation on the state to ensure non-discrimination in the enjoyment of human rights is a cross-cutting requirement that is fundamental to all monitoring. Non-discrimination includes equality before the law and equal protection of the law without any discrimination. It is a fundamental, cross-cutting principle relating to the protection of human rights. Whatever rights are being monitored a core element of monitoring is determining whether the rights are being enjoyed by all and monitoring requires knowledge of the prohibited grounds of discrimination.

What constitutes prohibited discrimination varies slightly under different treaties. Protocol No. 12 to the ECHR is illustrative in that it requires that human rights be secured “without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”. The final words are important as they emphasize that the list of prohibited grounds is not fixed, and could for example cover treatment that discriminates between those who are displaced and those who are not.

Gender mainstreaming

Gender mainstreaming is: “the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in any area and at all levels. It is a strategy for making the concerns and experiences of women as well of men an integral part of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres, so that women and men benefit equally, and inequality is not perpetuated. The ultimate goal of mainstreaming is to achieve gender equality.” UN Security Council Resolution 1325, 1997.

The expression gender mainstreaming refers to the concept of assessing the different implications for women and men of any policies, legislation and programmes and activities. While it explicitly means assessing issues from perspective of both men and women, discrimination against

women is particular concern in the context of conflict. There has been considerable recent focus on the specific impact of war on women, and the need to increase women’s role in conflict resolution and peace building. In October 2000, the UN Security Council passed Resolution 1325, which calls for an enhanced female participation of in the prevention, management and resolution of conflict. A number of core EU documents have developed the EU’s understanding of gender mainstreaming in the context of ESDP missions.

The EU Council, *Checklist to ensure gender mainstreaming and implementation of UNSCR 1325 in the planning and conduct of ESDP Operations*, adopted on 27 July 2006, outlines the key requirements. In addition to Mission planning,

training, review and lessons identified etc., the Checklist document also provides that “a gender perspective should be integrated into policies, programs and projects, monitoring and data collections”. Women, in particular, become increasingly vulnerable to sexual exploitation in times of war and conflict by international mission personnel as well as the local population. The Generic Standards of Behaviour for ESDP missions state: ‘Sexual exploitation and sexual abuse violate universally recognised international legal norms and standards. They constitute acts of serious misconduct and are therefore grounds for disciplinary measures. Exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour, is prohibited.’

A useful reference is the *Gender Mainstreaming in Practice: A Toolkit* Available in Russian and English at: www.europeandcis.undp.org/gender/show/6D8DE77F-F203-1EE9-B2E5652990E8B4B9

D. HUMAN RIGHTS MONITORING

There is no single definition of human rights monitoring that distinguishes it from related terminology such as verification, fact-finding, observation etc. of human rights. Frequently the terms are used inter-changeably. Monitoring has become understood to mean documenting and recording matters systematically over time with a view to action being taken by the monitors, the Mission or organisation and by others.

Human rights monitoring includes gathering information that relates to human rights: including incidents, events (elections, trials, demonstrations, police/military behaviour etc.), places (of detention, refugee/IDPs camps etc.). At some level it involves discussions with the authorities to obtain information and to pursue immediate follow-up or longer term remedies. The monitoring cycle includes both activities at national or international headquarters as well as first hand fact-gathering in the field. Ultimately, monitoring objectives are to deter and prevent human rights violations by documenting events and practices with a view to making remedial and preventive recommendations and/or influencing others to address the situation.

Monitoring can be:

- Direct (e.g. documenting actions through contact with victims, witnesses alleged perpetrators, visiting a place etc.) / Indirect (documenting information received from third parties);

- Simultaneous (documenting an event as it happens) / Retrospective;
- Periodic / one-off;
- Desk-based / Field-based etc.

Depending on the organisation concerned and factors such as interpretation of mandate, priorities and resources, monitoring may entail:

- Ongoing protective presence;
- Targeted Identification of particular situations or practices and seeking to raise awareness and influencing others (through public advocacy or diplomatic channels etc.);
- Formulating remedial and preventive recommendations;
- Facilitating sanction or prosecution of perpetrators.

Monitoring invariably entails establishing and maintaining contact with reliable sources of information and with alleged victims and witnesses of violations. Gathering of information is followed by reporting, corroboration and analysis of information received, and follow-up action, according to the problem and causes identified. This process may involve different information-gathering techniques, and different methods of analysis – all of which together should present the most accurate and comprehensive picture of what the problem is and what needs to happen to address it.

Different monitoring techniques are necessary because of the range of different human rights that can be monitored and specific features of each situation. Visible high profile monitoring can involve an element of protective presence and confidence building. Immediate first-hand monitoring may be possible if an event has happened in the recent past or if physical access to the relevant location is possible. Indirect monitoring may be necessary in other situations. Whatever techniques are employed, human rights monitors should seek to monitor the human rights *situation* – not only examples of human rights violations, but also improvements made in good faith by the state or other actors. From the information gathered the Mission or organisation can carry out an overall analysis, make recommendations and take other steps.

One method of monitoring is recording and analysing individual complaints, and using these to identify any general patterns of behaviour to assess if matters are improving or deteriorating. This involves gathering statements and individual complaints, including receiving information from members of the general public who approach monitors or who present complaints at field offices.

Certain issues or contexts are more effectively monitored using additional information-gathering techniques, beyond individual complaints. This may involve a programme of systematic visits to places where human rights violations can frequently take place (or where indicators of such violations may be found) – particularly if victims or witnesses

face physical or other barriers to providing information to monitors. For example, monitoring often includes systematic unannounced visits to courts, places of detention, hospitals, morgues, IDP centres, etc.

All of these types of monitoring methods have their own sensitivities, and planning, guidance, training and standard practices etc. are necessary for monitoring to be professionally carried out.

Who monitors

A range of different actors, national and international, undertake monitoring of compliance with legal obligations and best practice (including adherence to human rights standards). Each State, for example, has legal obligations to monitor its own compliance with international human rights treaties. This is sometimes conducted through designated state bodies such as national human rights institutions (In Georgia this role is carried out by the Office of the Public Defender in Georgia). The PDO has a constitutional mandate to monitor the protection of human rights in Georgia with its responsibilities and independence provided for by the Constitution of Georgia (Article 43) and the 1996 Organic Law on the Public Defender.

