

**Information concerning the legal proceedings initiated by Georgia against  
Russia**

Georgia strongly believes that the dispute with the Russian Federation should be resolved in accordance with international law. Georgia has filed two international claims against Russia: one at the European Court of Human Rights and the other at the International Court of Justice. At the same time, almost immediately after the break out of the hostilities, the Office of the Prosecutor General of Georgia launched investigation on the facts. Each of the ongoing legal proceedings will be discussed below in greater details.

***The European Court of Human Rights***

On 11 August 2008, while Russian forces were heading to the Capital of Georgia, Georgia applied to the European Court of Human Rights with a request for interim measures to the effect that the Russian Government should refrain from taking any measures which may threaten the life or state of health of the civilian population and to allow the Georgian emergency forces to carry out all the necessary measures in order to provide assistance to the remaining injured civilian population and soldiers via humanitarian corridor.

On 12 August 2008 the President of the Court, acting as President of Chamber, decided to apply Rule 39 of the Rules of Court (interim measures) considering that the current situation gives rise to a real and continuing risk of serious violations of the Convention. Both parties were indicated to provide the Court with information concerning their engagement under the Convention, particularly under Article 2 (right to life) and Article 3 (prohibition of torture, other inhuman and degrading treatment or punishment) on regular basis. Georgia has been providing

the Court with detailed information about its compliance with the provisional measures, including the positive obligation. Georgia has also been providing the Court with information about the failure of the Russian Federation to meet the obligations reinforced by the order of the Court.

Georgia submits that the Russian Federation has failed up to the present date to respond specifically to concrete allegations raised by Georgian Government. Regrettably, Russian Federation has failed to abide by the indications through repeatedly ignoring in the communications to the Court specific facts submitted by the Government of Georgia. Moreover, Russian Federation has artificially confined the area of applicability of the interim measures indicated by the Court to the territory of South Ossetia, particularly Tskhinvali region, while the allegations of the Government of Georgia reach far beyond South Ossetia and encompass the entire area of Russian controlled territories including Abkazia, certain villages in Samegrelo, Sachkhere, and Gori districts as well as whole Akhalkgori district.

The interim measures were prolonged twice by the Court on 26 August and 16 September respectively.

The Ministry of Justice is working on the inter-state Application that will be submitted to the European Court of Human Rights in due course.

### ***The International Court of Justice***

On 12 August, 2008, Georgia instituted proceedings before the International Court of Justice (ICJ) against the Russian Federation under the International Convention on the Elimination of All Forms of Racial Discrimination. Georgia requests the ICJ to establish that the Russian Federation, through its State organs, State agents, and other persons and entities exercising governmental authority, and through the South Ossetian and Abkhaz separatist forces

and other agents acting on the instructions of, and under the direction and control of the Russian Federation, is responsible for serious violations of its fundamental obligations under the Convention, including Articles 2, 3, 4, 5 and 6. These violations under the Convention were committed during three distinct phases of Russia's interventions in South Ossetia and Abkhazia in the period from 1990 to August 2008.

Georgia submits to the Court that Russia bears responsibility for the policy of ethnic cleansing and supporting separatism in Georgia; therefore Georgia asks the Court to find Russia responsible for the breach of its obligations under International Convention on the Elimination of All Forms of Racial Discrimination committed through,

- (a) Engaging in acts and practices of 'racial discrimination against persons, groups of persons or institutions' and failing 'to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation' contrary to Article 2(1)(a) of CERD;
- (b) 'Sponsoring, defending and supporting racial discrimination' contrary to Article 2(1)(b) of CERD;
- (c) Failing to 'prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination' contrary to Article 2(1)(d) of CERD;
- (d) Failing to condemn 'racial segregation' and failing to 'eradicate all practices of this nature' in South Ossetia and Abkhazia, contrary to Article 3 of CERD;
- (e) Failing to 'condemn all propaganda and all organizations... which attempt to justify or promote racial hatred and discrimination in any form' and failing 'to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination', contrary to Article 4 of CERD;
- (f) Undermining the enjoyment of the enumerated fundamental human rights in Article 5 by the ethnic Georgian, Greek and Jewish populations in South Ossetia and Abkhazia, contrary to Article 5 of CERD;

- (g) Failing to provide “effective protection and remedies” against acts of racial discrimination, contrary to Article 6 of CERD.

