NATIONS UNIES **A**

Assemblée générale

Distr.
GÉNÉRALE

A/HRC/10/13/Add.2
13 février 2009

FRANÇAIS
Original: ANGLAIS

CONSEIL DES DROITS DE L'HOMME
Dixième session
Point 3 de l'ordre du jour

PROMOTION ET PROTECTION DE TOUS LES DROITS DE L'HOMME, CIVILS, POLITIQUES, ÉCONOMIQUES, SOCIAUX ET CULTURELS, Y COMPRIS LE DROIT AU DÉVELOPPEMENT

Rapport soumis par le Représentant du Secrétaire général pour les droits de l'homme des personnes déplacées dans leur propre pays, Walter Kälin*

Additif

MISSION EN GÉORGIE**

* Soumission tardive.

** Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe au résumé, et il est distribué dans la langue originale seulement.

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Résumé

Le Représentant du Secrétaire général pour les droits de l'homme des personnes déplacées dans leur propre pays, Walter Kälin, a effectué une mission officielle en Géorgie au 1er au 4 octobre 2008, à l'invitation du Gouvernement géorgien et conformément à son mandat figurant dans la résolution 6/32 du Conseil des droits de l'homme. Son objectif principal était d'engager le dialogue avec les autorités en vue d'améliorer la protection et d'assurer la pleine réalisation des droits de l'homme des personnes déplacées dans leur propre pays, en Géorgie. L'évaluation qu'il a effectuée à ce titre fait ressortir les principaux obstacles et les conditions nécessaires à la mise en place de solutions durables pour ces personnes. Le Représentant regrette profondément que les politiques actuelles des parties au conflit sur l'accès à la région de Tskhinvali/Ossétie du Sud l'aient empêché de se rendre comme prévu dans cette région.

Les hostilités dans le nord de la Géorgie, qui se sont intensifiées dans la nuit du 7 au 8 août 2008, ont abouti au déplacement de quelque 133 000 personnes en Géorgie. Le Représentant se félicite de la réaction rapide du Gouvernement face à la crise déclenchée par ces déplacements induits par les hostilités et de ses projets tendant à trouver des solutions durables pour toutes les personnes déplacées, y compris celles qui le sont depuis le début des années 90. Un grand nombre des personnes déplacées en août ont pu regagner leur foyer. Celles qui sont retournées dans la zone dite tampon qui jouxte la région de Tskhinvali/Ossétie du Sud ont pour l'essentiel des besoins liés aux difficultés que pose la réinstallation, notamment en termes de sécurité et de rétablissement de l'ordre public. La reconstruction et la réparation des maisons détruites ou mises à sac, l'assistance humanitaire et le rétablissement des services de base comme l'éducation et la santé sont des sujets de préoccupation importants, tout comme la reprise de l'activité économique. Le Représentant prie instamment le Gouvernement de continuer à prendre toutes les mesures nécessaires pour instaurer les conditions d'un retour durable, en donnant aux personnes déplacées la possibilité de retourner en toute sécurité et la dignité, de leur plein gré, dans leurs maisons ou lieux de résidence habituels.

Selon des estimations du Gouvernement datant de novembre 2008, quelque 37 605 personnes déplacées ne rentreront pas chez elles à échéance prévisible. Ce chiffre englobe 19 111 personnes originaires de la région de Tskhinvali/Ossétie du Sud, 1 821 personnes de la haute vallée du Kodori, ainsi que des personnes déplacées qui passeront l'hiver hors de chez elles, à savoir 11 500 personnes ne pouvant regagner la zone adjacente à la région de Tskhinvali/Ossétie du Sud pour des raisons notamment de sécurité ou parce que les habitations ont été détruites, et quelque 5 173 personnes déplacées en provenance d'Akhalgori[1]. Le Gouvernement estime être en mesure de loger durablement quelque 21 000 personnes déplacées d'ici à la fin de 2008. Le Représentant félicite le Gouvernement de sa résolution à trouver des

[1] Bureau du Coordonnateur résident et Coordonnateur de l'action humanitaire, Rapport 35 sur la situation en Géorgie, 6-13 novembre 2008. Selon les informations de l'ONU au 9 décembre 2008, qui se fondent sur les chiffres communiqués par le Gouvernement, le nombre estimé de personnes qui ont réintégré la zone adjacente à la région de Tskhinvali/Ossétie du Sud aurait augmenté pour atteindre 27 805 personnes le 5 décembre. Le Haut-Commissariat des Nations Unies pour les réfugiés (HCR) estime entre 3 000 et 5 000 le nombre de personnes déplacées qui ne pourront revenir dans cette zone et qui passeront l'hiver en déplacement. Le nombre de personnes déplacées que le Gouvernement a réinstallées se montait, selon les estimations citées, à 2 300 au 15 novembre.

solutions durables pour les personnes déplacées qui ne sont pas susceptibles de rentrer chez elles à échéance prévisible. Il constate toutefois avec inquiétude que l'accent est mis presque exclusivement sur les infrastructures et il recommande au Gouvernement d'élaborer une politique d'intégration globale qui couvre l'ensemble des droits civils, culturels, économiques, politiques et sociaux des personnes déplacées. Il faudrait en outre s'attacher à garantir la pleine participation de toutes les composantes de la population déplacée à la planification et à la gestion du programme de réinstallation.

À ce propos, le Représentant rappelle que la réinstallation ou le retour doivent être librement consentis et souligne que des possibilités de réinstallation devaient être offertes sans discrimination, la priorité étant donnée aux personnes vulnérables. Les personnes déplacées doivent être en mesure d'opérer un choix éclairé parmi les solutions durables proposées.

Comme le Représentant l'a indiqué dans son précédent rapport, le plus grand défi est l'intégration des quelque 220 000 personnes qui vivent depuis plus de dix ans un déplacement dont on ne voit pas la fin. Le Représentant accueille avec satisfaction l'adoption, fin juillet 2008, du plan d'action pour l'application du décret n° 47 du Gouvernement géorgien portant approbation de la «Stratégie de l'État en faveur des personnes déplacées dans leur propre pays − persécutées», qui prévoit des mesures d'intégration des intéressés dans toute la société, ainsi que la décision du Gouvernement de réviser ce plan d'action à la lumière de l'évolution de la situation et l'adoption du décret n° 854 du 4 décembre 2008 chargeant le Ministère des réfugiés et du logement de procéder à cette révision. Le Représentant a été informé qu'un avant-projet du plan d'action révisé avait été élaboré et que les institutions publiques pertinentes avaient été chargées, en vertu du décret n° 4 du 12 janvier 1999, de prendre toutes les mesures nécessaires pour en établir la version finale à brève échéance. Tout en se réjouissant du revirement de politique consistant à ne plus considérer la réintégration locale et le retour comme incompatibles, le Représentant demeure préoccupé par le fait que les personnes déplacées «de longue date» n'ont toujours pas été réintégrées. Il faut veiller au respect des droits de ce groupe tout en agissant en faveur des groupes de personnes récemment déplacées, sans aucune discrimination. Le Représentant recommande au Gouvernement d'accorder la priorité absolue à l'application du Plan d'action pour les personnes déplacées dans leur propre pays adopté en juillet 2008 et aux modifications visant à tenir compte des populations récemment déplacées.

