

First set of questions to the Governments of Georgia and the Russian Federation related to humanitarian issues

Question 6: During or following the hostilities in 2008, when were the persons who fell into the power of your party or into the power of adverse party arrested? On what legal basis were they arrested? How were those persons treated? Were they tried? When they were released?

Regarding the mistreatment of Georgia hors de combat soldiers at the hands of the Russian Federation:

The practice of mistreatment against Georgian soldiers who were no longer taking an active part in hostilities has been widely documented. As many as 30 soldiers who were detained during and after the conflict experienced torture and ill-treatment, including being beaten with rifles, burned with cigarettes and cigarette lighters, and subjected to electric shocks.¹

Amnesty International and Human Rights Watch documented the cases of at least 13 soldiers who suffered injuries from severe beatings and torture during their detentions by proxy regime military and police forces between 8 and 19 August 2008.² The index fingers on four of the soldiers' right hands had been burnt to the bone. These former captives also reported summary executions of at least three other soldiers who had been detained with them. Many of the former detained soldiers continue to suffer severe trauma as a result of their experiences. The Russian and proxy regime in Tskhinvali region/South Ossetia did not reply to questions addressed to them by Amnesty International regarding the number and treatment of POWs.³

It is clear that the Russian Federation did not act consistently with the principles of IHL during the armed conflict and subsequent occupation of Abkhazia, Georgia and the Tskhinvali region/South Ossetia. The armed forces of the Russian Federation and the proxy militants under their control did not ensure that their attacks were limited to legitimate military targets and were discriminate and proportionate in nature. They did not tailor the means and methods of attack to limit collateral damage (both physical and psychological) to civilians and failed to pay due regard to the principle of humanity in their dealings with civilians and Georgian soldiers who were no longer taking active part in hostilities.

As a result of the mistreatment described above by the forces of the Russian Federation and proxy militants under separatist control, the injured parties have suffered serious psychological distress and experience severe anguish to the present day. The Russian Federation has been put on notice of these complaints by the reports of international institutions and non-governmental organisations. Despite this, no, or no reasonable, investigation appears to have been carried out into these complaints.⁴

¹ See for example, ANNEX 1 : witness statement of Khvicha Melkuashvili.

² Human Rights Watch, "Up in Flames: Humanitarian Law Violations and Civilian Victims in the Conflict Zone over South Ossetia", 22 January 2009, pages 185-194, available at: <http://www.hrw.org/en/reports/2009/01/22/flames-0>; Human Rights Watch, *Summary of Recommendations*. Available at: <http://www.hrw.org/en/news/2008/10/20/summary-recommendations>

³ Amnesty International, *Civilians in the line of fire: the Georgia-Russia conflict* cited above, p. 46. Available at: <http://www.amnesty.org/en/library/info/EUR04/005/2008/en>

⁴ ANNEX 2 : Council of Europe Parliamentary Assembly, Monitoring Committee Report, 'The implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia', 17 December 2008, AS/Mon(2008)33rev, at paras 32-52. See particularly para 46: "The Investigative Committee of the General Prosecutor's Office of Russia launched an investigation into genocide committed by Georgian troops against Russian

Persons detained by Georgia

- Russian military personnel held as POWs: five.
- Members of separatist illegal armed formations: thirty-two (Note that these are all able-bodied Georgian citizens of military age detained during the course of hostilities.).
- Apparent mercenary: 1 (Russian citizen).
- All Georgian held prisoners were exchanged for the 159 Georgian civilians and 39 POWs held under Russian authority:
 - o 5 POWs
 - o 32 members of separatist illegal armed formations
 - o 1 apparent mercenary
 - o 9 convicted criminals requested by Russian authorities (Note that these people were serving sentences in Georgian prisons for criminal convictions before, and unrelated to the war.)

ICRC visits

The ICRC was afforded unimpeded access to our detention facilities. The ICRC visited 3 of the 5 POWs—the other two were taken prisoner late in the war. The ICRC visited facilities maintained by the Ministries of Defense and Justice on a number of occasions, inspecting the conditions in which not only the POWs were detained, but also those of the detained members of separatist illegal armed formations.

It should be noted that the Russian Embassy was invited to visit the Russian POWs, however, they failed to respond.

Detaining authorities, facilities and conditions

Persons detained by Georgia during the conflict were held in facilities administered by the Ministries of Defense, Justice and Internal Affairs:

- Tbilisi Temporary Detention Isolator.
- Gori Temporary Detention Isolator.
- Adigeni Temporary Detention Isolator.
- Borjomi Temporary Detention Isolator.
- Vaziani GAF base.
- Prison #8, Gldani District, Tbilisi.
- Central Prison Hospital.

The ICRC visited Vaziani and Prison #8 and expressed satisfaction with the conditions in which detainees were held.

citizens (ethnic Ossetians) in South Ossetia. In addition, it opened an investigation into crimes committed by Georgia against the Russian military. It would seem that there is no intention to investigate possible violations of human rights and humanitarian law committed by Russian forces and forces under the control of the de facto South Ossetian authorities. Indeed, the Special Investigation Committee reportedly closed its investigations on the ground in South Ossetia in mid-September, at a time when credible reports indicated that looting, pillaging, as well as acts of ethnic cleansing were taking place on a daily basis in the areas under Russian control, including in the so-called 'buffer zone'."

All of the facilities used to hold detainees meet or exceed international standards. Gldani Prison #8 is a newly built penitentiary establishment that meets international standards and is the best facility in Georgia. Those detained in the context of the conflict were placed separately from other prisoners. They had three meals a day and unlimited access to medical service when needed or requested.

4 of the 6 detention facilities are either newly constructed or newly renovated. In general, these facilities have cells for 2, 4 or 6 detainees, ranging in size from 12m² to 16m². In no case did the number of detainees assigned to a cell exceed its capacity. In every case detainees—whether POWs or members of illegal armed formations—were held apart from those held in connection with ordinary crimes.

Although conditions vary among facilities, all cells are equipped with beds, mattresses, bedding, water and sanitary facilities.

In all the facilities, food is served three times daily, meeting accepted nutritional requirements. Some facilities are served by an in-house canteen; others are served by outside caterers. One facility shares a canteen with the adjacent Tbilisi Main Police Unit. There were no restrictions on access to water.

Detainees in need of medical care received such care.

Safeguards

In facilities maintained by the Ministry of Internal Affairs, the Main Unit for Monitoring and Protection of Human Rights provides internal monitoring, including announced and unannounced visits. Moreover, the ICRC was afforded unimpeded access to our facilities, visiting two of them.

The detention facility at the Vaziani military base is newly constructed, according to international standards. The detention facility is under control of the Military Police of the Ministry of Defense of Georgia.

Moreover, the ICRC was afforded unimpeded access to Vaziani, and its representatives inspected all parts of the facility in which POWs or members of illegal armed formations were held. All detainees held by the Ministry of Defense were visited by the ICRC, which interviewed them in private and afforded them the opportunity to make telephone calls to their families.

To date, no complaints or allegations of abuse of detainees have been received. However, the Prosecution Service of Georgia will investigate any adverse information that it may receive through public channels, including information from international organizations.