Georgia asks the Court order the Russian Federation to take all steps necessary to comply with its obligations under Convention, including:

- (a) Immediately ceasing all military activities on the territory of the Republic of Georgia, including South Ossetia and Abkhazia, and immediate withdrawing of all Russian military personnel from the same;
- (b) Taking all necessary and appropriate measures to ensure the prompt and effective return of IDPs to South Ossetia and Abkhazia in conditions of safety and security;
- (c) Refraining from the unlawful appropriation of homes and property belonging to IDPs;
- (d) Taking all necessary measures to ensure that the remaining ethnic Georgian populations of South Ossetia and the Gali District are not subject to discriminatory treatment including but not limited to protecting them against pressures to assume Russian citizenship, and respect for their right to receive education in their mother tongue;
- (e) Paying full compensation for its role in supporting and failing to bring to an end the consequences of the ethnic cleansing that occurred in the 1991-94 conflicts, and its subsequent refusal to allow the return of IDPs;
- (f) Not to recognize in any manner whatsoever the *de facto* South Ossetian and Abkhaz separatist authorities and the *fait accompli* created by ethnic cleansing;
- (g) Not to take any measures that would discriminate against persons, whether legal or natural, having Georgian nationality or ethnicity within its jurisdiction or control;
- (h) Allow Georgia to fulfil its obligations under CERD by withdrawing its forces from South Ossetia and Abkhazia and allowing Georgia to restore its authority and jurisdiction over those regions; and

- (i) To pay full compensation to Georgia for all injuries resulting from its internationally wrongful acts.

On 13 August 2008 Georgia availed itself to the right provided under the Rules of Court requested provisional measures to be indicated to the Russian Federation in order to stop the ongoing discrimination of ethnic Georgians in the territories under Russian control. The provisional measures request was modified on August 25, 2008. The oral hearings took place on September 8-10. Georgia submitted evidence to the Court in support of the claim of ongoing ethnic cleansing and the particular threat ethnic Georgians are facing to in Gori and Akhalgori Districts as well as in Gali District of Abkhazia. Georgian evidence was based on witness testimonies, including those of former hostages kept in notorious Tskvinvali camp, reports of independent international organizations, satellite images etc.

It is noteworthy that despite Russia's allegations against Georgia aired on TV or made at political forums, Russia strongly resists the International Court of Justice to exercise jurisdiction over the case and to make competent legal determination on Russia's possible responsibility for the ethnic cleansing of Georgians.

### **Domestic criminal investigation and International Criminal Court**

On 9 August 2008 the Office of the Prosecutor launched an investigation including under Articles 411 (deliberate violation of humanitarian law provisions during internal and international armed conflicts), Article 413 (other violations of international humanitarian law, including looting, illegal acquisition and destruction of civilian property) of the Criminal Code of Georgia. It is important to note that the investigation is not against anyone, but is launched on the fact and intends to shed light to the overall situation. Every person whose culpability is revealed

in the course of investigation will be subject to relevant legal proceedings. No charges have yet been made. At this stage of investigation, the authorities focus on exclusively fact-finding: Initial statements from prisoners of war, civilian hostages have been taken, statements are continually taken from internally displaced individuals affected by the conflict, forensic examinations have been conducted, and seizure and inspection of affected areas under Georgian control has been implemented.

Georgia has expressed its readiness to share this information with the International Criminal Court. Unlike Russia, Georgia is a State Party to the Rome Statute. Accordingly at the time of ratification Georgia expressed its willingness to be bound by the Statute and recognized the jurisdiction of the Court over relevant crimes committed *inter alia* on the territory of Georgia.