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**Promotion et protection de tous les droits de l'homme,
civils, politiques, économiques, sociaux et culturels,
y compris le droit au développement**

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

Additif

**Suite donnée au rapport sur la mission en Géorgie
(A/HRC/10/13/Add.2)****

* Soumission tardive.

** Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport, qui est joint en annexe au résumé, n'est distribué que dans la langue originale.

Résumé

Le Représentant du Secrétaire général pour les droits de l'homme des personnes déplacées dans leur propre pays s'est rendu, les 5 et 6 novembre 2009, dans la région de Tskhinvali (Ossétie du Sud) afin de donner suite à la mission qu'il avait effectuée en Géorgie en octobre 2008. Il a pu avoir accès à toutes les zones qu'il avait demandé à voir, y compris à la région de Tskhinvali et aux districts d'Akhggori et de Znauri, et il a tenu des consultations franches et ouvertes avec les autorités de facto d'Ossétie du Sud.

En raison du conflit d'août 2008, 19 381 personnes ont été déplacées au-delà de la frontière de facto, tandis que, selon les estimations, entre 10 000 et 15 000 personnes ont été déplacées à l'intérieur de la région de Tskhinvali (Ossétie du Sud). Seul un très petit nombre de personnes déplacées dans leur propre pays ont pu retourner dans la région de Tskhinvali (Ossétie du Sud) et, parmi les personnes qui ont été déplacées en Ossétie du Sud, nombreuses sont celles qui attendent toujours la reconstruction de leur maison.

La plupart des cas de déplacement ont été causés ou suivis par des violations du droit international humanitaire commises par les parties au conflit. Le Représentant est particulièrement préoccupé par la destruction et le pillage délibérés de villages géorgiens dans des zones où les tensions étaient fortes avant le conflit. En outre, il a noté avec inquiétude l'ampleur des destructions affectant des maisons et bâtiments appartenant à des civils à Tskhinvali, qui étaient aussi dues à l'utilisation d'armes frappant sans discrimination en milieu urbain.

Le Représentant demande instamment aux parties de veiller à ce que toutes les personnes déplacées par les conflits récents et passés soient en mesure d'exercer leur droit au retour volontaire chez elles sans risque et dans la dignité, et qu'elles puissent retrouver leurs propriétés et possessions ou être indemnisées. Dans ce contexte, le Représentant exhorte les autorités de facto d'Ossétie du Sud à ne pas établir de lien entre les exigences politiques et le droit au retour. Compte tenu de la complexité de la situation en matière de logements, de terres et de biens fonciers dans l'ex-République soviétique, en raison de plusieurs vagues de violences et de déplacements, il recommande la création d'un mécanisme de règlement des différends fonciers avec le concours d'experts internationaux.

Jusqu'à ce que soit trouvée une solution globale et durable au conflit, les parties devraient conclure des accords pragmatiques afin d'améliorer la situation des personnes déplacées dans leur propre pays et d'autres populations touchées par le conflit. Le Représentant est particulièrement préoccupé par les difficultés causées par la fermeture presque totale des frontières administratives. En outre, les lois et politiques adoptées par les parties au conflit empêchent effectivement les organisations humanitaires d'avoir accès à la région de Tskhinvali (Ossétie du Sud) et d'apporter l'assistance indispensable, notamment en matière de logement pour les plus vulnérables. Le Représentant appelle les parties à autoriser et à faciliter l'accès de tous côtés afin que l'itinéraire le plus adapté, le plus sûr et le plus économique puisse être emprunté pour apporter l'aide humanitaire.

Il reste toujours un groupe de 3 500 personnes dans des bâtiments publics servant d'hébergement de Tskhinvali (Ossétie du Sud), qui ont été déplacées lors du conflit de 1991-1992. Les autorités de facto d'Ossétie du Sud et autres intervenants devraient mettre en œuvre des programmes de logement et de subsistance qui permettent à ces personnes déplacées dans leur propre pays de normaliser leurs conditions de vie, sans que cela ait une incidence sur leur droit au retour ou la restitution de leurs biens immobiliers.