Le libre accès des organismes humanitaires à la région de Tskhinvali/Ossétie du Sud et à l'Abkhazie demeure une préoccupation majeure. À ce sujet, le Représentant souligne à nouveau combien il est préoccupé par la loi relative aux territoires occupés, dont plusieurs dispositions pourraient être jugées incompatibles avec les obligations incombant à la Géorgie en vertu du droit international des droits de l'homme. Il prie instamment le Gouvernement géorgien de prendre toutes les mesures possibles, sans discrimination, pour protéger l'ensemble des droits de l'homme des populations déplacées dans leur propre pays ou vivant dans les zones de conflit.

Annexe

REPORT OF THE REPRESENTATIVE OF THE SECRETARY-GENERAL ON THE HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS, WALTER KÄLIN, ON HIS MISSION TO GEORGIA (1 TO 4 OCTOBER 2008)

CONTENTS

Introduction

1. In accordance with his mandate contained in Human Rights Council resolution 6/32, and by invitation of the Government of Georgia, the Representative of the Secretary-General on the human rights of internally displaced persons (the Representative), Walter Kälin, conducted an official mission to Georgia from 1 to 4 October 2008 at the invitation of the Government of Georgia and in accordance with his mandate.[1] The mission built upon the Representative's previous mission in December 2005 and a follow-up visit in December 2006.[2] His main objective was to engage in dialogue with the Government with a view to identifying the challenges in addressing the situation of the internally displaced following the conflict that occurred in August 2008; to explore possibilities for addressing such challenges in the immediate and long term; as well as to elaborate concrete recommendations in this regard. During his visit the Representative also aimed to assess the situation of those persons living in protracted displacement since the 1990s and the implementation of recommendations following his previous visits.

2. During the present mission, the Representative had meetings in Tbilisi with the Prime Minister of Georgia as well as the Ministers of Foreign Affairs, Refugees and Accommodation, Health and Reintegration, the Deputy Minister of Interior and the Head of the Chancellery. He also held meetings with the United Nations Country Team, non-governmental organizations (NGOs) and members of the diplomatic community. He visited collective shelters in Tbilisi, the construction site for a new IDP settlement in Tserovani as well as the tented camp in Gori. He also travelled to the so-called buffer zone, where he had discussions with spontaneous returnees. The Representative regrets that the policies of the parties to the conflict have prevented him from conducting the planned visit to the Tskhinvali region/South Ossetia until now. He intends to conduct this part of the mission as soon as possible.

3. The Representative expresses his thanks for the open and frank conversations he was able to have with all of his interlocutors, which enabled him to gain a clearer picture of the present situation of internal displacement in Georgia. In particular, he would like to thank the Office of the United Nations High Commissioner for Refugees (UNHCR) for the logistical support provided throughout his mission. He is grateful for the information provided to him by representatives of civil society and would like to thank IDPs who were ready to share their experiences with him.

4. The Representative shared his primary findings with the Government at the conclusion of the visit and transmitted his preliminary conclusions and findings in early November. He was encouraged by the willingness of Government officials to engage in continuous dialogue to ensure that all internally displaced persons enjoy their human rights. He emphasizes his desire and intention to continue this dialogue.

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[1] Human Rights Council resolution 6/32.

[2] See E/CN.4/2006/71/Add.7 and A/HRC/4/38, paras. 22-24.

5. The Representative's conclusions and recommendations in the present report are informed by the Guiding Principles on Internal Displacement (the Guiding Principles),[3] which, although not directly binding, reflect and are consistent with international human rights and international humanitarian law. They have been recognized by States as "an important international framework for the protection of internally displaced persons",[4] and are increasingly reflected in national laws and policies.

6. The Representative interprets his mandate as covering all internally displaced persons (IDPs) in Georgia, i.e. in accordance with the Guiding Principles "internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border". As citizens of their country, IDPs in Georgia remain entitled to all guarantees of international human rights and international humanitarian law subscribed to by the State or applicable as customary international law. They do not lose, as a consequence of their displacement, the rights of the population at large. At the same time, IDPs have needs and vulnerabilities distinct from the non-displaced population, which must be addressed by specific protection and assistance measures. These rights are reflected and detailed in the Guiding Principles.

7. The primary duty and responsibility to provide protection to IDPs lies with the national authorities, and IDPs have the right to request and receive such protection and assistance from the Government (Guiding Principle 3). At the same time, the Principles also apply to non-State actors who are effectively exercising control over a territory to the extent that the rights of IDPs and returnees are affected. There may be times when a State does not have the capacity to fulfil these obligations, because it either lacks means to do so, or does not have de facto control over parts of its territory. In such cases, the State has an obligation to allow others to fulfil this duty, in particular international agencies and organizations. Such support shall be considered in good faith and not as interference in the internal affairs of a State, and all authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced (Guiding Principle 25).

8. Furthermore, and without prejudice to their legal status, those who hold de facto control are obliged to respect the rights of IDPs and secure their protection. The Guiding Principles "provide guidance to … all other authorities, groups and persons in their relations with internally displaced persons". As highlighted in his report to the Commission on Human Rights on his previous visit to Georgia, in the circumstances at hand this means that the de facto authorities in the respective areas of Abkhazia and the Tskhinvali region/South Ossetia are responsible for preventing and avoiding actions which could lead to arbitrary displacement, as well as for protecting those who are displaced in areas under its control and respecting the rights of IDPs should they wish to return to or to resettle in areas controlled by them. Although such de facto authorities as well as the territories they control are not subjects of international law, they may

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[3] E/CN.4/1998/53/Add.2.

[4] General Assembly resolutions 60/1, para. 132, 60/168, para. 8, and 62/153, para. 10. See also Human Rights Council resolution 6/32, para. 5.

nevertheless have obligations under international law. In times of internal armed conflict, article 3 common to the Geneva Conventions sets out basic obligations for all parties to a conflict irrespective of their status. As regards human rights, the obligations of Georgia under international treaty and human rights law continue to apply in the territories under the control of de facto authorities. Their acts are classified, under the rules of international law on State responsibility, as acts of the State to the extent that such authorities are in fact exercising elements of governmental authority in the absence or default of the official authorities, and in circumstances which call for the exercise of such authority.[5]

I. GENERAL CONTEXT OF INTERNAL DISPLACEMENT IN GEORGIA

A. Patterns of displacement

9. As a result of the hostilities in northern Georgia that escalated on 7/8 August 2008, some 133,000 persons became displaced within Georgia. According to an inter-agency assessment mission to the Tskhinvali region/South Ossetia, an estimated 10,000 to 15,000 persons remain displaced within the Tskhinvali region/South Ossetia.[6] A ceasefire was signed between Russia and Georgia on 13 August, five days after the conflict had erupted. Russian troops subsequently withdrew from various locations across Georgia but remained in the areas adjacent to the administrative border of the Tskhinvali region/South Ossetia (the so-called buffer zone). The European Union (EU) brokered an agreement providing for Russia to pull out its troops by 10 October, and for the deployment of at least 200 EU monitors, who started deployment during the visit of the Representative. The Russian withdrawal from the buffer zone was completed on 8 October.

