

## Georgia-South Ossetia: Refugee Return the Path to Peace

### I. OVERVIEW

President Mikheil Saakashvili's announcement of a peace initiative in January 2005 was a positive step towards the peaceful resolution of the Georgian-South Ossetian conflict.<sup>1</sup> The measures proposed go in the right direction and match many Crisis Group recommendations<sup>2</sup> but little has actually been done. Without immediate and visible steps to back up President Saakashvili's words -- beginning by seriously addressing the refugee and displaced persons issue in order to build some mutual confidence before plunging directly into status questions -- there is a real danger that Georgia and South Ossetia could blunder into another military clash.

Relations remain tense, and exchanges of small-arms fire are frequent. No progress has been made in implementing the demilitarisation agreements following the clashes of August 2004.<sup>3</sup> Although media reports as this briefing went to press indicate it may have been dismantled, the Georgian side has maintained until recently a training camp for reserves in Dzevera, ten kilometres from Tskhinvali, the capital of South Ossetia.<sup>4</sup> South Ossetian "ministry of defence" personnel engage in military exercises and live-fire training in the zone of conflict, where any military formations other than the Joint Peace Keeping Force (JPKF) are forbidden by the Sochi Agreement, which ended the fighting in 1992. As the winter snows melt in the zone of conflict, inhabitants and political analysts alike fear a return to violence.<sup>5</sup>

The war caused massive displacement, shattering Georgian-Ossetian coexistence and pushing Ossetians from Georgia much closer to their ethnic kin in North Ossetia (Russian Federation).<sup>6</sup> Thirteen years after the ceasefire, up to 60,000 Ossetians displaced from Georgia have yet to regain property rights or be compensated for their losses.<sup>7</sup> According to the last pre-war census (1989),<sup>8</sup> 164,055 Ossetians lived in Georgia, 97,658 within what today can be considered as "Georgia proper".<sup>9</sup> Today in Georgia proper only 38,028 remain.<sup>10</sup> It is unlikely that a

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parliament, Givi Targamadze, said on 12 April 2005, "Today the Georgian army can establish control over the whole territory of South Ossetia in three-four days", *Caucasus Press*, 13 April 2005. A few days earlier, former minister of defence and current minister of state for European integration, Giorgi Baramidze, stated, "I urge everyone to join the Georgian army, defend Georgia, join the people who are ready to spill blood for their motherland. This time has come", BBC Monitoring, original from Imedi TV, Tbilisi, 6 April 2005.

<sup>6</sup> For a quick overview of statistics illustrating the movements of both South Ossetians and Georgians in connection with the conflict, see Appendix C below. This briefing uses the terms "internally displaced person" (IDP) and "refugee" in the accepted international sense. An IDP is an individual displaced within the border of his or her country. A refugee is an individual displaced outside the border of his or her country. In the context of this briefing, a displaced individual within the internationally recognised borders of Georgia is considered an IDP whether in territory under the control of the Georgian state or not. Such an individual in North Ossetia, on the other hand, is considered a refugee. A "displaced person", unless otherwise identified, may be, formally, either an IDP or a refugee.

<sup>7</sup> UN Association of Georgia, *Refugee*, third issue, November 1999, in Global IDP database, "Right to Property Restitution: Georgia NGO Submits Draft Legislation (1999)", available at <http://www.db.idpproject.org/Sites/IdpProjectDb/idpSurvey.nsf/wViewCountries/09864A27EF9111BDC125689B00375619>.

<sup>8</sup> The 1989 Soviet, countrywide census includes the South Ossetia Autonomous Region. Crisis Group documentation from the state department for statistics of Georgia.

<sup>9</sup> While not wholly satisfactory, the term "Georgia proper" is used in this briefing to describe all areas currently under control of the Georgian state (i.e. large parts of South Ossetia and Abkhazia are not included). According to the 1989 census 65,232 Ossetians lived in South Ossetia and 1,165 in Abkhazia.

<sup>10</sup> State department for statistics of Georgia, available at <http://www.statistics.ge/Main/census/INDEXGEO.HTM>. The 2002 countrywide census does not include the parts of South Ossetia and Abkhazia not under Georgian state control.

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<sup>1</sup> "Initiatives of the Georgian Government with Respect to the Peaceful Resolution of the Conflict in South Ossetia", presented at the first part of the 2005 Ordinary Session of the Council of Europe Parliamentary Assembly, Strasbourg, 24-28 January 2005.

<sup>2</sup> Crisis Group Europe Report N°159, *Georgia: Avoiding War in South Ossetia*, 26 November 2004.

<sup>3</sup> Reached in Sochi on 5 November 2004, Vladikavkaz on 20 November 2004 and Moscow on 17 March 2005.

<sup>4</sup> Protocol No.3 to the Sochi Agreement defines the zone of conflict as a circle with a radius of fifteen km from the centre of Tskhinvali. Protocol No.3, 12 July 1994, signed in Vladikavkaz.

<sup>5</sup> War rhetoric has increased in the past weeks in Georgia. The chairman of the committee on defence and security of the

majority of the Ossetian displaced will ever return to Georgia. Nevertheless, if those who do want to return could regain their full rights as citizens, confidence and trust would be strengthened.

Through 2004, the office of the UN High Commissioner for Refugees (UNHCR) had facilitated return of only some 1,734 persons (513 families) from North Ossetia to South Ossetia and Georgia proper.<sup>11</sup> In 2004 the UN Office for the Co-ordination of Humanitarian Assistance (OCHA) found that with regards to Ossetians from Georgia, "an overwhelming number of IDPs [internally displaced persons] and returnees remain displaced...many if not most...reluctant to return to their places of origin".<sup>12</sup>

Since 1998, legislative drafts have been penned, international organisations have provided expert commentaries, and financial assessments of the cost of restitution and compensation have been made. In 1999, upon becoming a member of the Council of Europe (CoE), Georgia committed to take the necessary legislative measures to facilitate the restitution of ownership and tenancy rights or pay compensation within two years. It has yet to fulfil this commitment. In 2004 the government took only tentative steps to encourage return after President Saakashvili issued a decree allocating \$197,000 to assist 25 Ossetian families to regain their pre-war homes in the Borjomi valley.

If Tbilisi wants to show its political will to resolve the conflict through peaceful means, it should immediately implement unilateral measures to build confidence amongst the Ossetians, who do not trust President Saakashvili or most of his government. Until this happens, the Ossetians will not feel secure enough to make the hard compromises a definitive political settlement will require.

To provide the right environment for dialogue and co-existence, the groundwork for refugee and IDP return should be laid prior to any Georgian offer of a comprehensive agreement on the final status of South Ossetia.<sup>13</sup>

- ❑ President Saakashvili should address the Ossetians directly, encouraging them to return;

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<sup>11</sup> UNHCR, "Population Movements as a Consequence of the Georgian-South Ossetian Conflict", updated 1 September 2004. There is believed to have been no significant further facilitation of return at least through the end of the year.

<sup>12</sup> UN OCHA Georgia, "South Ossetia Briefing Note", January 2004.

<sup>13</sup> The Georgian government is currently working on such an offer, in cooperation with the Council of Europe's Venice Commission. See below.

- ❑ the Georgian Parliament should pass a law on property restitution and compensation with no further delays; and
- ❑ a mixed commission to handle property claims and compensation should be created and other steps taken to ensure returnees' social and economic reintegration into Georgia.

Though several international documents recall Georgia's responsibility to facilitate return, the international community has done little in practice to encourage the government to remove obstacles to property restitution and reintegration. Donors have shown little eagerness to provide the necessary funds to support the return effort outside the conflict area. Only UNHCR has offered any substantial assistance, but as experience from other post-conflict settings where large-scale return occurred demonstrates, multi-agency engagement is necessary for return to succeed.

- ❑ The international community should continue pressing Georgia for a satisfactory resolution of the return problem and should commit to helping fund return, but that aid should be conditioned on passage of the appropriate legislation by the Georgian Parliament.