Annexe

Follow-up to the report on the mission to Georgia (A/HRC/10/13/Add.2)

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I. Introduction

1. From 5 to 6 November 2009, the Representative, pursuant to his mandate contained in Human Rights Council resolution 6/32, carried out a visit to the Tskhinvali region/South Ossetia to follow up on the mission to Georgia he conducted in October 2008 (see A/HRC/10/13/Add.2). The Representative's conclusions and recommendations in the present report are based on the Guiding Principles on Internal Displacement.¹ The Guiding Principles are recognized by States as an important international framework for the protection of internally displaced persons² and are to be observed by all authorities, groups and persons irrespective of their legal status.³

2. The Representatives would like to thank all sides for the flexibility they have shown in allowing him to access the Tskhinvali region/South Ossetia.⁴ The Representative enjoyed access to all places he requested to see, including Tskhinvali and surrounding villages, Znauri district and Akhagori (also known as Leningori). He also held open and frank discussion with the South Ossetian *de facto* authorities, including Mr. Boris Chochiev, "Plenipotentiary Representative of the President of the Republic of South Ossetia on Post-Conflict Settlement Matters", Mr. Murat Djioev, "Minister of Foreign Affairs of the Republic of South Ossetia", and Mr. Konstantin Kochiev, "Advisor to the President of the Republic of South Ossetia". He also briefed the Government of Georgia on his findings and discussions upon his return from the Tskhinvali region/South Ossetia.

II. Patterns of internal displacement in and from the Tskhinvali Region/South Ossetia

3. An estimated 10,000-15,000 persons, the majority ethnic Ossetians, were displaced within Tskhinvali region/South Ossetia as a result of the August 2008 conflict.⁵ According to the Georgian Civil Registry, 19,381 persons, mainly ethnic Georgians, have been displaced from the Tskhinvali Region/South Ossetia across the administrative boundary line.

4. According the Guiding Principles on Internal Displacement, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border. Given that the *de facto* border has not received full international

¹ E/CN.4/1998/53/Add.2.

² General Assembly resolutions 60/1, para. 132; 62/153, para. 10; 64/162 (2009), para. 11; Human Rights Council resolution 6/32, para. 5.

³ Guiding Principle 2(1).

⁴ In comments to a draft version of this report, the Government of Georgia acknowledged the efforts of the Representative who had tried to access the region from Gori and highlighted that it gave its consent to the "Special Rapporteur's visit to the Tskhinvali region/South Ossetia from the north, that is through the Georgian-Russian state border."

⁵ Report of the Representative on the Mission to Georgia, A/HRC/10/13/Add.2 (2008), para.9.

recognition as a State border,⁶ the Representative considers all persons who were displaced across the administrative boundary line to be internally displaced persons.

5. In addition, many of the estimated 5000 persons who were internally displaced within the Tskhinvali region/South Ossetia as a result of the 1991-1992 armed conflict⁷ have yet to find a durable solution. These include 3,500 persons who have spent the last 17 years in collective centres according to figures provided by the South Ossetian *de facto* authorities.

6. The findings based on visits to a number of locations suggest that, while many civilians fled the general effects of armed conflict and insecurity, there are also clear indications that arbitrary displacement and other displacement-related violations of international humanitarian law were committed by parties to the conflict.⁸

A. Destruction of houses in and around Tskhinvali as a result of conduct of hostilities

7. The armed conflict of August 2008 has destroyed or severely damaged many civilian houses and a number of civilian public installations in Tskhinvali, including the university, the parliament and the main hospital. According to figures provided by the South Ossetian *de facto* authorities, 680 houses in Tskhinvali and surrounding villages were destroyed and over 1000 damaged. This includes a small settlement of 15 houses in Tbet village on the outskirts of Tskhinvali that UNHCR had built for some of the displaced from the 1991-1992 armed conflict. At the time of the Representative's visit, almost 15 months after the conflict, only 200 houses had been reconstructed and several thousand persons were facing a second winter in displacement.