10. The Representative, after having spoken to persons displaced in August from areas adjacent to the Tskhinvali region/South Ossetia, considers that most of them fled primarily in order to avoid the dangers of war and general insecurity. With regard to those displaced from the Tskhinvali region/South Ossetia, and in view of the fact that the current political positions of all sides regarding access to this region resulted in the Representative not having access, he is not in a position to assess the situation as to the causes of displacement or the current situation of those displaced inside the Tskhinvali region/South Ossetia.

11. Precise data on current displacement patterns remain difficult to establish. Currently, displacement in Georgia can be divided into three categories described below:

(a) Approximately (according to the Civil Registry Agency) 107,026 persons fled the area adjacent to the Tskhinvali region/South Ossetia. IDPs from the Tskhinvali region/South Ossetia are estimated as of November 2008 as 19,111, from the upper Kodori Valley as 1,821, and those displaced from Akhalgori as 5,173.[7] According to the Office of the United Nations Resident/Humanitarian Coordinator, an estimated 75,000 persons displaced from Gori and

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[5] E/CN.4/2006/71/Add.7, para. 5.

[6] United Nations Inter-agency Humanitarian Assessment Mission to South Ossetia, 16-20 September 2008, mission report, para. 5.6.

[7] Ibid.; Displacement Figures and Estimates, United Nations Georgia, 11 November 2008.

surrounding areas returned soon after the end of hostilities in August and September, while an estimated 24,596 of the persons who fled the so-called buffer zone have been able to return home in the Shida Kartli region following the withdrawal of Russian troops between 7 October and 10 November 2008.[8] The main needs of the latter category relate to the challenge of recovery after return including safety (including humanitarian demining) and the re-establishment of law and order. The reconstruction and repairs of destroyed or looted houses; humanitarian assistance with food and firewood; the re-establishment of basic services such as education and health; as well as the re-establishment of economic activities are important concerns;

(b) According to government estimates, some 37,605 IDPs will not return in the foreseeable future. This figure includes the 19,111 IDPs from the Tskhinvali region/South Ossetia and the 1,821 IDPs from the upper Kodori Valley, as well as those IDPs who will spend the winter in displacement, namely 11,500 who cannot return to the area adjacent to the Tskhinvali region/South Ossetia for reasons such as security or destruction of property, and some 5,173 IDPs from Akhalgori.[9] The Government estimates that some 21,000 displaced will be accommodated in durable housing by the end of the year;

(c) Approximately 220,000 internally displaced persons from the territories of Abkhazia and the Tskhinvali region/South Ossetia have been living in protracted displacement for more than a decade following the conflicts in the aftermath of the independence of the former Soviet Republic of Georgia in 1991 as described in the Representative's previous report.[10]

B. General human rights situation in Georgia

12. Georgia is party to several universal and regional human rights treaties, including the International Covenant on Civil and Political Rights and its Optional Protocol and Second Optional Protocol; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography. Furthermore, it is party to the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention relating to the Status of Refugees; and the Rome Statute of the International Criminal Court. Georgia is also party to the Geneva Conventions and the Additional Protocols thereto of 8 June 1977. At the regional level, Georgia is party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, including its Protocols Nos. 1 to 14, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as the Framework Convention for the Protection of National Minorities.

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[8] Office of the United Nations Resident/Humanitarian Coordinator, Situation report No. 35 on the situation in Georgia, 6-13 November 2008.

[9] Ibid.

[10] E/CN.4/2006/71/Add.7, paras. 6-9.

13. Several treaty bodies have issued observations and recommendations to Georgia on the implementation of their obligations under the above treaties. With regard to the situation of the internally displaced, the treaty bodies have formulated a series of recommendations regarding IDPs living in protracted displacement. In November 2007, the Human Rights Committee expressed concern at the forced eviction of IDPs from collective centres in Tbilisi, Kutaisi and Adjara, without a court decision or agreement of persons concerned, and without proper compensation and support by governmental agencies, in violation of articles 12 and 26 of the ICCPR. The Human Rights Committee recommended that Georgia ensure proper regulation of the privatization of collective centres, and take all necessary measures to prevent cases of forced evictions of IDPs in the future. It also asked that Georgia ensure that the plan of action for IDPs is fully in line with all provisions under the Covenant on Civil and Political Rights, in particular the principles of voluntariness of return and non-discrimination.[11] In June 2008, the Committee on the Rights of the Child welcomed the adoption of the draft plan of action on IDPs but expressed its concern at the continued serious socio-economic deprivation of IDPs and their limited access to housing, health services and education as well as the physical and psychological impact of displacement on children. It was also concerned at the potential negative impact of segregated schools on internally displaced children. The Committee recommended that Georgia give the highest priority to the protection of the rights of internally displaced children and incorporate the Guiding Principles on Internal Displacement in the legislation and policies of the State party.[12]

14. Complaints have been voiced by all sides regarding violations of international human rights and humanitarian law in the context of the August 2008 conflict. The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, after having visited Vladikavkaz, Tskhinvali, Gori, Tbilisi and Moscow from 22 to 29 August, in order to assess the human rights situation in the areas affected by the conflict, concluded that "the conflict has had a devastating effect on the human rights of the population". Following his visit, the Commissioner presented six principles for the urgent protection of human rights and humanitarian security, including the need to guarantee the right to return, to ensure adequate living conditions until IDPs can return, the need for demining, to immediately stop physical assault, torching of houses and looting and to hold perpetrators to account, the protection of prisoners of war, and the need for an international presence and assistance in the area affected by the conflict.[13] Those principles were endorsed at the international level and accepted by all relevant actors involved in the conflict. At the end of September, Commissioner Hammarberg undertook a further visit to assess the follow-up given to his recommendations.[14] He noted progress in some areas, such as support to ensure adequate living conditions for the internally displaced, but reiterated his concerns

[11] CCPR/C/GEO/CO/3, para. 12.

[12] CRC/C/GEO/CO/3, paras. 60-61.

[13] Thomas Hammarberg, "Human rights in areas affected by the South Ossetian conflict. Special mission to Georgia and the Russian Federation", CommDH(2008)22, Strasbourg, 8 September 2008.