A range of non-governmental organisations (domestic and international) also engage in monitoring. Some are subject specific (e.g. The organisation *Article 19* (named after the relevant article of the Universal Declaration of Human Rights) concerning freedom of expression), others monitor

at specific times such as during or after conflict, while others monitor periodically or on an ongoing basis (e.g. Amnesty International, Human Rights Watch etc).

Similarly, EUMM is not alone as an intergovernmental mechanism for monitoring in Georgia. There are a range of UN, CoE and OSCE monitoring mechanisms. Some of these monitor from their international headquarters while others do so through country visits such as those of the UN Special Rapporteurs mentioned in previous sections; or the CoE's Committee for the Prevention of Torture; or the FCNM Advisory Committee.

What is monitored

A key feature of monitoring is the distinction between monitoring and executive functions. Monitors with international missions or organisations generally do not include powers to replace the state in the exercise of its responsibilities. Some Mission mandates and legal bases are different. Where the monitoring is carried out by an international organisation that is also exercising de jure executive functions (as in UN Transitional Administration in Kosovo, Eastern Slavonia East Timor etc.) or where the mandate provides for a combination of monitoring and executive powers, e.g. EULEX Mission in Kosovo).

EUMM Georgia Monitoring functions are described as being to:

“Monitor, analyse and report on the situation pertaining to the stabilisation process, centred on full compliance with the six-

point Agreement, including troop withdrawals, and freedom of movement and actions by spoilers, as well as on violations of human rights and international humanitarian law.

Monitor, analyse and report on the situation pertaining to the normalisation process of civil governance, focusing on rule of law, effective law enforcement structures and adequate public order.

The Mission will also monitor the security of transport links, energy infrastructures and utilities, as well as the political and security aspects of the return of IDPs and refugees.”

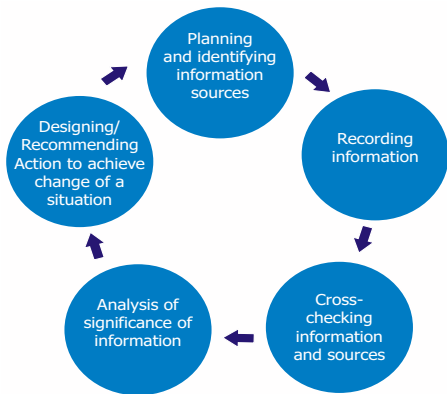
The stated purposes behind this monitoring are “to contribute to stabilisation, normalisation and confidence building and informing European policy in support of a durable political solution for Georgia.”

Traditionally, monitoring by international missions has prioritised civil and political rights (such as freedom from torture, elections etc.). However, the international legal obligations undertaken by states, require a wider monitoring focus covering the full spectrum of human rights. Equally the inter-dependence of different rights mentioned above needs to be borne in mind in monitoring. Denial of economic and social rights are often the barrier to the exercise of civil and political rights. For example, the poor or uneducated are most likely to be denied a fair trial or the right to vote.

The Cycle of Monitoring

Monitoring is a process. Monitoring can be presented as an ongoing cycle from planning through to follow-up action. Not all monitoring stages are conducted by the same personnel. Field monitors may be primarily engaged in steps 2 and 3, but all who are involved in the chain must understand the overall monitoring objectives, standards being applied etc.

1. Planning and identifying information sources;
2. Gathering/Recording information;
3. Cross-checking information and sources;
4. Analysis of the significance of information gathered;
5. Designing/Recommending action to change the situation.



1. Planning and identifying information sources:

- Selection, training and providing for accountability of monitoring and related staff;
- Ensuring familiarity with Mission mandate, powers, reporting lines as well as the relevant applicable law and monitoring best practice;
- Selection of monitoring priorities;
- Planning for specific skills/specialists required (lawyers, medics, forensics, ballistics, child experts etc.).

2. Recording information through:

- Individual complaints / Interviews;
- Systematic visits to places and locations;
- Use of surveys/questionnaires;
- Information from other actors, International partners, national bodies, NGOs, media, etc.

Recording relevant information, such as:

- *Alleged* Victims/Witnesses/Perpetrators;
- Alleged incident or practices;
- Possible causes, motivation of perpetrators;
- Action/inaction by authorities etc.

Recording Information in formats/databases to allow Mission track patterns:

- Geographical area (e.g. to establish legal/command responsibility);

- Changes over time (e.g. positive/negative trends, action or inaction on previous recommendations etc.);
- Any discrimination involved (e.g. sex, ethnicity, religion...).

Central to the recording of sensitive information is the need for systems for secure storage, transporting, archiving of information (e.g. case codes).

3. Cross-checking information and sources:

- Assess credibility of source(s);
- Corroborate information – Ideally with a combination of sources to verify allegations;
- Determine what standard of proof needed. Note distinction between cross-checking as part of monitoring as opposed to higher legal requirements of investigation for purposes of prosecution.

4. Analysis of significance of information, including:

- Compliance of conduct/conditions with relevant law, procedures and best practice etc.;
- Legal precision e.g. regarding law; presence of elements necessary to establishing a violation? specific law applicable to a particular situation/group? Validity of any derogation or interference with rights? etc.;
- Precision and degrees of certainty in language, of public reports in particular, e.g. ‘alleged’, ‘have reason to believe’ etc. “Monitoring team has received credible reports that” etc.;

- Need for specialist analysis depending on context (medical, forensic specialists, ballistics, legal expertise, etc.).

5. Designing or recommending action to change a situation:

The priority for monitoring missions is to reinforce and NOT replace local institutions. Action to achieve change will vary according to Mission mandate, interpretation, resources and priority choices, but may include:

- Internal mission reports and recommendations (public advocacy or “quiet diplomacy”) – ICRC’s general practice, for example, is not to publishing monitoring findings after visiting places of detention but to lobby the authorities privately;
- Reporting to international bodies (e.g. treaty mechanisms);
- Provide advice, training or other technical support, etc.;
- Facilitating the filing of complaints with international committees and courts, e.g. European Court of Human Rights.