8. Reports indicate that the large number of civilian houses destroyed also resulted from the use of weaponry in urban and other populated areas that was not accurate enough to discriminate between military and civilian targets.⁹ These include in particular GRAD multiple rocket launchers used by the Georgian military forces during the fighting in and around Tskhinvali. The Representative also takes note of reports that cluster munitions were used by the Georgian and the Russian armed forces.¹⁰ The use of cluster munitions has a long-term effect on internally displaced persons and other affected populations since unexploded remnants not only pose grave safety risks, but may deprive people of the opportunity to return to their homes or access their fields and other properties that their livelihood depends on.

⁶ When this report was finalized, only the Russian Federation, Nauru, Nicaragua and Venezuela had recognized an independent "Republic of South Ossetia."

On the issue of displacement across non-recognized borders cf. also the Reports of the Representative on the Follow-up Visit to the Mission to Serbia and Montenegro (Add.1, para. 3) and his Report on the Mission to Somalia (Add.2, para. 26).

⁷ Report of the Representative on the Mission to Georgia, E/CN.4/2006/71/Add.7 (2006), para. 8.

⁸ Independent International Fact-Finding Mission on the Conflict in Georgia (IIFMCG), Report: Vol. II (September 2009), pp. 295 ff.

⁹ IIFMCG, id., pp. 337 ff.

¹⁰ IIFMCG, id., pp. 340 ff.

In comments on a draft version of this report, the Government of Georgia has insisted that, unlike the Russian Forces, it has not used cluster munitions against civilians.

9. International humanitarian law prohibits the use of indiscriminate attacks that are not directed at a specific military target, employ means of combat which cannot be directed at a specific military objective or have effects which cannot be limited as required by international humanitarian law, and consequently strike military objectives and civilians or civilian objects without distinction.¹¹ Indiscriminate attacks may constitute grave breaches of international humanitarian law.¹²

B. Deliberate destruction of villages around Tskhinvali

10. In the aftermath of the armed conflict, a number of ethnic Georgian villages and settlements were systematically destroyed and pillaged. Due to shelling from surrounding areas in the days before major hostilities commenced on 7/8 August 2008 most of the population had already fled the villages. However, a few inhabitants remained in their houses and were driven out by force. The perpetrators were reportedly South Ossetian militia, aided by other armed elements, civilians and, in some instances, also Russian soldiers who either directly participated or failed to intervene.¹³ It appears that primarily those villages and settlements were targeted, where tensions were high before the conflict, in particular also because they were supporting the “provisional administration in South Ossetia” of Dimitri Sanakoyev.

11. In the Didi Liakhvi valley, along the road north of Tskhinvali, the Representative saw seven adjacent villages, which had been inhabited by an almost exclusively Georgian population prior to the August 2008 conflict. They had been completely destroyed, making a return of the former inhabitants in the near future physically impossible. The type and extent of destruction suggest that the buildings in these villages were deliberately destroyed by setting fire or detonating explosives. The Representative also found clear indications that the villages had been systematically looted. Reports indicate that South Ossetian militia destroyed and looted the villages after most of the inhabitants had fled.¹⁴

12. South Ossetian interlocutors acknowledged that the villages were destroyed as a result of “mutual hatred” rather than fighting. They highlighted that these villages used to have a considerable ethnic Ossetian minority population which was arbitrarily displaced by the majority population during the 1991-1992 conflict.

13. Furthermore, the Representative observed that the formerly ethnic Georgian quarter of Prisi village, east of Tskhinvali, had been systematically destroyed. At least two houses bore graffiti inscriptions with Ossetian names, presumably an indication that these houses were claimed to be the property of ethnic Ossetians.

¹¹ International Committee of the Red Cross, List of Customary Rules of International Humanitarian Law (2007), rules 11&12. Available from: <http://www.icrc.org/web/eng/siteeng0.nsf/html/p0860?opendocument>

¹² See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, art. 85 (3).

¹³ IIFMCG, Report: Vol. II (September 2009), at pp. 362-370.

¹⁴ See, e.g. Human Rights Watch, Up in Flames: Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia (January 2009), pp. 132 ff.

14. Other reports received, corroborated by satellite images analysed by UNOSAT experts, indicate that ethnic Georgian villages and settlements in the Patara Liakhvi valley (including Eredvi, Vanati, Disevi, Beloti, Satskheneti, and Atsriskhevi) were also deliberately destroyed and looted by members of South Ossetian militias and civilians.¹⁵ Due to time constraints, the Representative was not able to visit the Patara Liakhvi valley.