[14] Thomas Hammarberg, "Special follow-up mission to the areas affected by the South Ossetia conflict: implementation of the Commissioner's six principles for urgent human rights and humanitarian protection", CommDH(2008)33, Strasbourg, 21 October 2008.

regarding the need to ensure safety for people in all areas affected by the conflict. Furthermore, he recommended that all political decision makers must make a clear statement of commitment to the principles of the right to return.[15]

15. On 12 August 2008, Georgia lodged a complaint against Russia with the International Court of Justice (ICJ) alleging violations of the International Convention on the Elimination of All Forms of Racial Discrimination by supporting ethnic cleansing of Georgians during the present conflict and during the 1990s. On 14 August, Georgia submitted a request for the indication of provisional measures. On 15 October the ICJ ordered provisional measures to be taken by both Georgia and the Russian Federation to refrain from engaging in any act of racial discrimination and to ensure, without distinction as to national or ethnic origin, the security of persons and their right to freedom of movement and residence within the border of the State, as well as to protect the property of displaced persons and refugees.[16] Also, the Court indicated as one of the provisional measures that "both parties shall facilitate, and refrain from placing any impediments to, humanitarian assistance in support of the rights to which the local population are entitled under the International Convention on the Elimination of All Forms of Racial Discrimination".[17]

II. RESPONSES TO INTERNAL DISPLACEMENT

A. Domestic responses

16. The immediate humanitarian response from the Government to the rapid displacement resulting from the escalation of the conflict on 7/8 August is generally considered to have been speedy and adequate. Nevertheless, the Representative was informed that in the initial stages of the emergency, the coordination of the Government response was unclear and changed several times, revealing a lack of preparedness at the level of the competent authorities. This observation is shared by the Council of Europe Commissioner on Human Rights who considered, following his August visit, that neither the authorities nor the international community had done enough to provide the displaced with adequate living conditions, which had, however, improved in the course of September. As noted earlier, during his follow-up visit, the Commissioner remained concerned at the inadequate material conditions in the collective centres,[18] a concern which is shared by the Representative.

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[15] Ibid.

[16] Case concerning application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Georgia v. Russian Federation*), para. 149 A, available at http://www.icj-cij.org/docket/files/140/14801.pdf?PHPSESSID=78a3ba7646bec38edd6b27ff81acfb8e.

[17] Ibid., para. 149 B.

[18] See footnote 14, p. 8.

17. The Representative encourages the authorities to evaluate the lessons learned and to strengthen, with the support of the international community, their capacity to efficiently address future occurrences of internal displacement that may be caused by armed conflict but also by other events, including natural and man-made disasters.

18. The Representative welcomes the fact that in contrast to earlier responses to displacement, in the aftermath of the August conflict the Government endorsed a policy of full support to local integration of IDPs from the Tskhinvali region/South Ossetia and Abkhazia and quickly adopted implementation measures, in particular in the area of housing. Accordingly, it is building houses in three different locations, one of which the Representative was able to visit (Tserovani). As noted above, the Government of Georgia estimates it will be able to accommodate some 21,000 IDPs in durable housing by the end of 2008. While noting the Government's clear commitment to provide housing and plots of land, and commending its awareness that such plans must take into account the relationship with the local community, the Representative is concerned about the almost exclusive emphasis on infrastructure. Such infrastructure is a necessary but not sufficient condition for ensuring durable solutions, which require similar if not greater attention to social and economic integration.

19. Shortly before the eruption of the conflict, in July 2008, the Government had adopted the Action Plan to implement decree No. 47 of the Government of Georgia "On approving of the State Strategy for Internally Displaced Persons - Persecuted" (the Action Plan), a welcome step by the Government which is in accordance with previous recommendations of the Representative and facilitated and supported by numerous international agencies and partners. The Action Plan includes measures for (a) the creation of conditions for the dignified and safe return of IDPs, including the creation of conditions for return and provision of assistance to presumed returnees; and (b) support for decent living conditions for the displaced population and for their participation in society, including improvement of the living and socio-economic conditions of IDPs.[19]

20. The Representative was informed that in the aftermath of the crisis, the Government is planning to revise the IDP Strategy to respond to new requirements resulting from this new displacement. He notes that by decree No. 854 of 4 December 2008, the Government of Georgia has entrusted the Ministry of Refugees and Accommodation with the revision of the existing Action Plan. He was further informed that a first draft of the new action plan has been prepared, and that in accordance with decree No. 4 of 12 January 2009, relevant government institutions were entrusted with finalizing the drafting in the near future. He welcomes this development and encourages the authorities to continue to give utmost priority to the revision of the Action Plan and to ensure that there will be no delay in its implementation as a result. Implementation of the Action Plan as revised must be given absolute priority by the Government.

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[19] United Nations and World Bank, "Georgia: summary of joint needs assessment findings", prepared for the donors' conference of 22 October 2008 in Brussels, available at http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/MUMA-7KP5DR-full_report.pdf/$File/full_report.pdf.

21. Moreover, the Representative was informed of a general policy shift aimed at harmonizing the social assistance scheme. New IDPs would be considered under the "targeted social assistance system of the Government" which includes, for instance, free medical care. This would also imply moving IDPs out of collective centres and the cessation of special programmes for all IDPs. The overarching idea is to move from status-based assistance to IDPs to assistance based on rational, clear and transparent criteria of real need and vulnerability. While in principle the Representative welcomes such an approach, and in particular, as noted above, the acknowledgement of the Government that providing IDPs with possibilities for a life in dignity in the host community and the right to return - which continues to be an entitlement - are not mutually exclusive, he is concerned about the danger of forced evictions as well as the continuing lack of clarity as to the criteria used to determine who will be included in State-sponsored programmes. The Representative reiterates his serious concern about vulnerable persons in protracted displacement and in particular the caseload of elderly persons for whom the issuing of vouchers will be insufficient. With regard to the assessment of eligibility, and in view of the need to accelerate it, the Government may wish to consider redefining the burden of proof to start from the premise that everyone qualifies for assistance.

22. Finally, the Representative was impressed by the vibrant civil society which has responded quickly and effectively to the crisis. These organizations continue to provide assistance to the internally displaced in order to ensure that their human rights are respected and ensured. Their monitoring and assistance programmes are key in ensuring the protection of the human rights of IDPs, including their participation in decisions that affect them.

B. International responses

23. The humanitarian response to the crisis in August focused on the provision of essential support to the new group of internally displaced persons across Georgia, including to some 36,600 IDPs in 382 collective centres in Tbilisi. Much of the initial concentration of the IDPs in Tbilisi was dispersed through a secondary movement from Tbilisi to the Shida Kartli region (the main town of which is Gori) where some 7,200 persons were accommodated in a tented camp, in collective shelters, and in host families. UNHCR played a prominent role in ensuring that the key protection and assistance needs of the IDPs were being addressed promptly and effectively, including prioritizing physical safety at the beginning of the emergency and supporting the Government with prompt and accurate registration in order to develop an appropriate response. Throughout the initial period following the outbreak of hostilities and the movement of displaced persons, UNHCR acted as lead agency and, together with its partners, worked to ensure monitoring of protection concerns regarding population movements, living conditions in shelters and general needs, response to special needs, especially those of pregnant women, flight histories and traumatizing experiences, security concerns, the voluntary character of returns, enrolment of IDP children in schools, and the conditions in return areas.[20]

[20] See "Five challenging weeks: UNHCR's response to humanitarian crisis in Georgia - 8 August to 13 September 2008", available at http://www.reliefweb.int/rw/RWFiles2008.nsf/ FilesByRWDocUnidFilename/FBUO-7JXHE8-full_report.pdf/$File/full_report.pdf.