## II. BACK TO BASICS

The right of people displaced by war to return to their homes is often a key component of post-conflict peacebuilding, an extension of the "right of voluntary repatriation" enshrined in several fundamental international covenants.<sup>14</sup> In 1997 the UN Committee on the Elimination of Racial Discrimination (CERD) noted that "after their return to their homes of origin all refugees and displaced persons have the right to have restored to them property of which they were deprived during the conflict and to be compensated for any such property that cannot be restored".<sup>15</sup> In 2002 UN Special Rapporteur Paul Sergio

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<sup>14</sup> The Universal Declaration of Human Rights, Article 13 (2), International Covenant on Civil and Political Rights, Article 12 (4), International Covenant on the Elimination of All Forms of Racial Discrimination, Article 5 (d) (ii) in UNHCR, *Voluntary Repatriation: International Protection Handbook* (Geneva, 1996). UNHCR considers that "the pursuit of lasting solutions to refugee problems is therefore orientated first and foremost in favour of enabling a refugee to exercise the right to return in safety and with dignity". Ibid.

<sup>15</sup> The Committee on the Elimination of Racial Discrimination (CERD), CERD/C/SR.1189, 8 March 1997, quoted in Paul Sergio Pinheiro, "The Return of Refugees' or Displaced Persons' Property", working paper submitted to the UN Commission on Human Rights, UN Doc, E/CN.4/Sub2/2002/17, 12 June 2002.

Pinheiro called the right to return to one's home "a free-standing autonomous right".<sup>16</sup> In a 2004 Conclusion, UNHCR recognised the right to housing, land and property return and compensation for all returning refugees.<sup>17</sup> The most successful restitution process to date has been in Bosnia-Herzegovina, where 216,026 property restitution claims were processed,<sup>18</sup> but similar projects have been implemented in Kosovo, Croatia, Tajikistan and Cambodia among other post-conflict settings.

The Georgian government made a commitment to implement the right to return for victims of the Georgian-Ossetian conflict in 1999 when upon entering the Council of Europe (CoE) it pledged to "take the necessary legislative measures within two years of its accessions and administrative measures within three years of its accession...to permit the restitution of ownership and tenancy rights or the payment of compensation for the property lost by people forced to abandon their homes during the 1990-1994 conflicts".<sup>19</sup> Five years later, the Parliamentary Assembly of the CoE (PACE) found that Georgia had not yet fulfilled this commitment and set a deadline of September 2005 for it "to adopt a legal framework for the restitution of ownership and tenancy rights or compensation for the property lost".<sup>20</sup> The 1999

Istanbul Summit Declaration of the Organisation for Security and Cooperation in Europe (OSCE) similarly encouraged "the establishment by the parties concerned of a legal framework for refugee and internally displaced persons housing and property restitution".<sup>21</sup>

It is generally accepted that to implement the return of Ossetians, a multi-pronged strategy, grounded firmly in the rule of law, is required. This includes issuance of a Presidential Decree on Return, passage of a law on restitution and compensation and setting up a Housing and Property Claims Commission.<sup>22</sup> A decree "on the Arrangement for Restoration and Protection of Housing Rights and Property Rights of Refugees and IDPs" was in fact issued by then-President Shevardnadze in 1999, but little progress has been made on the two other issues.

## A. FIFTEEN YEARS OF DISPLACEMENT

Relations between Georgians and Ossetians began to deteriorate in the late 1980s on the eve of the break-up of the Soviet Union. Ossetians living in the South Ossetian Autonomous Region proclaimed full sovereignty within the USSR on 20 September 1990. On 11 December, Georgian President Zviad Gamsakhurdia abolished South Ossetia's autonomous status within Georgia, and direct military confrontation began the next month. The results of eighteen months of chaos and urban warfare were devastating: some 1,000 dead, 100 missing, extensive destruction of homes and infrastructure, and many refugees and IDPs.<sup>23</sup> A ceasefire, which has largely held,

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<sup>16</sup> Pinheiro, op. cit.

<sup>17</sup> Point (h), Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees, adopted by UNHCR's Executive Committee, 2004.

<sup>18</sup> Charles Philpott, "Though the Dog is Dead, the Pig Must be Killed: Finishing with Property Restitution to Bosnia-Herzegovina's IDPs and Refugees", *Journal of Refugee Studies*, Vol. 18, No.1, Oxford University Press, 2005. Paul Prettitore, "Refugee Return in Bosnia and Herzegovina", paper presented at "Transferring Best Practice: An International Workshop on the Comparative Study of Refugee Return Programs with Reference to the Palestinian Context", 9-12 June 2004, University of Exeter. See also Crisis Group Report N°137, *The Continuing Challenge of Refugee Return in Bosnia & Herzegovina*, 13 December 2002; Crisis Group Report N°95, *Bosnia's Refugee Logjam Breaks: Is the International Community Ready?*, 30 May 2000; Crisis Group Report N°73, *Preventing Minority Return in Bosnia and Herzegovina: The Anatomy of Fear*, 2 August 1999.

<sup>19</sup> Parliamentary Assembly of the Council of Europe (PACE), "Georgia's Application for Membership of the Council of Europe", Opinion No.209 (1999), adopted on 27 January 1999.

<sup>20</sup> PACE, Honouring of Obligations and Commitments by Georgia, Resolution 1415 (2004), adopted 24 January 2004. PACE Recommendation 1570 (2002) urged the Georgian authorities "to enforce the property rights of potential returnees of Ossetian origin". Text adopted by the Assembly on 27 June 2002 (23<sup>rd</sup> Sitting). As a member of the CoE, Georgia is bound by the European Convention on Human Rights (ECHR). Article 1, Protocol 1, of the ECHR guarantees that, "Any natural or legal person is entitled to the peaceful enjoyment of his

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possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law". The Convention does not impose an obligation on Georgia to remedy injustices committed before it came into force in 1999 but it does apply to ongoing or future restitution issues. For more on this see Marcus Cox, "Preliminary Review of May 2000 Draft Law of Georgia on Restoration and Protection of Housing and Property Rights of Refugees and Internally Displaced Persons", report prepared for UNHCR, Council of Europe and OSCE, 9 June 2000, obtained from the OSCE Mission to Georgia.

<sup>21</sup> OSCE Istanbul Summit Declaration, Article 16, 1999.

<sup>22</sup> Scott Leckie, "Housing and property restitution issues in the context of return to and within Georgia: An International Legal Perspective", report prepared for UNHCR, 7 July 1998. Crisis Group e-mail correspondence with author, March 2005.

<sup>23</sup> According to the "Intergovernmental Agreement Between Russia and Georgia on Economic Rehabilitation in the Georgian-Ossetian Zone of Conflict" (14 September 1993), war damages totalled 34.2 billion Russian roubles based on 15 July 1992 prices (\$260 million). Figures denoted in dollars (\$) refer to U.S. dollars in this report.

entered into force on 28 June 1992<sup>24</sup> but a political solution remains elusive.

Though precise figures are not available, the violence between 1990 and 1992 displaced around 60,000 Ossetians, the vast majority of whom now live outside Georgia (mostly in North Ossetia),<sup>25</sup> as well as 10,000 Georgians from South Ossetia.<sup>26</sup> Some moved due to fear, harassment or forcible eviction in parts of Georgia that remained otherwise largely peaceful during the conflict,<sup>27</sup> while others were displaced as a direct consequence of fighting in and around South Ossetia.

Though the Georgian and Ossetian peoples lived closely intermixed throughout Georgia, including in South Ossetia, before the war, this is much less so today. The 97,658 Ossetians in Georgia proper according to the 1989 census were the republic's fifth biggest ethnic group, after Georgians, Armenians, Russians and Azeris.<sup>28</sup> As noted, only some 38,000 remain.<sup>29</sup> Before the war Ossetians were present predominantly in the cities of Tbilisi (33,318), Tskhinvali (31,537), Gori (8,222) and Rustavi (5,613);<sup>30</sup> today in Georgia proper they inhabit mainly the regions of Shida Kartli (13,383), Tbilisi (10,268), Kakheti (6,109) and Mtskheta-Mtianeti (3,977).<sup>31</sup>

In 1989 the overall population of the South Ossetia Autonomous Region (SOAR) was 98,527, including some 28,544 ethnic Georgians.<sup>32</sup> According to UNHCR, of the 10,000 Georgians displaced during the fighting, 1,285 have returned. Similarly, 10,000 Ossetians moved to North Ossetia, of whom some 1,462 have returned. Within South Ossetia, about 5,000 people were internally

displaced, of whom 2,082 have gone back to their pre-war homes.<sup>33</sup>

North Ossetia shouldered the burden of providing shelter, food and services to the vast majority of Ossetian refugees. While best estimates put the total number of displaced Ossetians at 60,000, claimed figures for Ossetians who fled to North Ossetia range from 40,000 to 100,000.<sup>34</sup> A senior North Ossetian government official remembers, "in 1992 one quarter of the population here were refugees...we were on the border of a catastrophe".<sup>35</sup>

Refugees from Georgia now get much less Russian assistance, and by December 2004 their numbers and those of forced migrants from Georgia registered in North Ossetia were only 19,025.<sup>36</sup> UNHCR shifted focus from return to integration as early as 2000.<sup>37</sup> By 2002, North Ossetia stopped providing blanket financial assistance, though in the following year, it still allocated 25 million Russian roubles (\$893,000) to cover refugee accommodation and some basic aid. By 2004, 200 families had obtained small, semi-permanent homes, partially funded by UNHCR, other donors and the North Ossetian government.<sup>38</sup> Living conditions are generally adequate in these homes but difficult in other locations.<sup>39</sup> Thousands of displaced remain on waiting lists to receive permanent

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<sup>24</sup> For detailed analysis of the causes of the Georgian-South Ossetian conflict, see Crisis Group Report, *Georgia: Avoiding War in South Ossetia*, op. cit.