15. Pillaging and the extensive and deliberate destruction of civilian property without military justification constitute grave breaches of international humanitarian law.¹⁶ Military forces, which have established control over a territory, are required to uphold law and order and prevent breaches of international humanitarian law committed by members of their own forces or other persons under their control.¹⁷

C. Displacement from Akhagori District

16. Akhagori District, also known by its former Soviet name of Leningori, has traditionally had a majority ethnic Georgian population and was under the control of the Government of Georgia prior to the August 2008 conflict. While the District saw no fighting, many fled across the administrative boundary line after Russian armed forces entered the District on 20 August 2008. Another large group of persons left Akhagori in October 2008, fearing to become entrapped in the economically marginalized area in case the administrative boundary line would be closed. Since then the situation of the civilian population in Akhagori has further worsened as the supply of gas and often also electricity from across the administrative boundary line has been cut off. According to the Georgian Civil Registry the official figure of internally displaced persons from Akhagori stands at 5,348 persons.

17. Although the local *de facto* administration had no up-to-date population figures, the absence of a large part of the population is visible. Many houses were deserted and boarded up. The Representative was informed that only 120 children attended the two Georgian-language schools in Akhagori, which are reportedly still operational; another 60 are enrolled in the Russian-language school.

18. During his visit to Akhagori town, the Representative was encouraged to note that no houses were destroyed and there were no visible traces of looting. The Representatives is aware of reports suggesting that armed forces and militia have created a “climate of fear” in the town leading to further displacement.¹⁸ While the Representative noted during his visit that a militia presence is still visible in Akhagori, some of the remaining ethnic Georgian inhabitants who spoke to the Representative’s delegation did not report serious problems or appear to be intimidated.

¹⁵ See *Id.*, pp. 137 ff.; IIFMCG. See also United Nations Institute for Training and Research (UNITAR) Operational Satellite Applications Programme (UNOSAT), Georgia Maps, available at: http://unosat.web.cern.ch/unosat/asp/prod_free.asp?id=101.

¹⁶ See Art. 33 & 147 of Geneva Convention IV relative to the Protection of Civilians in times of war. Rome Statute of the International Criminal Court, art. 8 (a) (iv); 8 (b) (xvi), 8 (e) (v); 8 (e) (xii).

¹⁷ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, art. 43 & 46; Protocol Additional I to the Geneva Conventions, art. 87.

¹⁸ IIFMCG, Report: Vol. II (September 2009), at pp. 381 and 388. International Crisis Group, Policy Briefing: Georgia-Russia – Still Dangerous (June 2009), at p. 7.

19. Contrary to other areas along the line of control, the local population in Akhlagori can cross the checkpoints along the administrative boundary line. The Representative was told that many of those who fled the town return from time to time to harvest or collect salaries to the extent that they remain on public payrolls. The Representative is concerned about allegations of acts of harassment and extortion of civilians crossing checkpoints, which are reportedly committed by individual soldiers on both sides.¹⁹

D. Destruction of houses and displacement in Znauri District

20. Znauri District, in particular Znauri town, was directly affected by the armed conflict. According to the local *de facto* administration, 40-45 houses were destroyed and 130 damaged in areas that were under South Ossetian control before the August 2008 conflict. Many ethnic Georgians fled across the administrative boundary line with retreating Georgian forces, leaving mainly elderly persons behind. According to the local *de facto* administration, an estimated 1500 persons have been displaced during the conflict.

21. The ethnic Georgian villages of Avnevi and Nuli, which had been under Georgian control prior to the August 2008 conflict and were also integrated into paramilitary self-defence structures, have been systematically destroyed.²⁰ Local *de facto* administration officials acknowledged their destruction, while claiming that the fleeing inhabitants themselves had set houses on fire. Other reports based on testimony of victims, witnesses and independent observers indicate that the villages were deliberately destroyed; some houses seem to have been burned down weeks after a cease-fire was concluded.²¹

22. Other villages, which had a majority ethnic Georgian population prior to the August 2008 conflict, have not seen any visible destruction, although most of the ethnic Georgian population fled leaving often only elderly and vulnerable people behind. The Representative visited Okona, an ethnic Georgian village close to the administrative boundary line. The remaining inhabitants were almost exclusively elderly and vulnerable persons. Many lived in very dire conditions not least because they could no longer rely on the support of younger relatives who had fled and could not visit them as the checkpoints in the area are closed.