The Monitoring Cycle Continues by

- Continue the monitoring cycle to monitor progress in implementing recommendations made, compliance with court decisions etc.

Example: Enforcing human rights standards through the ECtHR

In cases where suspected violations of human rights are taking place, the first recourse is to the local institutions. Before addressing the ECtHR, an individual must have exhausted all domestic remedies.

The ECtHR in Strasbourg has responsibility for overseeing the implementation of the ECHR, and any petitions to the ECtHR, must therefore refer specifically to violations under one of the Articles of the ECHR.

The signatories of the ECHR are States, and therefore any alleged breach of the ECHR must be addressed to the offending State. States can file a case against another State; however, this rarely occurs. The vast majority of cases are taken by individuals. Cases must be taken by the injured party, or in the case of their death, by their next of kin – there must be a “victim” in the sense of a direct link between the person taking the case and the alleged violation. Other admissibility criteria are that The application must be received within six months of the exhaustion of local remedies and must be compatible with the Convention and not manifestly ill-founded or an abuse of the right to petition. An additional requirement is that the case must not already have been examined by ECtHR or by another international court or tribunal.

Final judgments of the ECtHR are binding on the State involved which is obliged to execute the judgment and remedy the violation by taking individual measures (to redress the damage toward the applicant) and/or general measures in order to prevent further violation of individual rights (amending the legislation or practice) to meet the Court's ruling. The most frequent way of redressing the damage toward the successful applicant is monetary compensation.

Core principles of monitoring

Certain core principles define effective monitoring and apply at all stages of the monitoring cycle:

1. **Do least harm**
2. **Accuracy**
3. **Principled Impartiality**

1. Do least harm

Well-intentioned monitoring can make matters worse and put victims, witnesses and monitors at risk. Doing least harm requires a number of steps from ensuring appropriate training, accountability, clarity of authority and responsibility to personal responsibility and professionalism of each individual monitor.

This principle means that monitoring should be planned and undertaken so as not to place monitors (and ancillary mission staff, interpreters, drivers etc.), witnesses, victims,

at unnecessary risk of harm. If absolute guarantees of safety cannot be given (as they invariably cannot) then risks should be planned for, minimised and communicated. This means, for example, that a complainant or source of information should be informed of any implications of providing testimony or filing a complaint etc. For example, where a witness or victim does not wish their identity to be revealed to the authorities (where for example the alleged perpetrators are within institutions that might otherwise be expected to investigate allegations).

The principle of doing least harm also takes account of the reputations of those against whom allegations are made and requires that all allegations are treated as unproven that until they are established to appropriate degree of certainty.

2. Accuracy

Accuracy is also a key principle underlying monitoring. It is the bedrock of credibility without which monitoring is unlikely to have a positive impact. Accuracy covers factual accuracy of information gathered (who, what, when where, why, how) as well as legal accuracy of analysis, findings and recommendations.

A mission or organisation, for example, which is legally obliged, or purports to mainstream human rights in its activities and objectives must be accurate as regards the applicable human rights standards.

The international legal framework is not an *à la carte* menu from which monitors can select at will. Each organisation

or mission may focus on priority human rights issues, but it may not undermine other human rights in doing so, such as by not acknowledging as human rights. For example, commonly, there is a reluctance to address violations such as discrimination on grounds of sexual orientation when monitoring discrimination.

Legal accuracy requires determining what law applies to a particular situation, group or geographical area. Monitoring whether a particular right has been violated requires legal accuracy at the stage of planning questionnaires and interviews, at the point of analysis of information gathered and in the formulation of recommendations for remedial action.

Monitoring whether Torture has taken place, for example, means posing a series of questions:

- Did the treatment or conditions lead to acute suffering (mental or physical)?
- Was the treatment or conditions are intentionally inflicted?
- Were the acts or omissions are done by or at instigation of a public official or if done by a private party tolerated by the state?
- Was the treatment *not* incidental to lawful sanctions?

There is, however, no *definitive* list of questions to determine whether torture has taken place but asking the right questions is key to assessing whether particular treatment or conditions may constitute torture. The “right” questions are

those that provide the fullest possible picture of the treatment/conditions concerned, as well as the specific features of the victim. Treatment that may be permissible in the case of a healthy adult may constitute torture where the victim is a child or a person with some disability.

Monitoring treatment during detention and conditions of detention also requires awareness of the case-law that has elaborated on the treaty provisions. In 2008, for example in the case of *Gäfgen v. Germany*, the ECtHR found that “a mere threat of conduct prohibited by Article 3, provided it is sufficiently real and immediate, may be in conflict with that provision. Thus, to threaten an individual with torture may constitute at least inhuman treatment.”

Another example of legal accuracy is of particular relevance in the context of people whose homes are destroyed or who are displaced is the right to adequate housing.

Every individual has a human right to “adequate housing”. This is a legal test set out in UN General Comment 4. The General Comment provides the “right to adequate housing.... encompasses the right to live somewhere in security, peace and dignity” and “includes seven key criteria:

- legal security of tenure;
- availability of services;
- materials;
- facilities and infrastructure;
- affordability;

- habitability;
- accessibility;
- location;
- cultural adequacy.”

Each of these elements has in turn been elaborated further by relevant international bodies to provide the source of monitoring questions.

Legal accuracy in monitoring also requires knowledge of domestic law. The factors that make an arrest or detention lawful or unlawful in national law depends upon compliance with powers and authority and time-limits. In the case of human rights that can be validly limited, these limitations must be “prescribed by law”.

Another aspect of accuracy relates to alleged perpetrators and the potential complexity of human rights legal analysis also arises when a range of actors are involved in violence in a country. The typical situation of extreme human rights violations involves armed agents of the state using violent unilateral repression against the civilian population. However, there may be mutually violent confrontations between the army/police and “civilians” who are in fact armed opposition groups. Or, there may be violence between different sectors of the population – without any obvious involvement of the state institutions (such as the police). This issue of legal accountability can be complicated further where

questions relating to the occupation of territory of one state by another and human rights obligations that arise.