<sup>25</sup> 5,000 Ossetians out of the 60,000 took refuge in South Ossetia. UNHCR, "Population Movements as a Consequence of the Georgian-South Ossetian Conflict", updated 1 September 2004.

<sup>26</sup> Ibid.

<sup>27</sup> As in other republics of the former USSR, in the late 1980s on the eve of Georgian independence, radical nationalist groups gained substantial political influence. Mottos, like "Georgia for Georgians", often dominated official discourse and mass media reports, creating a general sense of intolerance towards national minorities.

<sup>28</sup> Results of 1989 USSR census. Crisis Group documentation from the state department for statistics of Georgia.

<sup>29</sup> Georgian country-wide census 2002, available at: [http://www.statistics.ge/main/census/cen\\_inf/Tavi%203.htm](http://www.statistics.ge/main/census/cen_inf/Tavi%203.htm).

<sup>30</sup> 1989 USSR census, op. cit. There were also Ossetians in Bakuriani/Borjomi (1,824), Kareli (1,748), Kaspi (1,322), Khashuri (1,361) and the Kakheti region (1,300).

<sup>31</sup> Georgian country-wide census 2002, op. cit.

<sup>32</sup> 1989 USSR census, op. cit.

<sup>33</sup> UNHCR, "Population Movements", op. cit.

<sup>34</sup> This includes Ossetians from all parts of Georgia. The lower figure is based on data from UNHCR (estimations as of 1998). According to UNHCR Tbilisi, 30,000 Ossetians from Georgia proper registered in North Ossetia as refugees, while 10,000 from South Ossetia became "de facto refugees" in North Ossetia. Crisis Group interview, August 2004. Officials of UNHCR Vladikavkaz consider that in 1995 there were some 55,000 persons in North Ossetia displaced by the Georgian-South Ossetian conflict. Crisis Group interview, October 2004. The 100,000 figure is used by North Ossetian officials and includes those displaced from Georgia proper and South Ossetia. Crisis Group interview, October 2004; also quoted in Julian Birch, "Ossetiya -- land of uncertain frontiers and manipulative elites", *Central Asia Survey*, 18 (4), 1999, p. 505. The Ossetian population of Georgia proper (outside the SOAR) declined by 60,000 between 1989 and 2002. The majority of those who did not flee to North Ossetia moved to other parts of Russia, especially Moscow.

<sup>35</sup> Crisis Group interview with North Ossetia presidential adviser, October 2004.

<sup>36</sup> Crisis Group e-mail communication with UNHCR Vladikavkaz staff, March 2005.

<sup>37</sup> Crisis Group e-mail communication with UNHCR Vladikavkaz staff, March 2005. Crisis Group interview with UNHCR Vladikavkaz staff, October 2004.

<sup>38</sup> Crisis Group interview with senior official of the department on migration issues, ministry of internal affairs, North Ossetia, October 2004.

<sup>39</sup> Crisis Group field visit to refugee accommodations. Crisis Group interview with UNHCR Vladikavkaz staff, October 2004.

accommodation. Though the Russian government has been giving up to \$3,800 to assist each family seeking housing, this has been disbursed slowly.<sup>40</sup>

There is conflicting evidence about how many Ossetians from Georgia want repatriation or simply to integrate within Russia.<sup>41</sup> The Georgian state minister for civil integration, until recently an Ossetian refugee herself, noted that her ministry received in the past months over 50 applications from Ossetian families requesting repatriation assistance, and she anticipates the number will increase substantially once there are positive examples of return.<sup>42</sup> However, 99 per cent of those surveyed by a UNHCR implementing partner in 2002 in North Ossetia stated they had no intention of ever returning to Georgia. Significantly, they explained that the number one reason was that their previous home was unavailable or had been destroyed.<sup>43</sup>

Some North Ossetian authorities have also expressed scepticism about the return option. An official from the ministry of internal affairs told Crisis Group, "only a few persons want to return. How could they? They now have children here, they are going to school, their land has been redistributed and resold..." But, he added, "If Georgia wants to do something for these people, it should pass a law on property restitution and compensation".<sup>44</sup>

Ossetians North and South appear eager to resolve the refugee issue. According to a senior North Ossetian official, "refugees from Georgia remain a big problem for us, and the assistance that we were receiving from the [Russian] state is not enough to meet the needs...the longer we wait to resolve this issue the more dangerous it becomes. We would like more intensive cooperation with the Georgians in this field".<sup>45</sup> North Ossetian government officials told Crisis Group they supported Georgia's efforts to draft a law on property restitution and compensation and establish a property commission under the Joint Control Commission (JCC).<sup>46</sup> At a recent

dialogue meeting, Georgian and South Ossetian governmental and non-governmental representatives agreed that refugee return and property restitution was one of the few issues on which the two sides could presently cooperate to resolve.<sup>47</sup>

## B. TEN YEARS OF INADEQUATE PROGRESS

For ten years, from 1992 to 2002, there was slow but significant progress in the development of the means and mechanisms needed to facilitate the return of Ossetians to Georgia. Both sides pledged as early as 1992 to create conditions for return.<sup>48</sup> The first negotiations took place within the Joint Control Commission (JCC) -- a quadrilateral body with Georgian, Russian and North and South Ossetian representatives<sup>49</sup> and also OSCE participation.<sup>50</sup> The JCC was created to supervise observance of the 1992 Sochi ceasefire agreement, draft and implement conflict settlement measures, promote dialogue and political settlement, devise and carry out measures to facilitate refugee and IDP return, solve problems related to economic reconstruction in the zone of conflict and monitor human rights.<sup>51</sup>

It was not until 1997 that the sides adopted a Procedure on the Voluntary Return of IDPs and Refugees Resulting from the Georgian-Ossetian Conflict to their Permanent Place of Residence,<sup>52</sup> which outlined principles for return. The parties expressed readiness to accept the right to "voluntary repatriation" and to "choose...place of residence" and pledged to protect returnees and guarantee them the property they were deprived of, freedom of movement, civil, cultural and social rights, and information on the return process.<sup>53</sup>

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department on migration issues, ministry of internal affairs, North Ossetia, October 2004.

<sup>47</sup> Crisis Group interview with Georgian participants of the dialogue meeting organised by the London-based International Institute for Strategic Studies (IISS) with EU financing in Ljubljana, Slovenia, 15-18 March 2005.

<sup>48</sup> "Sochi Agreement on Resolving the Georgian-Ossetian Conflict", Article 4, 24 June 1992.

<sup>49</sup> The 24 June 1992 Sochi Agreement established the body, but the mandate of the JCC was defined only in 1994 (Terms of Reference for the JCC, 26 July 1994, signed by the Russian and Georgian representatives).

<sup>50</sup> At that time, the OSCE was the Conference on Security and Cooperation in Europe (CSCE). It was agreed that the CSCE would participate in the work of the JCC within the Terms of Reference for the JCC, 26 July 1994.

<sup>51</sup> Terms of Reference for the JCC, 26 July 1994, op. cit.

<sup>52</sup> JCC decision, Annex No.2, Article 1 (Procedure), 13 February 1997, signed in Vladikavkaz.