23. The Representative was encouraged to see that Arknet village retained a mixed ethnic Ossetian and Georgian population. The villagers explained that they chose not to engage in ethnically motivated acts of violence against each other despite pressure from different sides.

¹⁹ In comments on a draft version of this report, the Government of Georgia insisted that individual soldiers on the Georgian side did not engage in such conduct.

²⁰ An initial UNOSAT analysis of satellite images of 19 August 2009 indicated that all houses in the two villages visible in the images were either destroyed or severely damaged.

²¹ See, e.g. IIFMCG, Report: Vol. II (September 2009), at p. 399.

III. Key concerns relating to the displacement situation

24. The Representative had the opportunity to discuss key concerns in an open and frank manner with the South Ossetian *de facto* authorities.

A. Reconstruction and repair of conflict-affected houses and apartments

25. The reconstruction of houses has progressed far too slowly. As indicated above, the South Ossetian *de facto* authorities estimate that a total of 680 houses were destroyed in Tskhinvali and surrounding villages, while 1000 were damaged. At the time of the Representative's visit, almost 15 months after the conflict, only 200 houses had been reconstructed. In Znauri District, where at least 40 houses were destroyed and 130 damaged the reconstruction of 10 houses had just started. As a result several thousand persons were facing a second winter in displacement. The Representative was informed that many among the displaced were either staying with friends or relatives in Tskhinvali region/South Ossetia or found refuge in Northern Ossetia (Russian Federation). A small number of persons also lived in the basement of their houses or had set up transitional tent constructions on their property.

26. No efforts were visible to reconstruct the ethnic Georgian villages and settlements that were deliberately destroyed in the aftermath of the fighting.

B. Returns to and from South Ossetia

27. Internally displaced persons have a right to a durable solution of their choice, which includes the right to return to their home or place of habitual residence, to integrate locally or settle elsewhere in their own country.²² The Representative therefore welcomes the fact that his South Ossetian interlocutors recognized, in principle, that all internally displaced persons have a right to return, regardless of their ethnicity. At this point, however, the *de facto* authorities in Tskhinvali attach conditions to the right to return that are not in accordance with international human rights or the Guiding Principles on Internal Displacement since they tie exercise of the right to return to political demands.

28. The Representatives was told that returns would not be permitted until the Government of Georgia would agree to conclude an agreement on the non-use of force between the conflict parties. Furthermore, the South Ossetian *de facto* authorities underscored that returns would only take place to the extent that ethnic Ossetians could return to Georgian controlled areas. In addition, the *de facto* authorities maintained the position that returnees would have to accept to become citizens of the "Republic of South Ossetia" and that anyone who had been involved in combat activities on the Georgian side would be excluded from return.

29. The authorities also expressed concern about very visible and large-scale return operations fearing they would be abused for political purposes, while being more open to accept returns on an individual basis.

²² Guiding Principle 28.

30. At the local level, there seems to be slightly more openness to allow returns on a case-by-case basis. The Representative was informed that, in the year following the ceasefire of August 2008, at least 340 persons have been reunited with their families on both sides of the administrative boundary line thanks to the facilitation of neutral intermediaries. Many of the returnees reportedly belong to ethnically mixed families or are elderly persons.

C. Freedom of Movement across the administrative boundary line

31. At the time of the Representative's visit, the administrative boundary line was closed except for Akhlagori. People who nevertheless move cross the administrative boundary line, for instance to visit relatives, attend funerals or to pursue essential livelihood activities, risk being arrested and detained on the northern side. On 20 October, for instance, 16 Georgian woodcutters were arrested in the area of Akhali Burguli and released only several days later. On 4 November 2009, four teenage boys were arrested and detained until their release in December 2009, following the intervention of the Commissioner for Human Rights of the Council of Europe. The Representative also received allegations about instances of border crossers being held for questioning by Georgian authorities. The Representative was encouraged to receive assurances from the Government of Georgia that persons living in the Tskhinvali region/South Ossetia maintain their Georgian citizenship and have the right to move across the administrative boundary line.