A central challenge to ensuring accuracy in monitoring is the fact that violations are not generally witnessed first-hand by monitors and second-hand information can be biased, mistaken, distorted intentionally or unintentionally. Accuracy therefore means being as accurate *as possible*. At the same time monitoring is not just about documenting “facts”. In certain situations perception and opinion are valid matters to be documented; whether displaced people are afraid to return to their homes or whether people lack of confidence in the justice system. A states obligation to provide an effective justice system, for example, requires that the State not only ensure that justice is done but that justice *be seen to be done*. Lack of confidence in state institutions by society at large or some group within society *may* indicate a problem of knowledge or confidence in which case international law requires that the state respond to address the issue.

3. Principled impartiality

Effective Monitoring is dependent on the credibility of the Mission, monitoring teams and individual monitors. The bedrock of credibility is the concept of principled impartiality. This expression is used to make distinction between formal neutrality or any approaches that result in false equivalence by “balancing” monitoring reports. Monitors

cannot be “neutral” in the face of violations of human rights or humanitarian law. Principled impartiality means adherence to the principles enshrined in international law.

However, even in seeking to engage in impartial monitoring, action (or inaction) may still be seen as favouring one side to a conflict over the other, therefore proactive communication to society at large regarding the impartiality principle and how it underscores a monitoring mandate is of critical importance. The requirement that the principled impartiality of monitoring be seen by the host society and all sides to a conflict is fundamental. Without this impartiality information sources can dry up, people may resort to other means for solutions and impunity may be fuelled.

Principled impartiality is a matter of professionalism generally and in that it is related to a range of other issues including the public perception of the mission and its monitors.

With this in mind, the 2005 European Union “Generic Standards of Behaviour for ESDP Operations” provide that:

“Personnel should at all times exercise patience, tolerance, tact, diplomacy, good judgement and common sense. Personnel shall conduct themselves in an acceptable manner both on and off duty. Personnel should adhere to these standards in order to ensure appropriate behaviour in their relations with the local population.”

The *Standards Document* also notes that “The standards of behaviour are complementary to the legal obligations of personnel in accordance with international law and the law of the contributing state” including possible disciplinary measures or criminal procedures.

Interviewing in the context of monitoring

Here, “interviews” is used to refer to any kind of oral exchange with another person – whether formal or informal. The nature and type of monitoring interview will vary a great deal according to context, the kind of information sought, the persons to be interviewed etc. For example, the aim may be to determine whether an incident took place, to ascertain the facts, determine responsibilities, assess the actions taken by the competent authorities, to make recommendations for follow-up action, etc.

The interview is central tool in monitoring. Professionally conducted interviews can not only generate information that will form the basis of appropriate findings and recommendations but can also enhance the credibility of a mission among interviewees and the public at large. The core principles of monitoring of doing least harm, accuracy and principled impartiality have a fundamental importance in interviewing. [See also below checklist for conducting interviews through interpreters.]

Planning Monitoring Interviews

- Plan in advance for...
 - The profile of interviewee if known (victim/witness, what kind of violation they may witnessed or experienced? sexual violence for example requires specific interview skills), what other features may affect the interview (e.g. status such as IDP, child, illiteracy or any disability that may affect the conduct of interview? etc.);
 - Group or individual interview, (interviewing in groups may be necessary due to physical location etc. but can entail particular difficulties, interviewing a series of people may help shield a single source of an allegation who may be at risk if they are identified as the source of a complaint, etc.);
 - Cultural, social, religious, gender factors, (Such factors can be a barrier to individual interviews or for male monitors interviewing women, etc.);
 - Promptness, duration, appropriate level of formality, (Monitoring interviews with government or military officials may require specific considerations relating to protocol and seniority of those conducting the interview);
 - Place/location (IDP centre, place of detention etc.), privacy required for particularly sensitive interviews and to guard against retribution etc.;

- ALWAYS consider the OBJECTIVE(S) of each interview, particularly where interviewees may have been interviewed repeatedly already and may expect remedial action to have been taken arising from previous interviews.

In principle, where possible, interviewing in pairs is considered best practice as it allows one monitor to note the discussions while the other asks questions.

Individual Interviews

- Set the appropriate atmosphere, tone;
- Open the interview with introductions, explanation of mandate /purpose of interview (ideally with a letter explaining the monitoring objectives/mandate etc. in appropriate language;
- Seek the interviewee's permission to make notes of the interview;
- Use recording devices only with interviewee's permission and only where the advantages outweigh the disadvantages of having to later type up transcript;
- Consider narrative flow of the interview, pace, body language etc. that make for an effective interview;
- Probe without interrogating and never show disbelief even if you need to ask questions about apparent contradictions in the interviewee's story;
- Specific interviews may require the monitor to raise topics the interviewee is reluctant to speak about;

- Always listen and signal that you are listening to the interviewee;
- Close the interview by clarifying consent issues and ensuring there are no false expectations on the part of the interviewee;
- Always remember it is the interviewee's right to withhold their consent to any action being taken in their case – even it may mean that meaningful action cannot be provided without such consent.

Monitoring interviews in detention context

Detention interviews involve specific features that require additional consideration. These include awareness of specific legal safeguards required by international law and in some cases specific risks of reprisals due to interviewees lack of liberty.

In addition to the standard issues for consideration in interviews generally the detention context requires consideration such as:

- Advance preparation, including information about detainees' profiles, files, as well as any recommendations of previous monitoring visits etc.;
- Ensure clarity with the detention authorities regarding the nature of the monitoring access – the mandate, security, privacy and other conditions required etc.;

- Choosing interviewees and location (out of hearing and sight where possible) – consider using multiple interviews to protect sources of particularly sensitive allegations – Plan for possibility that other detainees may serve as informers for the authorities.