<sup>53</sup> These rights were guaranteed whether a person was returning to the exact place of pre-war residence or elsewhere

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<sup>40</sup> Crisis Group e-mail communication with UNHCR Vladikavkaz staff, March 2005. Crisis Group interview with ICRC staff, Vladikavkaz, October 2004.

<sup>41</sup> While in refugee situations elsewhere a further option has often been resettlement to third countries, this has not been a significant factor in the Ossetian case.

<sup>42</sup> Crisis Group interview, March 2005.

<sup>43</sup> Survey carried out by Children's Fund, based on 1,773 families (7,149 individuals). Crisis Group e-mail communication with UNHCR Vladikavkaz, March 2005.

<sup>44</sup> Crisis Group interview with senior official of the department on migration issues, ministry of internal affairs, North Ossetia, October 2004.

<sup>45</sup> Crisis Group interview with North Ossetia presidential adviser, October 2004.

<sup>46</sup> Ibid. Crisis Group interview with senior official of the

Implementation of the Procedure was to be coordinated by a permanent body of representatives of the four JCC participants.<sup>54</sup> However, the JCC subsequently created an ad hoc committee to be headed by its co-chairs, with the participation of the OSCE and UNHCR.<sup>55</sup> This committee was to organise and coordinate measures on practical implementation and meet at least monthly.<sup>56</sup> At the end of 1997 Georgian President Shevardnadze and the South Ossetian leader, Chibirov, met and declared 1998 the "Year of Return". However, the year did not live up to expectations. In 1999 the JCC noted that "insufficient work had been carried out to address obstacles to return" and recommended Georgia "speed up the consideration of the Property Restitution of Refugees and IDPs".<sup>57</sup> The committee is not currently functional.

The absence of property restitution legislation has remained a major obstacle to return. In 1999 President Shevardnadze issued a decree, "On the Arrangement for Restitution and Protection of Housing and Property Rights of Refugees and IDPs", which stated that the "Georgian government, in compliance with universal principles of international law, supports the unconditional return of refugees and IDPs to their former residences". He also created a special working group to draft the necessary legislative changes.<sup>58</sup> The group was short-lived, and legislative changes were not adopted, but it did produce an estimate of the financial burden of property restitution: some \$10 million.<sup>59</sup>

A clearer outline of the return process came only with the signing in 2000 of the "Russian-Georgian Economic Agreement on Rehabilitation in the Zone of Conflict and on the Return and Integration of Refugees", which tasked the JCC to work out an "interstate program on return,

settlement, integration and re-integration of refugees".<sup>60</sup> The sides agreed on that program in June 2002,<sup>61</sup> and the JCC approved it the following month.<sup>62</sup> It consisted of concrete stages for refugee and IDP return, including surveys of affected persons, legislative changes, provisions for favourable taxation and transportation for returnees. However, none of these bilateral projects have been implemented. In May 2003 the JCC adopted "Measures to Implement the Agreement" and an inter-governmental Russian-Georgian committee for that purpose was to be created but no progress appears to have been made.<sup>63</sup>

Clearly the political will to authorise and implement a coordinated, comprehensive and sustainable return process has been lacking. Today, though Russian and Ossetian interlocutors still make reference to the 2000 agreement and program,<sup>64</sup> Georgian authorities tend to discount it.<sup>65</sup>

## C. A STALLED RETURN PROCESS

### 1. A key impediment: loss of property rights

Before privatisation, two basic types of real property existed in Georgia: private and state-owned.<sup>66</sup> The former was usually a private home, the latter usually meant communal flats. The residents of communal flats enjoyed tenancy rights -- use for life and the ability to pass it to heirs -- while the state maintained ultimate ownership. A local executive committee issued "housing orders", which provided the legal basis for occupancy, and administered state-owned property. While it was difficult to rescind a tenant's

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in Georgia. The Procedure excluded from protection persons who had committed serious non-political crimes or war crimes. Ibid.

<sup>54</sup> The Procedure, op. cit., Article 11.

<sup>55</sup> JCC decision, Annex No.2, 26 September 1997, signed in Java. The official title of the Committee was the "Ad Hoc Committee for Facilitation of Voluntary Return of Refugees and IDPs as a Result of the Georgian-Ossetian Conflict".

<sup>56</sup> Regulations on the JCC Special ad hoc Committee, Article 1, 26 September 1997. The same document established a secretariat to undertake all organisational tasks.

<sup>57</sup> JCC decision, Annex No.3, 23 July 1999.

<sup>58</sup> Presidential Decree No.295, 30 April 1999. Irakli Machavariani, the Special Representative of the President of Georgia for the Georgian-Ossetian Conflict, was appointed head of the working group. Ibid.

<sup>59</sup> Crisis Group interview with senior analyst at the Georgian National Security Council, December 2004; Crisis Group interview with OSCE Georgia senior official, March 2005.

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<sup>60</sup> "Intergovernmental Agreement Between Russia and Georgia on Economic Rehabilitation in the Georgian-Ossetian Zone of Conflict and on the Return and Integration of Refugees", Article 1, 23 December 2000, signed in Tbilisi.

<sup>61</sup> Approved at a meeting of the ad hoc committee on 7 June 2002.

<sup>62</sup> "Draft Russian-Georgian Interstate Program on the Return, Settlement, Integration, and Re-integration of Refugees, Forcibly Displaced and Other Persons Affected by the Georgian-Ossetian Conflict and Measures for Rehabilitation of Economy in the Places of their Return", JCC decision, Annex No.2, 9 July 2002, Moscow.

<sup>63</sup> Crisis Group e-mail communication with UNHCR Vladikavkaz staff, March 2005.

<sup>64</sup> Crisis Group interview with Russian diplomat in Georgia, September 2004, Crisis Group interviews with governmental and NGO representatives in North Ossetia, October 2004.

<sup>65</sup> Crisis Group interview with Georgian ministry of foreign affairs senior official, January 2005.

<sup>66</sup> The Soviet legal system acknowledged mostly Socialist property (*Sotsialisticheskaya imushchestvo*), which could be divided into state (public) property, collective-cooperative property, or professional and other public union property.

right to reside in a flat, a six-month absence enabled the authorities to repossess the property.<sup>67</sup> This should have been pursuant to a court order following a formal judicial application, but in some cases local authorities simply issued new housing orders for new tenants.<sup>68</sup>

During and after the conflict, the occupancy rights of many persons displaced from Georgia proper, and to a lesser extent from South Ossetia, were cancelled in this way. Between 1991 and 1996 in the Gori district court alone, 165 cases were initiated to abolish tenancy rights of Ossetian families. In 134 of these the court ruled in favour of the executive committees.<sup>69</sup> People who had fled their homes were considered absent without a valid reason.<sup>70</sup> In numerous cases in which returnees tried to appeal, the courts refused to accept the conflict as a valid reason to have vacated a home.<sup>71</sup> As UN Special Rapporteur Pinheiro observed, "in Georgia ... the legacy of discriminatory application of the 1983 Housing Code against Ossetians who fled their homes during the 1990-1992 conflict prevented large-scale return for several years".<sup>72</sup> In South Ossetia, the discriminatory application of the same Housing Code kept Georgians from returning to their pre-war state-owned property.

The 1997 Georgian Civil Code abolished the 1983 Housing Code. This appears to have helped Ossetians regain their property rights. In 1998-1999 in the Gori and Kareli district courts, 52 of 59 cases were decided in favour of the original owner.<sup>73</sup> It may not be a coincidence that this occurred around the time

Shevardnadze and Chibirov declared the "Year of Return".

The privatisation process has become another impediment to restitution. Privatisation of state-owned flats gave secondary occupants the opportunity to purchase the residences they had obtained under the new orders, and the vast majority did so.<sup>74</sup> Some secondary occupants have also subsequently sold their flats.