32. These practices unduly interfere with the rights of the displaced to freedom of movement, family life as well as various social and economic rights that are also reaffirmed by the Guiding Principles.²³ The closure of the administrative boundary line affects internally displaced persons, but even more so those elderly and vulnerable persons who could not flee and stayed behind. They face enormous difficulties in the absence of their displaced relatives or neighbours on whose support they had relied in the past.

D. Access to international actors providing assistance and recovery support

33. Despite considerable support provided by the Russian Federation to the South Ossetian *de facto* authorities, a number of humanitarian needs of displaced and other vulnerable population remain to be addressed. In particular, the lack of progress on the reconstruction of housing for the most vulnerable among the displaced is a serious concern, also bearing in mind the cold winters in the region.

34. The Representative regrets the lack of flexibility shown by both sides to the conflict in providing access to international assistance and recovery support for the displaced. The South Ossetian *de facto* authorities continue to insist that international humanitarian agencies and assistance enter the territory solely from the territory of the Russian Federation. They highlighted that they would maintain this position, especially as long as no agreement on the non-use of force is concluded between the conflict parties.

35. On the basis of its Law on the Occupied Territory the Government of Georgia takes the position that access for humanitarian assistance to the Tskhinvali region/South Ossetia may only be delivered from Gori, although exceptions may be granted on a case-by-case basis. While the Representative welcomes the fact that the Georgian Parliament was considering a number of amendments to the Law on Occupied Territory when this report

²³ See Guiding Principles 14, 17 & 18.

was finalized, including an exception for delivery of emergency humanitarian assistance from the north, this would still not allow for the delivery of the type of non-emergency assistance that is currently needed.²⁴

36. The Representative recalls Guiding Principle 25, according to which all authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced. He urges the conflict parties to facilitate the provision of assistance through the most suitable, safest and economic routes, which would mean for some areas access from the South, for others from the North.

E. Normalization of the living situation of internally displaced persons

37. Until progress is made in finding a political solution to the conflict, it is unlikely that many of those displaced during the recent or past conflicts will be able or willing to permanently return across the administrative boundary line. It is therefore important to allow internally displaced persons to normalize and improve their living situation in the areas of their displacement.

38. The Representative has repeatedly emphasized that return and normalization of the living conditions of internally displaced persons are not mutually exclusive.²⁵ Helping internally displaced persons to normalize their living situation avoids dependency syndromes and places internally displaced persons in a better situation to voluntarily return once this option becomes feasible.

39. The Representative has therefore welcomed the fact that, on 28 May 2009, the Government of Georgia, adopted the State Action Plan for the Implementation of the National Strategy on Internally Displaced Persons (Government Decree No 403).. This Plan marks a paradigm shift and seeks to improve especially the housing conditions of those displaced in the recent or past conflicts who still live in collective centres.²⁶

40. Similar efforts also have to be made in the Tskhinvali region/South Ossetia. Most of the 3,500 persons who were displaced almost two decades ago still live in decrepit collective centres in Tskhinvali and its outskirts. The majority of these buildings were not designed for long-term residence and living conditions have steadily deteriorated over the years. Some collective centres were reportedly further damaged during the August 2008 armed conflict. The Representative met with inhabitants of one visibly dilapidated collective centre, who highlighted their difficult living conditions in the overcrowded shelter. He notes with concern that there are hardly any programmes to help internally displaced persons find their own housing, gain employment and assume a normal life again.

²⁴ Cf. in this regard European Commission for Democracy through Law (Venice Commission), *Final Opinion on the Draft Amendments and Annexes to the Law on Occupied Territories of Georgia*, Doc. No. CDL-AD (2009)051.

²⁵ See E/CN.4/2006/71/Add.7 (2006) para. 56; A/HRC/10/13/Add.2, para. 21.

²⁶ See Report of the Representative to the General Assembly, A/64/214 (2009), para. 42.