After the interview

- Consider any urgent action required as a result of interview findings (interviewees at risk, particularly in detention);
- Where necessary conduct a prompt debrief of interview team/interpreter (cross-checking notes, assessing credibility etc.);
- Referral to other agencies or institutions on issues relating to their mandate or specialisation e.g. humanitarian assistance;
- Guard against vicarious trauma of monitors and interpreters arising from particularly traumatic interviews or subject matter that can have a cumulative impact.

Working with Interpreters in Human Rights Monitoring

While the ideal situation in human rights monitoring is that monitors speak the language spoken by the people of the country or area in which they work, the reality is that commonly monitors need to work through interpreters. There will be times when interviewee speaks some English, or a monitor speaks some of the local language, but in such cases consideration should always be given to using an in-

terpreter, especially if the interview or meeting will involve using detailed or technical language.

Using interpreters presents particular challenges both in term of efficiency but also where victims of human rights violations or witnesses may be more reluctant to speak in the presence of an interpreter – particularly if the interpreter is local.

It is standard best practice for monitoring organisations and missions using interpreters to ensure that where interpreters are required, they are vetted as to their background to avoid infiltration by informers or “spoilers” with an agenda to impede the Mission’s objectives. Vetting and training is also critical to reduce the risk that interpreters intimidate interviewees. For example, former members of the military or individuals of the same ethnicity as the persecutors should be avoided. In addition, female interpreters may be less threatening than males in the interview context, in particular where the alleged violations include sexual offences. The reliability of interpreters is fundamental to the credibility of the work of the monitors and the Mission. As with all other employees of an organisation or mission, interpreters are also bearers of human rights which requires planning for what they may be asked to do, the risks they are expected to take, the training and assurances they should be given etc.

When working with interpreters, it is important to keep in mind the potential for interpreters to learn too much. In the worst case scenario, interpreters may become or be pres-

sured into becoming informants for the human rights violators. Interpreters may be so familiar with certain facts or country conditions that they translate carelessly or incompletely, based on what they know or assume rather than what they are told. Strategies vary according to contexts but some missions have chosen to rotate interpreters. Others make a point of recruiting interpreters from areas outside of the place where they are asked to work.

An organisation or mission should have clear guidelines regarding the use of interpreters and ideally a code of conduct for interpreters and translators. Many such codes exist and while they vary in detail, common standards identified in the codes include:

- Impartiality
- Confidentiality
- Accuracy
- Competency

However, circumstances may still arise where an interpreter who is not formally employed by the mission has to be used. In all cases consideration should be given to whether it is necessary to conduct a particular interview immediately or if it might be deferred.

If an interpreter is used for an interview, the monitor should explain the ground rules to the interpreter in private, before the interview begins. The interpreter should be asked to relay questions exactly, word for word to the extent possible. If the questions are unclear or if the interviewee does not

understand them, the monitor should ask the interpreter to let them know, so that questions can be rephrased. The monitor should speak in concise sentences, that are easy to understand and translate. The interpreter should relay questions or statements, one at a time, to assure that the interviewee understands them. The monitor should if necessary repeat questions several times. The monitor should look at and speak directly to the interviewee, rather than to the interpreter.

The application of checklists such as those below will vary according to a range of factors, whether centralized mission training of interpreters is provided, the levels of interpreters' experience of working in monitoring context, the formality of the particular interview etc. Working with an interpreter who is a Mission employee may be fundamentally different from circumstances where it is necessary to use an interpreter on an ad hoc basis. Nevertheless, the checklist provides monitors with a reminder of key issues which may be relevant in certain situations.

Before the interview

- Identify the language and/or dialect required. Remember that while presence of family members during an interview may be viewed as supportive in certain cultures, in others it may be highly inappropriate to discuss certain matters in their presence. For example, it may be culturally unacceptable for a female victim to discuss sexual matters in the presence of a male member of her family;

- Consider whether the gender or other features of the interpreter are an issue;
- Remember that using an interpreter will always make an interview or meeting longer, due to the need to repeat questions and answers.

Briefing the Interpreter

- In some cases, it may be useful to brief the interpreter in advance of the meeting, to save time on the day of the interview;
- Before the interview, the monitor should explain the ground rules to the interpreter in private, if necessary;
- Any specialised vocabulary or jargon that will be used during the meeting should be explained;
- The interpreter should be asked to relay questions and responses exactly, word for word as far as possible;
- In general, interviewees should not speak to interpreters in the absence of the monitor either before or after the meeting.

Starting the Interview

- The seating should be arranged so that the interpreter can maintain eye contact with both monitor and interviewee – who should ideally face each other, as in a normal meeting, with the interpreter seated to one side;
- Ensure the interviewee agrees to the use of an interpreter;

- Check that interviewee and the Interpreter speak the same language and dialect – remember two people who speak the same language may struggle to communicate if they speak different dialects;
- Explain your role/mandate and the purpose of the interview;
- Introduce the interpreter to interviewee and explain the interpreter's role, e.g. present solely to help you and the interviewee to communicate with each other, not to provide advice or opinions.

During the Interview

- The seating should be arranged so that the interpreter can maintain eye contact with both the monitor asking the questions and interviewee;
- Where possible the monitor and interviewee should face each other as in a normal meeting with the Interpreter seated to the side of the monitor;
- For group meetings, the interviewee and the interpreter should be seated close to each other and be able to see everyone at the meeting;
- Monitor should speak in concise sentences. The interpreter should relay questions or statements, one at a time so as to ensure that the witness understands them. If necessary questions should be repeated. The monitor should speak directly to the interviewee, rather than to the interpreter e.g. 'What is your full name' NOT 'Ask him to tell me his full name';

- If an interviewee does not understand any question, you should ask the interpreter to let you know, so that it can be rephrased;
- If an interviewee speaks too fast for the interpreter you should ask interviewee to slow down;
- Avoid any discussions with the interpreter which excludes the interviewee from the conversation.

Ending the Meeting

- Give the interviewee an opportunity to clarify any matters or raise any issue not covered in the interview;
- Ensure that interviewee is clear on what next steps will or may be taken.

Debriefing the Interpreter

- Ask for feedback from the interpreter as to how they felt the interview went and take any necessary action;
- Give any feedback you have for the interpreter.

