

**Question #2 :Why did persons leave their place of residence between 1990 and 2008, in particular in August, September and October 2008, and what hinders them to return? How are the property rights of these persons protected?**

Ethnic Georgians and other ethnic minorities have been ethnically cleansed from Abkhazia and the Tskhinvali region/South Ossetia as a result of the war in 1992-1993 in Abkhazia and in 1991-1992 in the Tskhinvali region /South Ossetia when the Russian Federation took direct part in hostilities, in addition to providing military and other support to its proxies.

As a result of the ethnic cleansing, Georgians and other ethnic minorities (i.e. Greeks, Estonians, Ukrainians, Jews, etc.) left Abkhazia (only in the Gali region has the Georgian population managed to return, however, they have been subjected to oppression and violence since then) In the Tskhinvali region/South Ossetia primarily Georgians were ethnically cleansed. After the expulsion of ethnic Georgians, the Russian Federation took on the formal role as neutral mediator and peacekeeper; however, in reality, the Russian Federation established and supported its proxy regimes in both regions.

In August 2008, the Russian Federation invaded and occupied Abkhazia and the Tskhinvali region/South Ossetia including parts that had been under the central government control before the August invasion. During and after the actual hostilities, Russian forces in harmony with irregular proxy armed groups raided Georgian villages in the territories under their control and expelled ethnic Georgians threatening their lives. As a result of this campaign more than 130,000 civilians have fled. About 32,000 civilians from the Tskhinvali region/South Ossetia and the Kodori Gorge/Upper Abkhazia are still unable to return.

Despite the peace initiatives of the Government of Georgia, the ethnic Georgian populations were denied the right of return (*about the peace initiative see answer to legal Question 5 re: recognition*). Russia is directly responsible for the denial of the right of return of the IDPs and refugees on the territories under proxy control.<sup>1</sup>

▪ ***Property rights of IDPs***

The persons expelled from Abkhazia and the Tskhinvali Region/South Ossetia are denied the right to enjoy their property. Some of them have filed cases in the European Court of Human Rights to vindicate their rights.<sup>2</sup>

Moreover, in March we have provided information in the answers to the “First set of questions on legal issues to the Governments of Georgia and the Russian Federation” concerning the illegal disposal of the property of IDPs and their purchase by Russian citizens and companies.

As regards the situation caused by the conflict in August 2008, please see below:

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<sup>1</sup> See negotiation chart

<sup>2</sup> In 2006 a group of ethnic Georgian IDPs filed application against Russia and Georgia at the European Court of Human Rights. The applicants argue that due to the direct Russian involvement in the conflict they have been expelled from their houses in Abkhazia and have been denied the right to return. Regarding Georgia, the applicants claim that Georgia should be responsible since the territory where the alleged violations took place is *de jure* part of Georgia and thus falls within the Georgian jurisdiction as understood by Article 1 of the Convention.

Independent international organizations like Human Rights Watch (HRW), Amnesty International, the OSCE etc., as well as eyewitness testimonies and satellite imagery obtained has confirmed the extensive destruction in various settlements invaded and occupied by the Russian Federation.<sup>3</sup>

International humanitarian agencies estimate that some 300 to 500 houses in the Russian proclaimed “buffer zone”<sup>4</sup> were deliberately burned and that about 2,000 houses were otherwise damaged in the course of the conflict.<sup>5</sup>

▪ ***Impediments to displaced persons to return to their ‘Homes’:***

As noted above, Russian aggression in August 2008 led to the displacement of tens of thousands of people resident in the Tskhinvali region/South Ossetia. The HRAM interviewed a number of displaced persons who reported being forced from their homes as a result of the aerial bombardment of their villages by Russian planes or because they feared harm from advancing forces. In Eredvi, Ksuisi Kekhvi and Nuli, for example, the population began to flee as the bombs began to fall. Other villagers fled as Russian and armed proxy militant forces under Russian control began to arrive in their villages, for example in Vanati and Akhagori.<sup>6</sup>

In Eredvi, according to villagers, groups of armed proxy militants under Russian control in military uniforms told the inhabitants they had to leave; in at least one instance these proxy militants told the villagers that “if you don’t leave, you will be killed.” Another villager from Eredvi reported to the HRAM that one old couple was threatened by “Russians and Ossetians” and forced to leave.<sup>7</sup>

On the other hand, many of the ethnic Georgians who fled their villages in the Tskhinvali region/South Ossetia during the conflict and its immediate aftermath have not been able to return. Mr. Kokoity (the leader of separatist forces) reportedly made a statement in mid-September that Georgian “refugees” holding South Ossetian citizenship can freely return to their former places of residence. Displaced Georgians will be allowed to come back if they are ready to renounce Georgian citizenship and acquire South Ossetian citizenship.<sup>8</sup>