## 2. Other impediments

Refugees and IDPs who owned their houses and who have not sold them face fewer difficulties. However, much of that housing has been destroyed, become derelict after years of vacancy, or has been taken over by others. In 2004 the Georgian government decided to try to assist the Ossetian displaced who fell into this category. President Saakashvili signed a decree allocating 350,000 laris (\$197,700) to assist 25 Ossetian families to return to pre-war homes in the rural Borjomi region. Their houses were rehabilitated and refurnished, and some livestock and agriculture support was provided; nine received monetary compensation of 4,000 laris (\$2,200) apiece.<sup>75</sup>

However, rebuilding houses is not sufficient to ensure sustainable return and reintegration of Ossetians in Georgia. The cases of the 25 families -- only five have remained in Georgia -- are illustrative. Apparently the lack of appropriate access to education, dismal infrastructure and almost non-existent social services made repatriation unsustainable for the other twenty.<sup>76</sup> A senior Georgian government official told Crisis Group, "the returnees asked for a Russian language school for their children in order for them to stay".<sup>77</sup> Children who have been raised in North Ossetia or in other parts of

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<sup>67</sup> "Housing Code of the Georgian Soviet Socialist Republic", Article 69, 1983.

<sup>68</sup> Crisis Group interview with Georgian independent legal expert, March 2004. Crisis Group interview with UNHCR Georgia staff, March 2004.

<sup>69</sup> The record was kept by the Georgian Young Lawyers' Association, Gori branch. Crisis Group interview, March 2005.

<sup>70</sup> Article 69 listed some reasons for justified absence, like military service, medical treatment, job-related trips, etc. Housing Code, op. cit., Article 69, Parts 1-8.

<sup>71</sup> Crisis Group interview with UNHCR Georgia staff, March 2004. See also Leckie, "Housing and Property Restitution Issues", op. cit.

<sup>72</sup> Pinheiro, op. cit.

<sup>73</sup> Crisis Group interview with lawyer from the Georgian Young Lawyers Association (GYLA) in Gori. See also UNHCR, "Global Report 2000". Crisis Group, however, was unable to obtain the text of a ruling in favour of an original owner and so cannot confirm that it was the new civil code which effectively made property restitution possible. Crisis Group received no evidence that the restitution process through the courts in these two districts continued beyond 2000. In 1998-1999, in addition to the 59 cases heard, another 25 cases were initiated but not decided.

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<sup>74</sup> Acts of privatisation of housing and other property could be challenged by appeal to the courts within three years. The three-year span has already passed in most privatisation cases, and there are no legal remedies left through which to contest the property right of a secondary resident/new owner. Z. Burduli and A. Dolidze, "Housing and Property Restitution in the Republic of Georgia", in Scott Leckie (ed.), *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons* (Transnational Publishers, 2003), p. 323.

<sup>75</sup> Crisis Group interview with the minister for refugees and resettlement of Georgia, March 2005.

<sup>76</sup> Crisis Group interview with the state minister for civil integration, March 2005.

<sup>77</sup> Crisis Group interview, March 2005. The South Caucasus Institute of Regional Security assessed conditions in Ossetian villages in Georgia proper in spring 2004 and found that many buildings -- especially schools and other public structures -- were unusable after years of neglect. Crisis Group interview, August 2004.



Russians have been following the curriculum of the Russian Federation and have generally been schooled in Russian. They adapt with difficulty to Georgian schools, although even these are unavailable in some places.

Lack of employment prospects has exerted a further dampening effect on return. Unemployment is high throughout Georgia. Families with older children who have no Georgian language skills realise it would be difficult to find jobs in Georgia. Competition for work is fierce, and the impression among Ossetians is that they will be at a disadvantage. They remember that in the early 1990s many Ossetians were fired purely because of their ethnic affiliation.<sup>78</sup>

Many Ossetians who lived in Georgia before the collapse of the Soviet Union and became refugees as a consequence of the conflict do not have Georgian citizenship. Georgia's Citizenship Law removed their automatic right to that if they left the country before December 1991.<sup>79</sup> It is very difficult for residents of North Ossetia to obtain legal documents (passports, birth certificates, marriage licenses or labour books) from Georgia to apply for citizenship before return.<sup>80</sup> Over 10,000 refugees in North Ossetia have become citizens of the Russian Federation.<sup>81</sup> According to the Georgian Constitution (Article 12.2) dual citizenship is not permitted except as granted by the president in special cases. Saakashvili used this power for the 25 families repatriated in 2004<sup>82</sup> but other potential returnees have no guarantee they will be able to obtain Georgian citizenship.

Fear for their security also keeps many from returning. Ossetians living in North Ossetia argue that they have never been accepted as full citizens in Georgia. They

recall the massacres that occurred in 1920 and consider the 1990-1992 conflict the second attempt in a century to remove Ossetians from Georgia.<sup>83</sup> They regard themselves as a "small nation" of the Caucasus that has learned from history to live as a compact group. Mistrust of the new Georgian leadership has been compounded by the events of summer 2004.<sup>84</sup> The popular discourse in North Ossetia is against return, and local media is highly critical of Saakashvili, comparing him to Zviad Gamsakhurdia, the nationalist first president of post-Soviet Georgia. Ossetians who have returned to Georgia have been ostracised by the Ossetian community and seen as traitors to their nation.<sup>85</sup>

Even if more Ossetians wanted to return, the capacity of Georgian governmental bodies to organise their orderly and dignified reintegration into Georgian society is limited. The only government body in Georgia dealing with repatriation of Ossetians is the state ministry for civil integration.<sup>86</sup> The state minister was in charge of implementing the special presidential program that repatriated the 25 families but the 2005 state budget gives her only enough money to cover the costs of her small staff.

### III. MOVING FORWARD

After years of limited effort to resolve the conflict, President Saakashvili's announcement at the Council of Europe Parliamentary Assembly (PACE) in January 2005 of a South Ossetia Peace Initiative was a step forward. The Initiative primarily proposes means to resolve South Ossetia's status within Georgia. But without prior confidence-building measures, status discussions will get nowhere. In the Initiative, the Georgian government pledges to adopt a Law on Property Restitution and to establish a special committee, including international organisations, to deal with unresolved property disputes.<sup>87</sup>

<sup>78</sup> Most notoriously, nine teachers in the Kareli district lost their jobs, with ethnicity recorded as the reason for dismissal in their labour books (*trudavaya knizhka*, the official record of hiring, firing, and resignations). One of them, Zoia Kodolova, unsuccessfully appealed to the Supreme Court. Crisis Group interview with Kodolova's lawyer, March 2005. Many more employees chose to resign rather than risk being fired since a notation in one's labour book of having been fired made it extremely difficult to find a new job. See also Human Rights Watch Report, "Bloodshed in the Caucasus: Violation of Humanitarian Law and Human Rights in the Georgia-South Ossetia Conflict", 1992, pp. 48-51.

<sup>79</sup> Organic Law of Georgia on Georgian Citizenship, adopted in 1993, Article 3.

<sup>80</sup> Crisis Group interview, UNHCR Tbilisi staff, March 2005.

<sup>81</sup> These people are no longer considered to be "of concern to UNHCR" and so cannot benefit from UNHCR-organised repatriation programs. If they want to return to Georgia, they must first obtain a visa. Crisis Group interview, UNHCR Tbilisi staff, March 2005.

<sup>82</sup> Crisis Group interview with state minister for civil integration, March 2005.

<sup>83</sup> Human Rights Watch found that, "Acts of reprisal against Ossetians began in January 1991 in other parts of Georgia, where they were systematically and on [a] wide scale threatened, robbed, beaten, and forced to leave their homes", Human Rights Watch Report, op. cit., p. 37.

<sup>84</sup> Crisis Group interview with Ossetian refugees from Georgia in North Ossetia, October 2004.

<sup>85</sup> Crisis Group interview with senior official of the department on migration issues, ministry of internal affairs, North Ossetia, October 2004.

<sup>86</sup> Another body dealing with refugee issues is the ministry for refugees and resettlement. However, it does not currently have any programs for repatriation of Ossetians. Crisis Group interview with the minister for refugees and resettlement, March 2005.

<sup>87</sup> "Initiatives of the Georgian Government with Respect to the Peaceful Resolution of the Conflict in South Ossetia", op. cit.



However, the plan emphasises that the law will be adopted "once constitutional law enters into force", that is, when the status issue has been decided and Georgia's territorial integrity restored. Instead, the law should be implemented as soon as possible to help build trust within the Ossetian community and prepare the ground for a full restoration of Ossetians' rights as Georgian citizens.

The experience of the past ten years demonstrates that persons who previously lived in state-owned apartments are more likely to have lost their rights to their pre-war homes, while owners of private property have had less difficulty. Any immediate action should, therefore, target refugees and internally displaced persons who lost or involuntarily abandoned their rights to state-owned property.