Even the most skilled interpreters may not have knowledge of human rights terminology. Useful human rights glossaries on human rights include:

UN-INTERPRETERS.ORG

www.un-interpreters.org/glossarylist.html

CoE Georgian–English and Russian–English glossaries

www.humanrights.coe.int/aware/GB/publi/publires-la.asp?F=1

www.humanrights.coe.int/aware/GB/publi/publires-la.asp?F=1

Checklist for human rights reporting

A monitoring report might be defined as a factual record of acts or omissions, a monitoring report that is human rights based is one which provides data that can be analysed from a human rights perspective, i.e. to identify human rights problems or progress, making findings conclusions and recommendations that are accurate in human rights terms.

- While there is no set format or length (Mission formats vary) a monitoring report can be distinguished from a press release etc.;
- Monitoring reports can be *internal* (to an organisation or Mission) (e.g. EUMM IDP, ‘Spot’, Returnee, follow-up) or *external*, such as the reports of the CoE-Human Rights Commissioner, available at [www.coe.int/t/commissioner/Source/Com-mDH\(2008\)37_en.pdf](http://www.coe.int/t/commissioner/Source/Com-mDH(2008)37_en.pdf);
- Monitoring Reports can be periodic, thematic, can relate to single interview or incident, or more generally, such as the detention system, a border etc.;
- Emergency monitoring reports are sometimes called “flash reports” or “urgent action reports” etc.

A monitoring report generally outlines as much available information as possible concerning:

- Who? (victim, witness, perpetrator);

- What? (happened, law appears to have been violated or lacking, what practice, action/inaction by responsible authorities);
- When? (the alleged incident took place, a complaint was filed);
- Where? (geographical location, place under responsibility of a particular body or institution);
- How? (action or inaction);
- Why? (This can be most difficult to establish but should be a primary focus of monitors so as to recommend appropriate action, is a problem due to lack of training, lack of supervision or is it a result of direct orders?).

Language of monitoring reports

Monitoring reports for external dissemination raise different concerns than internal reports, particularly as regards sensitivities around the use of language. However, many points regarding appropriate language might useful be borne in mind for both internal and external reports:

- Language and use of acronyms should vary according to the knowledge and specialisation of the intended reader, (e.g. factual report on military movements or analytical report to aid political decision-making);
- Accuracy of language (Human rights “violations” for states; human rights “abuses” for others. Use of appropriate qualifications such as “alleged” where an

allegation is not proven, “The monitors received credible reports that...”. Other language sensitivities can relate labeling of geographical areas (border or boundary etc.) and particular names used for armed groups can be seen as granting them legitimacy, etc.;

- Clarity, balancing detail and conciseness, comprehensiveness and urgency. Use of summaries, annexes etc. in the case of long reports.

Effective, monitoring reports should be relevant, timely and action oriented (setting out key findings and recommendations):

- Key qualities include precision, completeness, conciseness, and concrete specific recommendations where possible;
- Monitoring reports should ALWAYS reflect the 3 core principles of monitoring:
 - Do least harm (use of case codes to conceal identities as necessary, secure transport and storage of reports, detail allegations with appropriate language etc.);
 - Be accurate (with regard to facts, applicable law);
 - Reflect the principled impartiality of the monitoring function.

E. GLOSSARY

Abuse (of human rights): Used as a matter of legal accuracy to describe misconduct of non-state parties who by virtue of the fact that they cannot be party to treaties cannot “violate” the law.

Admissibility: The stage of an individual complaint procedure at which the responsible body decides if the right conditions are present for it to be able to examine a complaint. If a complaint is inadmissible, its merits cannot be examined further.

Allegation (e.g. of torture): A claim (as yet neither proved nor disproved) that, for example, torture has occurred.

Applicant: Person making an application under an individual complaint procedure.

Arbitrary Detention: The UN Working Group on Arbitrary Detention describes three kinds of deprivation of liberty as “arbitrary”, where:

- 1) Where there is no legal basis for detention. This includes those held without charge or trial or despite a judicial order for their release, or those still in prison after the expiry of their sentence;
- 2) An arrest or detention which is lawful under national standards may nonetheless be arbitrary under international standards, for example if the

law under which the person is detained is vague, excessively broad, or is in violation of other fundamental standards;

- 3) When violations of the fair trial rights of the detained person, such as the right to legal counsel, are sufficiently grave.

Asylum: Asylum is the status which those who qualify as refugees are entitled to receive from other states. Once granted, it means being allowed to remain in a country which is not their own.

Civil and Political Rights: The rights to liberty and equality, freedom to worship, to think and express oneself, to vote, to take part in political life, access to information etc.

Convention: Binding agreement between states; used synonymously with Treaty and Covenant.

Corroboration: Evidence which supports or confirms the truth of an allegation.

Customary International Law: Unwritten law that becomes binding on states as a result of being adhered to out of custom; when enough states have begun to behave as though something is law, it becomes law “by use”.

Court judgment: Legally-binding decision in which a court expresses its conclusions in a case.

Declaration: Document stating agreed upon standards but which is not legally binding. UN conferences, like the 1993

UN Conference on Human Rights in Vienna and the 1995 World Conference for Women in Beijing.

Deportation: Expulsion from a country.

Effective remedy: The right of any person whose rights have been violated. The ECtHR has held that a state's obligation to provide effective remedies to individuals whose rights are violated requires that capacity to review the factual basis for the grounds asserted by the executive, to balance the public interest asserted by the State with the individual right at issue and to reject the executive's assertion in this regard and that remedies must be adequate and accessible.

Enforcement (of obligations): Making the obligations effective; ensuring that they are respected.

Entry into force (of a treaty): The moment at which treaty obligations begin to apply.

Extra-judicial (e.g. execution): Action taken without judicial authority or appropriate legal process.

Economic, Social, Cultural Rights: Rights that concern the necessities of life that give people social and economic security, e.g. the right to food, shelter, education, health care, the right to one's cultural identity etc.

General Comments: Committees monitoring the implementation of treaties issue general comments to assist with their interpretation. E.g. the Committee on the Rights of the Child has published its interpretation of the Conven-

tion on the Rights of the Child in a range of General Comments on different thematic issues.