24. The response in Georgia was rapidly organized through a Humanitarian Coordination Group, comprising United Nations agencies, international organizations, NGOs, Government and donor representatives. Using in-country stocks, relief supplies were delivered mainly to the affected populations in and around Tbilisi. UNHCR also set up and managed the tented camp in Gori where at its peak some 2,500 IDPs were accommodated. The Italian Red Cross provided a field kitchen. The Representative visited a kindergarten that accommodated IDPs in Gori, as well as the well-organized camp which provided the basic humanitarian requirements. In their discussions with the Representative the key concerns raised by IDPs living in the camp related to their uncertainties as to the possibilities of return, the state of their homes and security conditions for return once the Russian forces retreat from the buffer zone. Only a few weeks after the Representative's visit, UNHCR reported on 17 October that the camp had been closed as a result of the return of a significant number of IDPs following the withdrawal of Russian troops.

25. Working in close collaboration with the Government of Georgia, and following best practices in humanitarian coordination, the Humanitarian Coordination Group (HCG), under the leadership of the United Nations Resident/Humanitarian Coordinator, prepared a flash appeal which was launched on 18 August, to cover the identified and estimated needs of IDPs. It prioritized immediate life-saving activities in six sectors, including food; health and nutrition; protection; shelter and non-food items; water, sanitation and hygiene; and logistics and telecommunications, plus a seventh sector of coordination and support services. Based upon improved assessment and access, a revised appeal was launched in early October which introduced refinements in the above areas and a range of early recovery initiatives.

26. The refinements in the revised flash appeal have paralleled and informed the joint needs assessment (JNA) carried out at the request of the Government by the United Nations, the World Bank and other international organizations/agencies to address humanitarian, recovery and reconstruction, as well as development needs. The JNA is designed to address the needs of those directly and indirectly affected by the conflict as well as macroeconomic impact and infrastructure damage and losses and is viewed as the basis for early recovery efforts.[21] The findings were presented at the donors' conference held in Brussels on 22 October. It has identified donor support for post-conflict recovery activities in three areas, including support for the rapid restoration of confidence, for social needs, and for critical investments.

27. The Representative acknowledges the prompt humanitarian response by the international community and the work done by international humanitarian agencies and NGOs which has contributed to the prevention of casualties caused by displacement.

III. PROTECTION NEEDS OF INTERNALLY DISPLACED PERSONS DURING DISPLACEMENT

A. General remarks

28. The conflict that occurred in August 2008 has had a significant impact on the civilian population, both IDPs and host communities. Throughout his mission, interlocutors emphasized that while the immediate needs of the newly displaced are being addressed, a harmonized, non-discriminatory approach towards both new IDPs and those persons living in protracted

[21] See footnote 19, p. 10.

displacement is essential. In this connection and with reference to his previous recommendations, the Representative takes note with satisfaction of the adoption, in late July 2008, of the Action Plan, which foresees measures aimed at integrating IDPs into mainstream society, in particular by providing them with permanent housing or vouchers to acquire such housing. The Action Plan has translated the principles of the Strategy referred to above into concrete programme areas including housing, livelihood and education. The Representative also welcomes the decision to revise the Action Plan in light of the present situation.

29. While welcoming the overall approach adopted by the Government in addressing the rights of IDPs and the shift in Government policy away from considering local reintegration and return to be mutually exclusive, and envisaging for the first time the possibility of local integration, the Representative continues to be concerned about the continued lack of integration of the "old" IDPs. The rights of this group of IDPs need to be ensured in tandem with responding to the new group of internally displaced on a non-discriminatory basis. The Representative encourages the Government to ensure that a holistic approach towards all groups of IDPs is employed.

30. The Representative continues to be concerned about the special attention required for vulnerable groups amongst the displaced, such as the elderly or persons with disabilities, for whom vouchers are insufficient. Rather, particular attention should be paid to vulnerable groups among the displaced so as to ensure that they are able to fully enjoy their rights.

31. Furthermore, according to the findings and recommendations of a rapid needs assessment of internally displaced women, carried out by the Institute for Policy Studies with the support of the United Nations Development Fund for Women (UNIFEM) and presented to the Representative during his mission, violence against women has escalated in the context of the conflict. He urges the Government to ensure implementation of the Law on the Elimination of Domestic Violence, Protection of and Assistance to the Victims of Domestic Violence, and to provide victims with shelters, hotlines and rehabilitation centres.

B. Adequate standard of living

32. Ensuring shelter for temporary and long-term accommodation is a key issue which requires urgent attention. A significant number of newly displaced in Tbilisi have been accommodated in collective centres, both in new shelters and in shelters where IDPs who had previously been displaced were residing. The Representative visited two collective centres where he was informed of urgent needs for water and sanitation repairs. During his meetings with IDPs, the Representative heard various complaints, including the lack of electricity and problems with sanitation. The need for urgent winterization of collective centres was highlighted as a priority concern.

33. For the IDPs accommodated in the collective centres in Tbilisi, securing basic living standards remains a challenge.[22] IDPs who spoke with the Representative flagged the need for warmer blankets and clothing. The Representative heard a variety of voices highlighting the need

[22] Georgia Crisis Flash Appeal 2008: Revision, p. 16, available at http://ochadms.unog.ch/quickplace/cap/main.nsf/h_Index/Revision_2008_Georgia_FA/$FILE/Revision_2008_Georgia_FA_SCREEN.pdf?OpenElement.

for supplementary feeding for certain groups, for instance the need for baby food. Several IDPs indicated problems relating to the need for medicines and access to health care. As regards the right to adequate food, the Representative was informed that the main findings of the World Food Programme emergency food security assessment, conducted during the first half of September, found that IDPs were totally dependent on Government and international aid to meet their basic needs. About 60 per cent of IDPs have no income at all.[23] The Representative notes that the majority of IDPs had relied on agriculture for their livelihoods. The question of access to agricultural land and the property rights of IDPs is of prime importance.

C. IDP status and related benefits

34. Registration of the newly displaced persons has been carried out by the Civil Registry Agency (CRA), facilitating registration, which assists in obtaining humanitarian assistance but does not provide formal IDP status. In several discussions throughout the visit, including with IDPs, the Representative heard complaints about the failure of the Government to grant IDP status and related benefits to the new group of IDPs. The Representative shares their concern that the Government must ensure that IDPs displaced in August are not discriminated against in terms of benefits and legal protection mechanisms, such as legal guarantees for housing and security of tenure and protection from forceful eviction, and receive equal treatment by the authorities. He welcomes the information provided by the Government, indicating that persons displaced as a result of the August 2008 hostilities will be granted IDP status during the first quarter of 2009. At the same time, the Representative recalls the utmost importance of accelerating the implementation of the (revised) Plan of Action to ensure that the human rights of all IDPs, both old and new, are respected, protected and fulfilled.

35. The Representative recommends that the issue of equal treatment of new IDPs and those from previous conflicts is addressed as a matter of priority, particularly in terms of humanitarian assistance, housing and security of tenure and protection from forceful eviction from collective centres.

36. The Representative notes that early, clear and coordinated registration and documentation of all new IDPs to enable them to access IDP benefits immediately, as well as raising the awareness of IDPs of their rights through information campaigns, has been identified as a priority activity in the JNA with regard to protection and rights.[24] He encourages the authorities to implement this task as a matter of priority and welcomes the information regarding the granting of IDP status.