#### A. LAW ON RESTITUTION OF HOUSING AND PROPERTY DRAFTS

The Georgian public defender's office was made responsible for drafting a law on property restitution and compensation for the victims of the conflict in November 2004 and has convened a small drafting group of legal experts. Two larger meetings including representatives of government and civil society have also been held. Rather than preparing the requested draft, however, the public defender's office is considering working on a general law to restore all rights of people discriminated against during President Gamsakhurdia's time, which it wants to have ready in several months.<sup>88</sup>

The transfer of drafting responsibilities to the public defender's office and the extension of the scope of the restitution law were misguided. Georgia has already repeatedly committed to pass legislation ensuring restitution of ownership and tenancy rights or payment of compensation to those displaced between 1990 and 1994 in not only the South Ossetian but also the Abkhaz conflict. This cannot be done adequately in a general law reaffirming the basic rights of all former citizens of Georgia. A specific law on restitution and compensation is needed.

Since 1998 various drafts on the restitution of housing and property to the victims of the conflict have been prepared and commented on by international experts. One of the first attempts was by the Georgian Young Lawyers Association (GYLA).<sup>89</sup> Subsequently, a draft of the Law

of Georgia on Restoration and Protection of Housing and Property Rights of Refugees and Internally Displaced Persons was submitted to the Council of Europe, OSCE and UNHCR for comments. The three organisations provided a combined legal analysis on 9 June 2000.<sup>90</sup> Thereafter little progress was made. In August 2004 the Georgian minister of justice presented a new draft, largely based on the 1999 GYLA text, the Draft Law on the Restitution of Housing and Property to the Victims of the Georgian-Ossetian Conflict. In October 2004 the European Commission for Democracy through Law (Venice Commission) adopted an opinion on that draft.<sup>91</sup> UNHCR and the American Bar Association - Central and Eastern Europe Law Initiative (ABA-CEELI) also submitted comments to the government.<sup>92</sup>

The 2000 and 2004 drafts are Georgia's main attempts to legalise the right to return, restitution and compensation. While the 2000 text concerned the rights of all refugees and IDPs, the 2004 version focused on the victims of the Georgian-Ossetian conflict. Both underlined the Georgian state's responsibility to bring into conformity with international human rights standards the legal status of persons displaced as a result of conflict. Neither of the drafts clearly indicated precedence in the case of claims by both a returnee and a secondary occupant.<sup>93</sup> The original inhabitant's prerogatives should be clarified if the law is to provide the basis for restitution, compensation and justice for those whose rights were previously violated and ensure that such violations do not occur again.

For restitution of property to be possible, especially of formerly state-owned residences, Georgia must revoke legislation that has denied refugees and IDPs the right to

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cit., Annex 1. The GYLA draft was not accepted by the Georgian authorities in 1999 because of a "lack of political will", Crisis Group interview with GYLA staff, March 2005.

<sup>90</sup> Marcus Cox, "Preliminary Review of May 2000 Draft Law", op. cit.

<sup>91</sup> European Commission for Democracy through Law (Venice Commission), Opinion No.311/2004, adopted at the 60<sup>th</sup> Plenary Session, 8-9 October 2004 in Venice. Opinion based on the comments of Mr Pieter Van Dijk and Mr Peter Paczolay.

<sup>92</sup> UNHCR, "Observations on the Draft Law of Georgia on the Restitution of Housing and Property to the Victims of the Georgian-Ossetian Conflict", December 2004. Rhodri C. Williams, "Legal Comment on the Draft Law of Georgia on the Restitution of Housing and Property to the Victims of the Georgian-Ossetian Conflict", prepared for ABA-CEELI, 20 August 2004.

<sup>93</sup> This was done in Bosnia-Herzegovina, where similar counterclaims to property existed, after the Council of Europe issued an opinion stating that a presumption in favour of pre-war occupants was required under the ECHR. Prettitore, op. cit., p. 15.

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<sup>88</sup> Crisis Group interview with public defender and deputy public defender of Georgia, February 2005.

<sup>89</sup> As early as 1998, an excellent comprehensive "Draft Law on Housing and Restitution" was proposed by Scott Leckie. See Leckie, "Housing and Property Restitution Issues", op.

repossess their property.<sup>94</sup> Both drafts would partially do this by recognising the right of IDPs and refugees to appeal against "unjust application of Article 69 of the 1983 Housing Code".<sup>95</sup> Yet, they did not recommend that all decisions based on Article 69 be abolished when dealing with victims of the Georgian-Ossetian conflict. The texts also did not explicitly say that refugees and IDPs have the right to be reinstated in their former occupancy rights.

As many state-owned properties in Georgia were handed over to secondary occupants, who in many instances bought (and often later sold) them, it is important for a law on property to set out the rights also of these persons.<sup>96</sup> The drafts would entitle secondary occupants to compensation or alternative accommodation. However they did not define how compensation would be calculated, allocated and funded, nor explain who would be entitled to substitute accommodation and whether entitlement would be related to humanitarian need. A commentator further notes, "there is little sign in the draft law that efforts have been made to match the state's compensation liability to its available resources...[which] might approach €50 million".<sup>97</sup> The drafts also failed to describe what enforcement measures would be employed if a secondary occupant refused to vacate a property.<sup>98</sup>

Neither draft clearly spelled out who would be eligible for compensation, how this amount would be calculated,

and how a compensation fund would be financed. In 2000, compensation was envisaged for secondary occupants forced to vacate homes repossessed by returnees as well as for other damages suffered by returnees.<sup>99</sup> In 2004, provision for compensation was included for secondary occupants (Article 3.2), and for original residents who could not return to their homes (Article 3.1). This seemed to assume that at least some who chose permanent resettlement outside Georgia could request compensation without going through the exercise of physically attempting to repossess their homes. However, the draft did not elaborate on whether a refugee could choose compensation as a preferred remedy, or compensation would be paid only when a property was no longer inhabitable.<sup>100</sup>

## B. THE COMMISSION FOR HOUSING AND PROPERTY ISSUES

The 2000 and 2004 drafts both foresaw creation of a special committee to rule on claims for housing and property rights restitution. The drafts invested primary responsibility in a central housing commission.<sup>101</sup> Both laws thus foresaw an accelerated administrative procedure for determination of claims (30 days). Inherently, they assumed that the courts lack the capacities, objectivity, and trust of the displaced to respond adequately. This seems realistic as some refugees and IDPs were previously deprived of their property through court proceedings. International experts who have reviewed the two drafts have responded positively to the housing commission concept.<sup>102</sup>

The commission should be visibly independent and impartial. Whereas in the 2000 draft its members were to be appointed by the Georgian president, in the 2004 text the commission was to be made up of nine individuals, three nominated by the president of Georgia, the Ossetian side and UNHCR respectively.<sup>103</sup> This is a positive amendment if the commission is to inspire confidence amongst Ossetians and ensure that information on the

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<sup>94</sup> In Bosnia-Herzegovina this was done with the passage in the Federation of the Law on Cessation of Application of the Law on Temporary Abandoned Real Property Owned by Citizens, and the Law on Cessation of Application of the Law on Abandoned Apartments, and with the passage in Republika Srpska of the Law on Cessation of Application of the Law on Use of Abandoned Property.

<sup>95</sup> Draft Law of Georgia on Restoration and Protection of Housing and Property Rights of Refugees and Internally Displaced Persons, Article 5, 2000. Draft Law of Georgia on the Restitution of Housing and Property to the Victims of the Georgian-Ossetian Conflict, Article 3.3, December 2004.

<sup>96</sup> A similar problem existed in Bosnia-Herzegovina where "the primary obstacle in the process of repossession of property in BiH proved not to be the determination of rightful owners and possessors, but determining the rights of temporary occupants", Paul Prettitore, *op. cit.*, p. 14. See also Williams, *op. cit.*, pp.5-6.

<sup>97</sup> Cox, *op. cit.*, p. 10. Similarly, UNHCR noted that the 2004 draft law should be "re-examined in light of Georgia's available resources", UNHCR (2004), *op. cit.*, pp.1-2.