Genocide: The 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group living conditions calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Gross violations of human rights: Particularly serious violations of human rights, such as torture or extra-judicial killing.

Human Rights: The rights people are entitled to simply because they are human beings, irrespective of their citizenship, nationality, race, ethnicity, language, gender, sexuality, or abilities; human rights become enforceable when they are codified as Treaties, or as they become recognized as customary international law.

ICRC: ICRC/Red Crescent an independent, neutral organisation founded in 1864 and based in Geneva with a mandate (in the 1949 Geneva Conventions and ICRC Statute) to ensure humanitarian protection and assistance for victims of war and other situations of violence.

IDP: IDPs are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.

Impunity: Refers to situations where perpetrators of human rights violations are allowed to escape punishment for their actions.

Incommunicado detention: Being held by the authorities without being allowed contact with the outside world, and/or without the detention being acknowledged. Detention in which a detainee is denied access to people outside the place of detention, such as lawyers, doctors, family or friends, who might help them or find out what is happening to them and protect them from or publicize violations of their rights.

Indiscriminate attacks: Article 51 of Protocol I Additional to the 1949 Geneva Conventions classifies as “indiscriminate” both attacks by armed forces which are indiscriminate as to target and attacks which are disproportionate, and

prohibits both. Attacks are described as indiscriminate as to target when they fail to take necessary measures required to distinguish between civilians and civilian objects (unlawful objects of attack) and combatants and military objectives (lawful targets). Attacks are described as disproportionate when although directed at a lawful target, the expected incidental loss of civilian life is excessive in relation to the concrete and direct military advantage anticipated.

Individual complaint: A complaint relating to a specific set of facts affecting an individual or individuals.

Instrument: A general term to refer to international law documents, whether legally binding or not (e.g. treaties, declarations, Guiding Principles).

Indivisible: Refers to the equal importance of each human right.

Interdependent: Refers to the complementary framework of human rights. For example, the ability to participate in free and fair elections is directly affected by whether right to education, freedom of movement etc. are guaranteed.

International armed conflict: This refers to a conflict in which at least two States are involved. They are subject to a wide range of rules arising from human rights law and international humanitarian law, including those set out in the four Geneva Conventions and Additional Protocol I. In international humanitarian law such conflict is distinguished from non-international armed conflicts (see below).

Intergovernmental Organisations (IGOs): Organisations sponsored by several governments that seek to coordinate their efforts; some are regional (e.g. the CoE).

ICCPR: Adopted in 1966, the ICCPR provides individuals with a broad range of civil and political rights.

ICESCR: Adopted in 1966, the ICESCR provides individuals with a broad range of economic, social, and cultural rights.

International humanitarian law: Also known as the "laws of war", international humanitarian law comprises principles and rules that seek to mitigate the effects of war by limiting the means and methods of conducting military operations. The laws also oblige combatants to spare civilians and those who no longer actively participate in hostilities (including, for example, soldiers who have been wounded or have surrendered). Many of these rules have been codified in international treaties such as the Geneva Conventions of 12 August 1949 and their two Additional Protocols adopted in 1977.

Jurisdiction (of a state): Area or persons over which a state exercises legal authority.

Margin of appreciation: This concept means that allowance must be made for the fact that where rights can legitimately be restricted, the state is often in a better position to assess the need for restrictive measures. Particularly where there has to be a balance of interest between the rights of the individual and the general public interest.

Mandate: The source of the powers of a mechanism or organisation – the document which explains what the mechanism or organisation is authorised to do, powers etc.

Nongovernmental Organisations (NGOs): Organisations that are not part of a state institution. The term is usually used in reference to voluntary, charitable or professional organisations, such as human rights organisations. Some NGOs monitor acts as 'watchdogs of human rights. Some are large and international (e.g., the ICRC, Amnesty International); others may be small and local. NGOs are a subset of civil society (which also includes churches, media etc.).

Non-international armed conflict: This refers to conflict that is confined to the territory of a single State, involving either regular armed forces fighting armed dissidents, or armed groups fighting each other. A more limited range of humanitarian law rules apply to internal armed conflicts and are laid down in Article 3 common to the four Geneva Conventions as well as in Additional Protocol II.

OSCE: Regional organisation, comprised of 58 states, European plus Canada and US (different from the EU and the CoE). It conducts a wide range of activities including monitoring.

Perpetrator: The person who has carried out an act or omission.

Place of detention: In human rights law this term is used in a broad sense. It covers any place where a person is deprived of liberty by the state: prisons, police stations, centre for

asylum seekers, juvenile detention centres, social care homes, psychiatric institutions and any other place where people can be deprived of their liberty.

Positive obligation: In addition to negative protection of rights (i.e. requiring states and their officials to refrain from interfering with the rights) in some circumstances the Treaties impose positive obligations on the state to ensure that the rights are protected. Therefore a right can be violated by the state's failure or omission to act. For example the state is under a positive obligation to legislate in order to protect the right to life – so a state must have laws in place to prosecute those guilty of murder and manslaughter. ECHR positive obligations arise mainly from Article 1 of the Convention to “secure to everyone within their jurisdiction” the rights set out in the Convention. But the positive obligations are also explicit in some Articles, e.g. Article 2 provides that the right to life “shall be protected by law”.

Proportionality: In human rights terms this concept means that any interference with rights in order to balance the rights of the individual and the interests of others must be a fair balance and not excessive. Where it is necessary (for some valid reason) to interfere with the exercise of a human right the interference must be reasonable in terms of its means employed, severity and duration etc. and the aim pursued.

Protocol: A treaty which modifies another treaty (e.g. adding additional procedures or substantive provisions).

Provisional measures: Temporary measures which can be requested by a judicial or quasi-judicial body before having completed its consideration of a case, in order to avoid irreparable damage.

Quasi-judicial procedure: A procedure before a body which considers cases in a similar way to a judicial body, but which is not composed of judges and the decisions of which are not legally-binding.