37. At the same time, the implementation of the Action Plan for all IDPs, both new and “old”, remains a serious concern. The Representative was informed of increasing dissatisfaction on the part of “old” IDPs as a result of the shift of emphasis to the newly displaced and a feeling of lack of attention to their human rights on the part of the Government. The Representative emphasizes his serious concerns as to the equal treatment of both “old” and newly displaced persons and his recommendations that solutions be based on objective criteria of vulnerability irrespective of when the displacement occurred. Such distinction is not only a violation of the principles of

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[23] Ibid., p. 6.

[24] See footnote 19, para. 82.

non-discrimination, but - as was pointed out to the Representative by several IDPs and civil society organizations - the current state of affairs, particularly the differential treatment/status between old and new IDPs may lead to increased tensions among groups of IDPs.

D. Access to education

38. During his discussion with IDPs, the Representative learned of several concerns regarding access of IDP children to schools, including fears that they would be segregated from other children. He received information that there was limited coordination in assigning new IDP children to local schools and that those in collective centres had not been accepted in local schools. Several IDPs he met in collective centres indicated an overall lack of textbooks and basic school equipment. The Representative welcomes the fact that the JNA includes provisions for the education sector to ensure that all internally displaced children and children directly or indirectly affected by the conflict enjoy full access to education.[25] It similarly highlights the need for programmes to address the psychosocial needs of IDP children who suffer from the trauma of violence and separation from their homes.

IV. PROTECTION NEEDS OF INTERNALLY DISPLACED PERSONS REGARDING RETURN AND OTHER DURABLE SOLUTIONS TO DISPLACEMENT

39. In accordance with Guiding Principle 28, IDPs have the right to choose freely between return to their place of origin, local integration or resettlement in another part of the country. The Representative recalls that the decision of resettlement or return shall be voluntary and informed, and emphasizes that resettlement opportunities shall be offered in a non-discriminatory manner, giving priority to vulnerable cases. IDPs shall be able to make a well-informed choice about durable solutions offered to them and the authorities have an obligation to create an environment where IDPs can participate fully in the planning and management of their return, resettlement and reintegration. Moreover, the authorities have an affirmative obligation to facilitate the integration of IDPs into the social, cultural and economic life of the community, regardless of the solution chosen. Also, in accordance with Guiding Principle 29, IDPs and returnees have the right to be protected from discrimination as a result of their displacement and to recover their property and, in cases where this is not possible, to obtain appropriate compensation or another form of just reparation.

40. The Representative is concerned that the extent to which IDPs have been included in planning processes for resettlement and temporary and permanent housing solutions has been insufficient. During his discussions with the authorities and other stakeholders, the Representative emphasized the importance of providing IDPs with the opportunity to make an informed choice as to whether to locally integrate, return or resettle on a temporary or permanent basis. In order to guarantee this right, it is essential that transparent procedures for relocation and resettlement be ensured and the targeted population receive sufficient information on the conditions in the areas of resettlement and relocation.

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[25] Ibid., p. 32.

41. A systematic approach must be developed to ensure consistent consultation and information-sharing with IDPs. IDPs have a fundamental right to participate in decisions affecting their lives.[26] For responsible authorities, the information gained can improve the effectiveness of the response. For IDPs, consultation enhances feelings of participation and trust. Information-sharing, complete, timely and accessible, is furthermore essential to allow IDPs to make voluntary, informed and therefore sustainable decisions regarding their futures. These principles have also been included in the JNA,[27] and the Representative urges all stakeholders involved to continue to attach priority to IDP consultation and informed participation.

42. The right to return to their place of origin is one of the key rights of internally displaced persons; arbitrary forced displacement is in itself a violation of this right. Most of the persons who fled the so-called buffer zone have been able to return home following the withdrawal of Russian troops from this zone on 8 October, although the Representative is concerned that the circumstances of some returns may not have been in all cases fully in accordance with the principles of voluntary return in safety and dignity. According to the Ministry of Refugees and Accommodation, some 24,500 persons returned in October 2008.[28] Regrettably, the prospect of being able to return in the foreseeable future is more limited for an estimated 37,506 IDPs, given the current political constellation and the failure to reach a peaceful solution between the main parties.

43. The overwhelming majority of those IDPs who met with the Representative all expressed their wish to return, irrespective of the fact that they were aware that such return would in all likelihood not be possible in the near future. All parties should reaffirm their commitment to giving full effect to this right.

A. Return in safety and dignity

44. A key factor for successful return is to ensure the physical safety of returnees. During his visit, the Representative met with several witnesses, United Nations agencies and their partners, as well as monitors of the European Union Monitoring Mission (EUMM) which started its work, inter alia, in the so-called buffer zone, at the time of his visit still under Russian control. The Representative was deeply concerned about the lack of effective protection of the population who have remained in the areas adjacent to the Tskhinvali region/South Ossetia, which has been categorized into three distinct zones, primarily based on access and security considerations. He was concerned that particularly in the northern zone, the situation was extremely volatile. During his visit to the so-called buffer zone, he witnessed evidence of widespread looting of property and listened to villagers reporting incidents of harassment and violent threats committed by armed elements, in tandem with a failure by Russian forces to respond and carry out their duty to protect, particularly in the northernmost area adjacent to the de facto border with the Tskhinvali region/South Ossetia. Villagers explained their permanent fear of attack by what they described as armed bandits coming from the Tskhinvali region/South Ossetia, and their repeated

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[26] See for example, Guiding Principles 18 (3) and 28 (2).

[27] See footnote 19, para. 81.

[28] Office of the United Nations Resident/Humanitarian Coordinator, Situation report No. 32, 23 October 2008.

but unsuccessful requests to the Russian forces for protection. Villagers insisted that there were no problems between neighbours within the same villages, irrespective of their ethnic origins, but that the perpetrators were coming from outside the villages, i.e. the Tskhinvali region/ South Ossetia.

45. An absence of the rule of law and a climate of impunity could be significant obstacles to the sustainability of returns. Many of the IDPs interviewed in the tented camp expressed their clear wish to return as soon as possible to their villages in the buffer zone, but hesitated out of fear. Some members of their families had gone back during the day and returned to the camp at night. The Representative welcomes the fact that the EUMM started its work during the time of his visit and spoke with newly arrived EUMM monitors in the buffer zone. Unfortunately, the monitors, at the time of the Representative's visit, were significantly handicapped in carrying out their functions effectively due to a lack of 24-hour presence and insufficient language skills. The Representative was assured by the Head of EUMM that these concerns would be addressed as a matter of priority. The Representative welcomes the total openness of EUMM to his observations and its readiness to cooperate with United Nations agencies to ensure the return of internally displaced persons in safety and dignity, and to contribute to creating an environment where human rights are respected and ensured. The Representative also welcomes the assurances of the Georgian authorities that they will ensure law enforcement in these areas in order to guarantee the physical safety of the returnee population and local residents.

46. However, the Representative remains concerned about reports that in some parts of this area a certain degree of insecurity persists. The Government must re-establish safety and security in all IDP and return areas, protecting the civilian population from all forms of harassment or physical harm. Clear monitoring and accountability mechanisms must be established.