<sup>98</sup> The 2004 draft (Article 10.3.b) states somewhat vaguely that the Commission "takes decisions obligatory for enforcement on the whole territory of Georgia". It does not say that the Commission's decisions are legally binding or indicate which public bodies are required by law to implement its decisions. See also Venice Commission, *op. cit.*, p.5; Williams, *op. cit.*, pp.8-9.

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<sup>99</sup> Such as loss of "unused possibilities (including education), loss of capacity for work, material or business losses", Draft Law of Georgia on Restoration and Protection of Housing and Property Rights of Refugees and Internally Displaced Persons, Article 7, 2000.

<sup>100</sup> Venice Commission, *op. cit.*, Article 4, point 47, p. 7.

<sup>101</sup> In the 2000 draft the body was called the Housing and Property Claims Commission; in the 2004 draft the title was the Commission for Housing and Property Issues.

<sup>102</sup> Cox (2000), Venice Commission (2004), Williams (2004), UNHCR (2004), all *op. cit.*

<sup>103</sup> Draft Law of Georgia on the Restitution of Housing and Property to the Victims of the Georgian-Ossetian Conflict, Article 6.2, December 2004.

mechanism can be disseminated within the Ossetian community. It could be argued that one Ossetian representative should be from North Ossetia, whose authorities have been hosting refugees for over a decade and are most familiar with their problems and concerns.<sup>104</sup> It is unlikely that South Ossetians will be willing to participate in a body created by the Georgian legislature, however, until Tbilisi demonstrates its sincere commitment to the process. Nevertheless, Georgia should create the commission and leave a way for Ossetians to participate later if they so choose.

If the commission is to be a mixed body with Ossetian participation, its procedural rules should be drafted only after the general law on property restitution and compensation has been passed, with participation from all sides. This could be done within the JCC, in particular through the creation of a new special ad hoc committee to be headed by the JCC co-chairs, with the participation of the OSCE and UNHCR.

### C. ADDRESSING OTHER IMPEDIMENTS

While passage of an appropriate law on property restitution and compensation and the establishment of a housing or property commission would be key first steps to facilitate return, they would have to be followed by a much broader series of social, economic and political efforts to ensure Ossetians' reintegration in Georgia.

As a result of losing their tenancy and property rights, Ossetians who previously lived in Georgia now encounter infringements on their rights as Georgian citizens. Yet, according to UNHCR, "where refugees have lost their nationality, the country of origin should arrange for its restoration as well as for its granting to children born outside its territory".<sup>105</sup> The 2000 draft law discussed above contained generous provisions for refugees to regain Georgian citizenship (Article 8).<sup>106</sup> The 2004 draft made no mention of this. Georgian citizenship should be granted to persons who were forced to leave the country before December 1991 and sought shelter in other countries during or following the conflict. Due to the specific conditions in which they have lived since

the conflict, persons who were displaced and now reside in South Ossetia should be allowed dual (Russian-Georgian) citizenship.

Returnees should not be subjected to any discrimination and should enjoy the same fundamental freedoms and human rights as all other citizens of Georgia. The country is already a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, including Protocol Twelve on the general principles of non-discrimination, but in order to provide sufficient protection of national minorities, it should ratify and implement the Council of Europe Framework Convention for the Protection of National Minorities.<sup>107</sup>

If return is to be sustainable, returnees should have access to services, infrastructure employment, and education on a par with other members of their community. Where possible, Ossetians should be reinstated in their former employment, but where this is unrealistic they should have their years of exile compensated and any ethnic-based firing struck from their labour books.<sup>108</sup> Sustainable return is more likely in urban areas -- including Tbilisi, Gori and Rustavi -- than in poor, isolated rural areas such as the villages around Borjomi, where return was facilitated in 2004. Local authorities in return areas -- the first point of contact between the Georgian state and returnees -- should be prepared to implement re-integration efforts and in some cases to facilitate reconciliation between formerly displaced and non-displaced populations.

Georgia lacks the institutional capacity to deal with wide-scale and sustainable return. As noted above, the newly created state ministry for civil integration does not have sufficient funds to satisfy even current requests for voluntary return. An opportunity to address this problem was lost on 8 April 2005, when the parliament decided on funding allocations for a 449 million lari (\$245 million) increase in the state budget. No funds were allocated to the ministry for civil integration, while

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<sup>104</sup> The 2004 draft, however, states that the Ossetian representatives must be Georgian citizens and have knowledge of the state language (Article 8). In its analysis, the Venice Commission questions the language requirement. Venice Commission, op. cit., Article 8, point 55, p. 8.

<sup>105</sup> UNHCR, *Voluntary Repatriation: International Protection Handbook*, op. cit.

<sup>106</sup> Draft Law of Georgia on Restoration and Protection of Housing and Property Rights of Refugees and Internally Displaced Persons, Article 8, 2000.

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<sup>107</sup> The Framework Convention, which entered into force on 1 February 1998, is one of the most comprehensive treaties designed to protect the rights of persons belonging to national minorities. Parties undertake to promote the full and effective equality of persons belonging to minorities in all areas of economic, social, political and cultural life together with the conditions that will allow them to express, preserve and develop their culture and identity. See: <http://www.coe.int/minorities/>.

<sup>108</sup> The labour books were Soviet documents that do not have equivalents in current-day Georgia. However, they remain valuable to middle-age and older individuals, in particular for proof of pension rights.

39 per cent -- 176 million laris (\$96 million)<sup>109</sup> -- was given to the ministry of defence.<sup>110</sup>

A major information campaign is needed to address all Ossetian concerns in the preparation of the return process, including details on restitution and compensation options, and to ensure awareness of developments in Georgia in general. Refugees lack knowledge of what is happening in Georgia, and even political experts have little or no expertise on the various legal drafts.<sup>111</sup> UNHCR notes that "refugee populations should be kept informed of the progress of repatriation negotiations",<sup>112</sup> yet this is seldom the case in North Ossetia. No forums exist for refugees to participate in the preparation for return and voice their reactions and concerns. Once the right to property return and compensation becomes law in Georgia, it will be essential to implement a broad, comprehensive, information campaign, in particular for Ossetians currently residing in North Ossetia. To launch this, President Saakashvili should address the Ossetian people through the Russian media, reiterating his willingness to confront the suffering and misdeeds of the past and restore the rights of all refugees and IDPs to return voluntarily to their original homes.

#### **D. HOW THE INTERNATIONAL COMMUNITY CAN HELP**

The international community has not done enough to encourage the Georgian government to remove obstacles to refugee and IDP property restitution and reintegration. Donors have shown little eagerness to provide funds or expertise to support the return effort outside the immediate conflict area. Yet as experience from other post-conflict situations demonstrates, sustainable return needs multi-agency engagement to succeed.

If a property or housing commission is eventually established, UNHCR, OSCE, the EU and other donors should provide financial assistance to cover part of the operating costs, but most importantly to assist the Georgian government to meet its compensation liability. The return process will also require information dissemination, rehabilitation of housing and

infrastructure, social and economic programs, and monitoring, all of which the international community should help with.

With a mandate to facilitate voluntary repatriation and close to fifteen years experience working with the victims of the Georgian-Ossetian conflict, UNHCR is the primary international organisation that can assist the government in facilitating return. It should continue its efforts to promote voluntary, safe and dignified return of refugees and individuals without status as well as maintain its information role, drafting and disseminating an "information note" on property restitution and compensation once a new law is passed. In 2004 UNHCR started a legal aid program to help refugees and IDPs regain their property rights, with a lawyer in Tbilisi and another in Tskhinvali. It was suspended after May 2004 due to the worsening security situation<sup>113</sup> but should be resumed. As it has elsewhere, UNHCR might consider quick impact, labour intensive projects for rehabilitating community infrastructure, targeting areas where return has occurred.

The EU has been forthcoming in providing funds to support resolution of the conflict, confidence-building, and IDP returns. In 2003 it initiated its third rehabilitation program in the conflict zone, worth €2.5 million, including basic shelter assistance and repatriation kits for refugees (€800,000), rehabilitation of basic infrastructure in places of refugee repatriation (€400,000) and rehabilitation of basic infrastructure in support of permanent residents (€1,300,000).<sup>114</sup> Under the first component, returnees often obtain standard block houses as well as seeds, tools and other farming inputs. The EU should consider funding the same assistance for those returning to Georgia proper, as well as community infrastructure development in poorly equipped rural areas where return is occurring. It should include this aid in its general TACIS programming,<sup>115</sup> and in its Action Plan for Georgia, rather than link it to its funding for the conflict area.<sup>116</sup>

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<sup>109</sup> Crisis Group interview with official, Parliament of Georgia, Committee on Budget and Finance, April 2005.