Ratification, Ratify: Process by which the legislative body of a state confirms a government's action in signing a treaty; formal procedure by which a state becomes bound to a treaty.

Refugee: any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable, or owing to such fear, is unwilling to return to it.

Reparation: Measures to repair damage caused by human rights violation. In 2005 the UN adopted Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

Reservation: The exceptions that States Parties make to a treaty (eg, provisions that they do not agree to follow). Reservations, however, cannot be made which undermine the fundamental meaning of the treaty.

Resolution: Official decision of an international body, often adopted through a vote. It is usually a recommendation and therefore not of itself legally binding.

Rules of procedure: The detailed rules which a judicial or quasi-judicial body adopts, setting out the way in which proceedings before it should be carried out.

Sanction: A penalty imposed for a state's failure to respect its legal obligations.

States Party(ies): Those countries that have ratified a Covenant or a Convention and are thereby bound to comply with its provisions.

Supervisory body: A body set up to supervise the ways in which states implement their obligations under a treaty (a court, committee etc.).

Torture: The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a

third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

Treaty: A formal legal agreement between states that defines their mutual duties and obligations; used synonymously with Convention, Covenant, Protocol etc.

Treaty body: An institution (court, committee etc.) established by a treaty responsible for monitoring implementation of the treaty by states.

UDHR: Adopted by the general assembly on December 10, 1948. Although not legally binding, it has now considered to have become part of customary international law.

Universal jurisdiction: Jurisdiction is generally territorial, in that courts of each state have jurisdiction over people who are suspected of having committed crimes in their territory. However, international law has long recognized that courts can exercise wider jurisdiction with respect to certain crimes, such as piracy and war crimes. International law permits and, in some cases, requires states to exercise jurisdiction over people suspected of certain grave crimes under international law, no matter where these crimes occurred, even if they took place in the territory of another state, involved suspects or victims who are not nationals of their state or posed no direct threat to the state’s own particular security interests.

Violation (of obligations): Failure by a state to respect its obligations under international law.

Violence Against Women: The UN Declaration on the Elimination of Violence against Women defines “violence against women” as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life... Violence against women shall be understood to encompass, but not be limited to, the following: (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.”

War crimes: The Rome Statute of the International Criminal Court defines war crimes in international conflicts as “grave breaches of the Geneva Conventions” (acts against people protected by the Geneva Conventions including wilful killing, torture and inhuman treatment, deprivation

of the rights to fair and regular trial, hostage-taking and unlawful imprisonment); and “other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law” (such as “intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities” and “attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives”).

In the case of an armed conflict not of an international character, the Rome Statute defines war crimes as serious violations of Article 3 common to the four Geneva Conventions (acts against people taking no active part in the hostilities, including violence to life and person, cruel treatment and torture) and other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law (including rape, sexual slavery, enforced prostitution, forced pregnancy, and any other form of sexual violence).

F. SELECTED WEB RESOURCES ON INTERNATIONAL HUMANITARIAN LAW/HUMAN RIGHTS AND MONITORING

Council of Europe

www.coe.int/

European Court of Human Rights

www.echr.coe.int/echr/Homepage_EN

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

www.cpt.coe.int/en/

CoE Commissioner for Human Rights

www.coe.int/t/commissioner/default_en.asp

UN Human Rights Website

www.un.org/rights/

EU Human Rights Policy. Including EU human rights guidelines which serve as a framework for protecting human rights in third countries, These are non-binding but draw upon international law and cover relevant groups and issues such as Torture, human rights defenders, children in armed conflict etc.

www.ec.europa.eu/external_relations/human_rights/guidelines/index.htm

International Committee of the Red Cross

www.icrc.org/

A large collection of web links to international human rights bodies and human rights monitoring is available at: International Human Rights Network

www.ihrnetwork.org/links_187.htm

IASC Reference Group on Humanitarian Action and Human Rights, “Frequently asked questions on international humanitarian, human rights and refugee law in the context of armed conflict”

www.reliefweb.int/rw/lib.nsf/db900SID/KKEE-6DMS4W?OpenDocument

Rule of Law in Armed Conflicts Project (Geneva Academy of International Humanitarian Law and Human Rights)

[www.adh-geneva.ch/RULAC/
applicable_international_law.php?id_state=68](http://www.adh-geneva.ch/RULAC/applicable_international_law.php?id_state=68)

Brief overview of International human rights compiled by non-governmental organisations WaterAid and Rights and Humanity. Taking the right to water as example it explores state obligations and UN treaty mechanisms for monitoring States compliance with these obligations

www.righttowater.org.uk/code/introduction_1.asp

UN Fact Sheet No.13, International Humanitarian Law and Human Rights

[www.ohchr.org/Documents/Publications/
FactSheet13en.pdf](http://www.ohchr.org/Documents/Publications/FactSheet13en.pdf)

UN Training Manual on Human Rights Monitoring

[www.ohchr.org/Documents/Publications/
training7Introen.pdf](http://www.ohchr.org/Documents/Publications/training7Introen.pdf)

Other web resources, with specific reference to Georgia, include:

A list of Georgian laws are available on line at:

www.legislationline.org/countries/country/29

CoE (treaties signed by Georgia)

http://www.coe.int/T/e/com/about_coe/member_states/e_ge.asp#TopOfPage

The International Red Cross (operations in Georgia)

www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/georgia?opendocument&link=home

Office of the High Commissioner for Human Rights (most recent UN treaty remarks and reports on Georgia)

<http://www.ohchr.org/EN/countries/ENACARegion/Pages/GEIndex.aspx>

Human Rights Watch (Georgia materials)

www.hrw.org/en/europecentral-asia/georgia

Amnesty International (Georgia Materials)

www.amnesty.org/en/region/georgia

Minority Rights Directory (Georgia)

www.minorityrights.org/1909/georgia/georgia-overview.html

Materials for use in human rights awareness and training activities (including materials in Georgian)

www.humanrights.coe.int/aware/GB/publi/publidtb.asp

www.eumm.eu

Directorate General of Human Rights
and Legal Affairs
Council of Europe
F-67075 Strasbourg Cedex