47. According to information received by the Representative, unexploded ordnance remains a problem and demining in the areas affected by the conflict has been insufficient. Demining and mine-awareness programmes must continue to be implemented as a matter of priority.

B. Adequate standard of living

48. In addition to physical fear, during his meetings with displaced persons, the Representative noted a great uncertainty about the future, due to factors such as the destruction of houses and crops, the cutting down of orchards and the lack of firewood (which had previously come from the Tskhinvali region/South Ossetia). The initial assessment of the Public Defender of Georgia of the villages in the adjacent areas, which included 13 communities and 31 villages, concludes that some 1,200 houses were damaged to a medium to serious extent. The report highlights priority humanitarian needs for each village, including requirements for food, medicines and remission of taxes for electricity, as well as special attention required for vulnerable groups. The report documents the multiple factors contributing to insecurity as described above, ranging from the incursion of armed bands to the presence of unexploded ordnance.[29]

[29] Initial Assessment of the Occupied Villages Adjacent to Tskhinvali Region - Special report of the Public Defender of Georgia - September 2008.

49. The population who have experienced temporary displacement and have since returned are in need of assistance to restore their livelihoods and repair damage to their property, including the rebuilding of destroyed houses. The Representative believes there is an urgent need for a strong humanitarian response to support and sustain the return, combined with confidence-building measures, through presence and protection monitoring.

50. As regards adequate housing and security of tenure, the Representative heard serious concerns resulting from the lack of a comprehensive housing policy. The need for securing the tenure rights of both temporary and long-term displaced persons is of key importance in providing the basis for durable solutions and preventing further displacement. The Representative was informed that until now, there has been a lack of clear approvals and corresponding legal regulations on the part of the authorities with regard to objects which have been selected for permanent housing solutions. This lack of clarity should be remedied without delay.

51. In this connection, the Representative re-emphasizes his continuing concerns regarding the housing and economic situation of those IDPs who were displaced in the early 1990s. As a result of the previous official view that return was the only option, integration in both rural and urban areas has had insufficient support from the Government. The Representative is concerned that almost half of the "old" IDPs are still residing in public buildings of a deplorable standard and that their economic situation is similarly grave. The Representative recalls his previous recommendations to address the widespread - and disproportionate - poverty and unemployment amongst IDPs. Following his visit in December 2005, the Representative encouraged the Government to, inter alia, implement its plans to improve the living conditions of IDPs, in particular by closing collective centres, raising the monthly financial allowance to which IDPs are entitled on the basis of up-to-date needs assessments, and by offering income-generating projects and providing land plots.[30] Utmost attention to the range of civil, cultural, economic, political and social rights remains a key concern and should be remedied without delay.

C. Resettlement

52. As noted above, according to government estimates, some 37,605 IDPs will not return in the foreseeable future. This figure includes 19,111 IDPs from the Tskhinvali region/South Ossetia, 1,821 IDPs from the upper Kodori Valley, as well as those IDPs who will spend the winter in displacement, namely 11,500 who cannot return to the area adjacent to the Tskhinvali region/South Ossetia for reasons such as security or destruction of property, and some 5,173 IDPs from Akhalgori.[31] The Government estimates that some 21,000 displaced will be accommodated in durable housing by the end of the year. The Representative commends the Government of Georgia for its decision to provide durable solutions for those IDPs who are unlikely to be able to return in the foreseeable future. He was impressed by the construction of houses in three different locations, which according to the Government would be of different types, specifically, 2,000 houses to be built in Tserovani, of a more urban character; 400 houses

[30] E/CN.4/2006/71/Add.7, para. 55.

[31] Office of the United Nations Resident/Humanitarian Coordinator, Situation report No. 35 on the situation in Georgia, 6-13 November 2008.

with plots for agriculture; and 300 houses with larger areas of land and livestock. He visited the construction site in Tserovani.

53. Drawing on his experience from other countries, the Representative felt that while it was commendable that new houses were being built for IDPs, he was concerned about the almost exclusive emphasis on infrastructure. Such infrastructure is a necessary but not sufficient condition for ensuring durable solutions, which requires similar if not more attention to social and economic integration. The Representative welcomes the clear commitment of the Government to provide housing, plots of land and livestock, and commends its awareness that resettlement plans must take into account issues related to political participation and the relationship with the local community. However, the Representative recommends that the Government develop a comprehensive integration policy which would encompass the whole range of civil, cultural, economic, political and social rights of IDPs. Such policies would not only address the question of accommodation, but would also facilitate access to education and health care, and would ensure the creation of economic opportunities allowing IDPs to sustain themselves. Finally, and distinct from the right to adequate shelter, protection of IDPs' housing, land and property rights is an essential component of durable solutions. IDPs are entitled to restitution or compensation for their property, regardless of whether they choose to return, integrate locally or resettle.

54. During his interviews with IDPs in collective centres, a strong desire for extended families and communities to remain together was expressed and the Representative could sense a general lack of clarity as to the organization of resettlement and the criteria for selecting those who would be resettled. Many of the IDPs met by the Representative expressed their frustration at the lack of detailed information about government proposals and the different options available to them. The Representative has raised the issue of the need to provide detailed information on the eligibility criteria for determining the allocation of housing. It is of prime importance to ensure that IDPs are fully informed and consulted about developments that affect their future. Such consultation would not only ensure the efficient use of government resources, but also give IDPs a sense of ownership and control over their lives. Full and transparent information will be a key component in ensuring the sustainability of resettlement. The Representative encourages the Government to involve affected communities in the planning and implementation of the programmes the Government is establishing on their behalf and to ensure their informed participation.

V. HUMANITARIAN ACCESS

55. In accordance with Guiding Principle 25, the primary duty and responsibility for providing humanitarian assistance to IDPs lies with national authorities. International organizations, however, play an important role in supporting Governments in meeting these responsibilities, especially where Governments are unable or unwilling to provide necessary assistance. In Georgia, the issue of access to the Tskhinvali region/South Ossetia, and to some extent also to Abkhazia, has yet to be resolved. The Representative notes the adoption by Parliament on 23 October, and the subsequent signing by the President, of the Law on the Occupied Territories. While appreciating that he was given the opportunity to provide comments and welcoming some amendments to the draft to bring it into line with the international human rights obligations of Georgia, the Representative remains concerned that several provisions which may raise concerns as to their compliance with international human rights obligations have been retained. He

remains concerned that the law may seriously affect humanitarian access to the Tskhinvali region/South Ossetia and Abkhazia and even hinder the return of displaced persons.

56. The Representative urges the Government of Georgia to take all possible measures, without discrimination, to ensure protection of all human rights for the internally displaced population from or living inside the conflict-affected areas. He would like to recall that internally displaced persons, as citizens of Georgia, are entitled to the full protection of human rights available to the population of Georgia by virtue of the obligations Georgia has accepted under relevant human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the European Convention on Human Rights, and that Georgia should refrain from any measures that may negatively affect the enjoyment of the human rights of displaced persons and returnees as spelled out in the Guiding Principles on Internal Displacement in areas not under the control of the Georgian authorities. Also, as regards the question of the recognition of civil acts carried out by the de facto authorities, such as the issuance of birth, marriage or death certificates, the invalidation of such acts as provided for by the law would have a serious impact on the effective enjoyment of human rights by the population living in the conflict-affected areas, in violation of Georgia's obligations under international human rights treaties, notably the Convention on the Rights of the Child.