Other *de facto* South Ossetian officials have expressed similar views. The *de facto* Minister of Interior, for example, told the HRAM that he has found records of 4,000 ethnic Georgians living in South Ossetia who had been issued weapons since 2006 and that if these people tried to return they would be prosecuted. Others, he said, would only be allowed to return if they renounce their Georgian citizenship. The Deputy Chairperson of the *de facto* Council of Ministers (the *de facto* Deputy Prime Minister) told the HRAM: “If a Georgian who decides to remain in South Ossetia does not meet our expectations, they will be expelled.... I don’t want Georgians to return to the northern villages of Tamarasheni and others, and they won’t be able to.”<sup>9</sup> The Commandant of the

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<sup>3</sup> Amnesty International ‘Civilians in the Line of Fire’, p. 40

<sup>4</sup> Annex: Map of the Russian proclaimed Buffer Zone. The following villages are situated within the Buffer Zone: Variani, Nikozi, Khviti, Ergneti, Shindisi, Fkhvenisi, Karaleti, Tkviavi, Tirdznisi, Koshka, Mereti, Mdzevera.

<sup>5</sup> Report by the Office for Democratic Institutions and Human Rights (ODIHR), Human Rights in the War-affected Areas Following the Conflict in Georgia, Warsaw, 27 November 2008, pp. 22-24. Available at: [http://www.osce.org/documents/odihhr/2008/12/35656\\_en.pdf](http://www.osce.org/documents/odihhr/2008/12/35656_en.pdf)

<sup>6</sup> ODIHR, Human Rights in the War-affected Areas Following the Conflict in Georgia cited above, p. 24

<sup>7</sup> ODIHR, Human Rights in the War-affected Areas Following the Conflict in Georgia cited above, p. 47

<sup>8</sup> ODIHR, Human Rights in the War-affected Areas Following the Conflict in Georgia cited above, p. 48

<sup>9</sup> ODIHR, Human Rights in the War-affected Areas Following the Conflict in Georgia cited above, p. 48

Russian Armed Forces in South Ossetia told the HRAM that it is too early to speak about the return of displaced persons.<sup>10</sup>

Many displaced ethnic Georgians told the HRAM that they were unable to return to their former places of residence. A displaced person from the village of Disevi, for example, told the HRAM that she tried to return to Disevi but was prevented from doing so by Russian soldiers. Another concurred in a separate interview that “it is impossible to get through the Russian-Ossetian check points” and that it was not safe to return to tend the fields.<sup>11</sup>

A displaced couple from Vanati told the HRAM they have not been able to return to their house because police stop people from entering that area. A villager who tried to return to Ksuisi village said he was turned back at a checkpoint after being told he should apply for a Russian passport and citizenship if he wanted to return to the village. Other villagers reported they were afraid to go back to their villages after their experiences there. A villager from Okona said she would not return to her village as long as the Russians are there. A displaced person from Tamarasheni said she had no means to return to her village even if she wanted to, but in any event she had been told that all the houses in the village were destroyed, making return impossible.<sup>12</sup>

Since the proxy regime of the Tskhinvali region/South Ossetia, with the assistance of the Russian troops deployed in the region, has taken over in the Akhagori area, many people have left the region. More than 5,100 individuals had left Akhagori by the end of October. As another indication, a teacher told the HRAM that there were just 40 students in her school this year, compared to 170 last year and there were only half as many teachers as previously. The HRAM was told that some people are selling their homes and others are considering doing so; others have stated they return frequently to ascertain the situation prior to making a decision whether to sell their homes and move permanently to another region of Georgia. Georgians are leaving Akhagori because of the strong presence of Russian and armed proxy militant forces under Russian control and believe that fighting may break out.<sup>13</sup> To date, remaining ethnic Georgians in Akhagori live in constant fear; their rights and freedoms are limited; they are forced to accept Russian or so-called Ossetian passports and to cut links with the rest of Georgia.

Human Rights Watch researchers spoke with several members of the armed proxy militants under Russian control who openly admitted that the houses were being burned by their associates, explaining that the objective was to ensure that ethnic Georgians would not have the houses to return to.<sup>14</sup>

- ***The right of IDPs to dispose their property freely***

The Constitution of Georgia recognizes the right to property. The right of property of IDPs over their property left behind in Abkhazia is regulated correspondingly to the extraordinary situation. The Parliamentary Decree (2002) restricted the right to property of IDPs until the “elimination of the conditions that caused the displacement of those individuals.” The restriction is not about the

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<sup>10</sup> ODIHR, Human Rights in the War-affected Areas Following the Conflict in Georgia cited above, p. 48

<sup>11</sup> ODIHR, Human Rights in the War-affected Areas Following the Conflict in Georgia cited above, p. 48

<sup>12</sup> ODIHR, Human Rights in the War-affected Areas Following the Conflict in Georgia cited above, p. 49

<sup>13</sup> ODIHR, Human Rights in the War-affected Areas Following the Conflict in Georgia cited above, p. 50

<sup>14</sup> Human Rights Watch (HRW), [Georgia: Satellite Images Show Destruction, Ethnic Attacks](http://www.hrw.org/en/news/2008/08/27/georgia-satellite-images-show-destruction-ethnic-attacks), available at: <http://www.hrw.org/en/news/2008/08/27/georgia-satellite-images-show-destruction-ethnic-attacks>

general recognition of the property right but about the special regime for the registration of the property located in the parts of Abkhazia that remain beyond the control of the central government.