<sup>110</sup> These funds are in addition to the 138,885,000 laris (\$75,893,442) allocated to the ministry of defence in the regular 2005 budget. That ministry also benefits from a special fund of unknown size to which private donors contribute.

<sup>111</sup> Crisis Group e-mail correspondence with Ossetian political expert from Tskhinvali, currently residing in Vladikavkaz, March 2005.

<sup>112</sup> UNHCR, *Voluntary Repatriation: International Protection Handbook*, op. cit.

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<sup>113</sup> Crisis Group interview with Norwegian Refugee Council staff, UNHCR implementing partner, March 2005.

<sup>114</sup> "Protocol on the Implementation of the Third EC-funded Rehabilitation Program in the Zone of the Georgian-Ossetian Conflict".

<sup>115</sup> Technical Assistance to the Confederation of Independent States (TACIS), the program established by the European Commission shortly after the collapse of the Soviet Union to provide aid to the newly independent republics.

<sup>116</sup> If the EU does this, however, the Ossetian authorities are likely to object, as they would consider it against their interest for funding to go to Georgia proper instead of the conflict zone. Crisis Group interview with EC Delegation to Georgia and Armenia staff, March 2005.

The OSCE plays a key role in facilitating dialogue and encouraging an eventual political settlement through its participation in the JCC. It also takes part in the JPKF monitoring and implements community-level confidence-building projects in the zone of conflict. It presented expert commentary on the 2000 draft law, and one of its human rights officers is working closely with the Georgian public defender's office as it prepares a new draft. However, the OSCE has been hesitant to engage further in facilitating the return of Ossetians to Georgia proper.<sup>117</sup>

The OSCE's mandate in Georgia is extensive and includes promotion of "the respect of human rights and fundamental freedoms", and facilitation of "the creation of a broader political framework in which a lasting political settlement can be found to the Georgian-Ossetian conflict".<sup>118</sup> It thus could take on more responsibility for encouraging and assisting in the return of victims of the conflict. In other post-conflict situations, it has been involved in monitoring the work of property commissions, assessing progress made by the main institutions responsible for settling property claims, serving as a point of contact for returnees, and carrying out other measures to protect property rights.<sup>119</sup> Should more substantial return of Ossetians begin, it has the mandate and experience to monitor the process, receive individual human rights complaints and provide policy recommendations. It is also in a position to encourage Georgia to address the return issue rapidly based on the recommendations in the Istanbul Summit Declaration and more generally on the human dimension commitments Georgia has agreed to abide by as an OSCE participating state.

The Council of Europe's Venice Commission has helpfully given timely legal advice on the 2004 property restitution draft. After a visit to Georgia in January 2005, it agreed to assist the government to prepare a detailed text on the autonomous status of South Ossetia, and in February it offered comments. Yet, it is important that the commission in its private and public communications with the Georgian authorities underline that the property restitution law should be adopted and implemented before a draft agreement on status is presented to the Ossetians. The Council of Europe's Parliamentary Assembly should also react strongly if Georgia again reneges on its commitment to adopt a legal framework for restitution and compensation by September 2005.

Bilateral donors should also consider providing funds and expertise to support the return effort. The German government is waiting to receive detailed project proposals from the Georgian government before launching a thorough assessment of the needs and opportunities but it has explicitly expressed willingness to invest €5 million in rehabilitation of housing and village infrastructure for returning refugees or IDPs outside of the conflict area and in Georgia proper.<sup>120</sup> Bilateral grants should, however, be made conditional on the passage of appropriate return and compensation legislation and the establishment of a mixed property or housing commission to handle claims and restitution.

#### IV. CONCLUSION

Although President Saakashvili has committed in words to finding a just and lasting settlement to the Georgian-Ossetian conflict, this is unlikely to happen unless the Georgian government begins implementing concrete and sustained confidence-building measures. It should be putting into practice the pledges the president pronounced in Strasbourg in January 2005 and which form the backbone of his South Ossetia Peace Initiative. It should not expect, however, that a political settlement will be found first, and that confidence-building measures could follow. Rather, it needs to push forward with unilateral steps to reincorporate Ossetians as equal citizens in Georgia proper.

If the Georgian side is honest about its commitment to resolve the conflict peacefully, it should demonstrate this by addressing the long-standing, unresolved, issue of refugee and IDP return. As a first step, the president should speak to the Ossetian people directly, through the media, and with the issuance of a presidential decree. He should reiterate his willingness to confront the suffering and misdeeds of the past and to restore the right of all refugees and IDPs to return voluntarily to their original homes. Secondly, the Georgian Parliament should pass a law on property restitution and compensation for the victims of the 1990-1992 conflict. A mixed commission to handle property claims and restitution should be created, and a large information campaign launched in Georgia, South Ossetia and North Ossetia (Russian Federation). Thereafter, the Georgian government should develop a reintegration strategy for Ossetian returnees, including a package of economic, social, and political measures.

<sup>117</sup> Crisis Group interview with senior OSCE Georgia official, January 2005.

<sup>118</sup> OSCE Mission to Georgia mandate found at <http://www.osce.org/georgia/mandate/>.

<sup>119</sup> For example, in Bosnia-Herzegovina, Croatia, Kosovo and Tajikistan.

<sup>120</sup> Crisis Group interview with the state minister for civil integration, March 2005; Crisis Group interview with diplomat, German Embassy to Georgia, March 2005.

For these efforts to succeed, political will and commitment are required from the Georgian government, as well as from the Ossetians and Russians. Donors will have to help with financing, which the Georgian government can only partly provide from its own budget. The number of likely returnees is much smaller than the number of those who were originally displaced, so the scale of return to Georgia is far more manageable than it has been in other recent post-conflict contexts. Starting with refugee and IDP return, therefore, is both a realistic and highly symbolic means for the Georgian government and its international partners to build trust quickly between Ossetians and Georgians and so ultimately contribute to conflict resolution.

**Tbilisi/Brussels, 19 April 2005**

## APPENDIX A

### MAP OF GEORGIA

Administrative map of Georgia





## APPENDIX B

### MAP OF THE SOUTH OSSETIAN REGION



## APPENDIX C

### SOUTH OSSETIAN AND GEORGIAN POPULATION FIGURES REFLECTING WAR DISLOCATION<sup>121</sup>

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#### Ossetians

1989	Ossetians in South Ossetia Autonomous Region (SOAR)	65,232
1989	Ossetians in Abkhazia Autonomous Republic	1,165
1989	Ossetians elsewhere in Georgia	97,658
<b>1989</b>	<b>Total Ossetians in Georgia</b>	<b>164,055</b>
2002	Ossetians from SO internally displaced (IDPs) inside SO	2,918
2002	Ossetians from SO now in Northern Ossetia	8,538
2002	Ossetians from Georgia proper now outside Georgia proper	59,658 <sup>122</sup>
<b>2002</b>	<b>Total Ossetians displaced (refugee and IDP) from place of origin</b>	<b>71,114</b>
2002	Ossetians remaining in Georgia proper	38,028

#### Georgians

1989	Georgians in SOAR	28,544
2002	Georgian IDPs from SO in Georgia proper	10,000

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<sup>121</sup> These figures are drawn from several sources including the last Soviet (1989) census, the 2002 Georgian state census, which did not include those portions of South Ossetia (and Abkhazia) not under Tbilisi's control, and estimates provided Crisis Group by UNHCR officials who noted, however, that their organisation is not responsible for IDPs and does not have comprehensive information about spontaneous returns. Consequently, these figures are believed to reflect the situation with general accuracy but are not necessarily as precise as they may appear.

<sup>122</sup> Of these, some 5,000 are believed to be IDPs in South Ossetia.

## APPENDIX D

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Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and printed copy to officials in foreign ministries and international organisations and made available simultaneously on the website, [www.crisisgroup.org](http://www.crisisgroup.org). Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board -- which includes prominent figures from the fields of politics, diplomacy, business and the media -- is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is chaired by Lord Patten of Barnes, former European Commissioner for External Relations. President and Chief Executive since January 2000 is former Australian Foreign Minister Gareth Evans.

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**April 2005**

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