VI. CONCLUSIONS AND RECOMMENDATIONS

57. **The Representative of the Secretary-General on the human rights of internally displaced persons acknowledges the substantial achievements of the Government but believes that further efforts are required. He reiterates his desire to continue his dialogue with the Government, and specifically, to cooperate in the search for durable and equitable solutions for all internally displaced persons (IDPs) in Georgia. In this spirit, he makes the following conclusions and recommendations.**

58. **The main problem encountered by IDPs in Georgia continues to be the absence of political solutions to regional conflicts, as observed in the Representative's previous report and which remains a key concern, as evidenced by the new displacement of some 133,000 persons within Georgia, of whom an estimated 37,600 will not be able to return in the foreseeable future.**

59. **The Representative calls on all parties to take all necessary steps to ensure persons displaced by the recent and past conflicts are able to enjoy their right to return voluntarily to their former homes in safety and dignity, and to guarantee recovery of their property and possessions. Where such recovery is not possible, they should obtain appropriate compensation or another form of just reparation.**

60. **IDPs have the right to freely choose whether they want to return, integrate locally or resettle in another part of the country. The Representative welcomes the recognition of this right by Government authorities and the policy shift in accordance with it. He urges relevant authorities to raise awareness of and promote this right so as to render the choice meaningful for IDPs and to create economic opportunities allowing IDPs to sustain themselves, irrespective of their choice as regards durable solutions. Moreover, protection of IDPs' housing, land and property rights is an essential component of durable solutions.**

IDPs are entitled to restitution or compensation for their property, regardless of whether they choose to return, integrate locally or resettle.

61. **The Representative remains concerned about reports that in some areas of return adjacent to the Tskhinvali region/South Ossetia a certain degree of insecurity persists. He recommends that the Government of Georgia:**

(a) Take all required steps to ensure that the conditions for sustainable return are created, which would allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence. This includes ensuring the physical safety and security of the returnee population and local residents, guaranteeing law and order in all affected areas and ensuring that the physical and material conditions required for return are established through humanitarian assistance;

(b) Implement demining as well as mine-awareness programmes;

(c) Ensure effective monitoring of the protection of human rights of internally displaced persons and returnees.

62. **The Representative commends the Government of Georgia for its decision to provide durable solutions for those IDPs who are unlikely to be able to return in the foreseeable future. However, he is concerned at the almost exclusive focus on infrastructure. He recommends that the Government develop a comprehensive integration policy which would encompass the whole range of civil, cultural, economic, political and social rights of IDPs. Such policies would not only address the question of accommodation, but would also facilitate access to education and health care, and would ensure the creation of economic opportunities, allowing IDPs to sustain themselves. Moreover, full participation of all segments of the internally displaced population in the planning and management of the resettlement plan should be guaranteed.**

63. **The Representative recalls the voluntary nature of resettlement or return and emphasizes that resettlement opportunities shall be offered in a non-discriminatory manner, giving priority to vulnerable cases. IDPs shall be able to make a well-informed choice about durable solutions offered to them.**

64. **The Representative takes note with satisfaction of the adoption, in late July 2008, of the Action Plan to implement decree No. 47 of the Government of Georgia "On Approving of the State Strategy for Internally Displaced Persons - Persecuted" which foresees measures aimed at integrating IDPs into mainstream society, in particular by providing them with permanent housing or vouchers to acquire such housing. While welcoming the shift in Government policy away from considering local reintegration and return to be mutually exclusive, the Representative continues to be concerned about the continued lack of integration of the "old" IDPs. The rights of this group of IDPs need to be ensured in tandem with responding to the new group of internally displaced on a non-discriminatory basis. The Government should ensure that a holistic approach towards all IDPs is developed and implemented.**

65. **The Representative recommends that the revision and implementation of the Action Plan for Internally Displaced Persons adopted in July 2008 - with amendments to account for the newly displaced population - is given absolute priority by the Government. He welcomes the adoption of decrees No. 854 of 4 December 2008 and No. 4 of 12 January 2009, both of which are aimed at accelerating the finalization of the process of revising the Action Plan under the leadership of the Ministry of Refugees and Accommodation, so as to swiftly move to its implementation.**

66. **Particular attention should be paid to vulnerable groups among the displaced to ensure that they are able to fully enjoy their rights. Where required, the implementation should provide for humanitarian assistance to the most vulnerable displaced persons and find durable solutions for those who may not be able to live on their own, such as elderly persons without family support.**

67. **The issue of formal recognition of the newly displaced as IDPs under relevant national legislation and the associated social benefits and legal protection mechanisms linked to this status should be addressed, particularly as regards housing and security of tenure, as well as protection from forceful eviction from collective centres. The Representative welcomes the information provided by the Government, indicating that persons displaced as a result of the August 2008 hostilities will be granted IDP status during the first quarter of 2009.**

68. **As regards the immediate response to the humanitarian emergency, the Representative encourages the authorities to evaluate the lessons learned and to strengthen, with the support of the international community, its capacity to efficiently address future situations of internal displacement that may be caused by armed conflict but also by other events including natural and man-made disasters.**

69. **The Representative deplores the fact that humanitarian access has become a question of political differences between the relevant parties. He is deeply concerned at provisions in the Georgian Law on the Occupied Territories which may restrict access to all areas by humanitarian actors. He regrets that the current policies of the parties to the conflict have prevented him from conducting the planned visit to the Tskhinvali region/South Ossetia. As indicated previously, he intends to conduct this part of the mission as soon as possible.**

70. **The Representative urges all parties to agree on a monitoring mechanism to ensure the protection of the human rights of the displaced population in all conflict-affected areas. As a first step, unimpeded access to all conflict-affected areas should be granted to humanitarian actors so that they may reach internally displaced persons and other civilians at risk without further delay, and to refrain from any steps that may further impede such access. In this context, the Representative refers to the decision of the International Court of Justice, in which the Court indicated as one of the provisional measures that "both parties shall facilitate, and refrain from placing any impediments to, humanitarian assistance in support of the rights to which the local population are entitled**

under the International Convention on the Elimination of All Forms of Racial Discrimination".[32]

71. **The Representative acknowledges the prompt humanitarian response by the international community and the work done by international humanitarian agencies and NGOs which has contributed to the prevention of casualties caused by displacement. The Representative recommends that the United Nations, humanitarian and development organizations and donors:**

(a) Continue to support the Government of Georgia in meeting its primary responsibility to protect and assist IDPs;

(b) Continue to support capacity-building within the Government;

(c) Continue to provide support and commit resources with a view to addressing both the acute humanitarian needs of the newly displaced and the requirement to reach durable solutions for both the "old" and newly displaced populations, and more specifically to implement all the components of the Government's new Action Plan for Internally Displaced Persons. This would restore hope and dignity for a part of the Georgian population that has been marginalized for too long. In this connection, the Representative urges the donor community to ensure in particular support for durable solutions for IDPs, with a clear protection component.

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[32] See footnote 17.