According to the general legislation on the registration of property, valid identification documentation and cadastral information shall be presented to the Public Registry. Identification documents as well as cadastral data<sup>15</sup> of the property located in Abkhazia have been remained there or were destroyed during the conflict. In the light of the above-mentioned, in order to conduct the valid registration of the property in the territory of Abkhazia, it is inevitable to conduct on spot verifications. Without on-spot verification, especially behind the background that privatization of property as such has never been conducted in Abkhazia, using regular procedures for registration may cause violation of the rights of third persons. Conversely, the risk that a person who claims ownership over the property may not be the real owner is tremendous. Through neglectful registration, the rights of potential buyers of the property are also under the risk. Therefore, the Government of Georgia takes very seriously the issue of property registration in the parts of Abkhazia beyond the control of the central government.

However, in order to strike the fair balance between the interests of different individuals the Public Registry conducts a preliminary registration. The preliminary registration means that the Public Registry can register property rights on the basis of satellite photos taken by the Government and the valid identification documents submitted by applicants.

This procedure is regulated within the frameworks of the Presidential Program "My House".<sup>16</sup> It is aimed at recording the real estate and registering the rights on it in the *de facto* territories not controlled by the Georgian Government. The program sets the foundation and exercises the preliminary registration of the property rights of the persons that had their real estate on the territory of Abkhazia prior to armed conflict and who as a result of it was forced to leave their property and change their place of residence. Preliminary registration of property rights in Abkhazia constitutes grounds for regular registration after the restoration of the jurisdiction of Georgia. It is important to mention that the preliminary registration is a manifestation of ownership over the property in question, however, the owner is temporarily restricted in his/her right to sell or otherwise dispose the property.

Pursuant to Decree No 124, in order to have preliminary registered property rights on the real property in Abkhazia, natural and legal persons must fill out a special declaration form indicating the information concerning the real estate that was in their possession on the territory of Abkhazia. Afterwards the data indicated will be compiled into declarations together with the satellite shoots to be used for creation of a geo-informational system of the Autonomous Republic of Abkhazia. All this provides the necessary requirements and gives the possibility to exercise preliminary registration of property rights of physical and legal persons in the territory of Abkhazia. For the implementation of these tasks a special department of land and other property-related issues of IDPs has been created in the Ministry of Refugees and Accommodation of Georgia.

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<sup>15</sup> Cadastral data provides information on location, boundaries, area and rights of a specific immovable property.

<sup>16</sup> The program is established by the Presidential Decree No. 124 of February 14, 2006, on Measures to be Taken with Respect to Recording of Rights to Immovable Property existing in the Autonomous Republic of Abkhazia and the Tskhinvali Region, and by the Presidential Decree No. 255, dated April 8, 2006, on Approval of the Procedure for Preliminary Registration of Immovable Property Existing in the Autonomous Republic of Abkhazia and the Tskhinvali Region.

Among others, the program "My House" aims at ensuring the identification of "persons" who are entitled to claim the right to ownership over real estate (persons who possessed the real estate) in the *de facto* territories and protection of their civil rights and interests. Upon restoration of the *de jure* jurisdiction of Georgia over Abkhazia, Georgian citizens will have legally valid and technically approved documents in Georgian and Abkhazian languages on real estate confirming the right to their property (the real estate's "recording certificate" and attached their farmstead plan) on the basis of which property related issues will be regulated and resettlement of IDPs in their habitual residences will be carried out.

The Public Registry will be able to conduct full scale and normal registration of the property in the parts of Abkhazia beyond the control of the central Government only after verification of the archival documents locally and accurate verification of location, boundaries, area and purpose of the property.

In order to show Georgia's commitment to restore the IDPs their right to property they have been expelled from, the measures taken in Upper Abkhazia, Kodori Gorge, is worth mentioning. As soon as the central government obtained necessary control over Upper Abkhazia in 2006, the Gulripshi Public Registry Office has been opened that registered the property over that territory and accordingly the inhabitants were effectively restored their property rights.

- ***Property Rights in Tskhinvali region/South Ossetia***

The Law on Restitution was adopted on December 29, 2006. The aim of the law is to provide property restitution, adequate immovable property in place or compensation of the material (property) damage to the victims who suffered damage as a result of a conflict in the Former Autonomous District of South Ossetia. Currently, the steps are taken for the implementation of the Law on Restitution.