F. Protection and Restitution of Housing, Land and Property

41. All internally displaced persons from the recent and past conflicts are entitled to restitution or compensation for their property, regardless of whether they choose to return, integrate locally or resettle. Their property needs to be protected against unlawful appropriation, occupation and use by the relevant authorities.²⁷

42. While reiterating his concerns about illegal occupation of property of ethnic Ossetians displaced from places on the Tblisi side of the administrative boundary line,²⁸ the Representative urges the South Ossetian *de facto* authorities to protect property left behind by ethnic Georgian internally displaced persons from illegal appropriation, occupation or use. Having seen some limited construction activity in the destroyed formerly ethnic Georgian village of Tamarasheni on the outskirts of Tskhinvali, the Representative is concerned about allegations that a settlement for Russian military personnel serving in the Tskhinvali region/South Ossetia will be built on the site.

43. The Representative was encouraged to receive assurances from the South Ossetian *de facto* authorities in Tskhinvali and Akhmagori that property questions would be resolved in accordance with the rule of law. At the same time, the South Ossetian *de facto* authorities indicated that they would not recognize the privatization of housing or land in areas such as Akhmagori, based on laws adopted by the Government of Georgia. They argued that these laws never applied in the “Republic of South Ossetia” of which Akhmagori formed a part. Other interlocutors were reportedly told by local *de facto* officials in Akhmagori that land privatized by the Government of Georgia would be renationalized and used to compensate ethnic Ossetians who had lost land outside the Tskhinvali region/South Ossetia.²⁹

44. Housing, land and property questions are extremely complex. It needs to be borne in mind that control over housing, land and property often changed hands several times during different waves of violence, conflict and displacement. The legal situation is further complicated by the fact that much land was considered state- or socially-owned during the Soviet-era and privatized only later. Against this backdrop, the Representative considers it essential to establish a mechanism to resolve housing, land and property claims that is based on a comprehensive approach, taking into account events since the end of the Soviet era and addressing disputes on both sides of the administrative boundary line. International expertise will be needed to ensure that the mechanism is impartial and that good practices and lessons learnt in similar situations are applied.

45. Resolving housing, land and property disputes not only ensures that the rights of internally displaced persons and others are upheld, it is also important in respect of resolving the wider conflict and building a lasting peace.

IV. Conclusions and Recommendations

46. The August 2008 conflict caused considerable internal displacement in and from the relatively small area covered by the Tskhinvali region/South Ossetia. Only very few of those who were internally displaced across the administrative boundary line have been able to return. Within the Tskhinvali Region/South Ossetia many internally displaced persons still wait for the reconstruction of their houses.

²⁷ See Guiding Principle 29.

²⁸ On the latter point cf. E/CN.4/2006/71/Add.7 (2006), at para. 37.

²⁹ IIFMCG, Report: Vol. II (September 2009), at p. 404.

47. The Representative underscores that the issue of displacement has to be addressed comprehensively taking into account the recent and past armed conflicts and therefore reaffirms the recommendations made in the reports on his 2005 and 2008 missions to Georgia. He reiterates namely his call that all parties take all necessary steps to ensure persons displaced by the recent and past conflicts are able to enjoy their right to return voluntarily to their former homes in safety and dignity, and to guarantee recovery of their property and possessions, or where this is impossible, obtain compensation or other just reparation.³⁰

48. While progress on questions of peace and security, in particular the conclusion of an agreement on the non-use of force, would build confidence and open up political space to improve the situation of internally displaced persons, the conflict parties should not make the right to return conditional to political demands.

49. Resolving housing, land and property questions, which are to some extent an underlying cause of displacement, is very complex, in particular since possession may have changed several times since the end of the Soviet era during different waves of violence, conflict and displacement. The Representative therefore recommends that the parties agree to set up a property resolution mechanism involving international expertise to resolve all outstanding property claims, including those arising in the Tskhinvali region/South Ossetia and Abkhazia.

50. Much of the displacement that occurred is linked to violations of international humanitarian law of conflict parties. With regard to the August 2008 conflict, the Representative is particularly concerned about the deliberate destruction and looting of ethnic Georgian villages on ethno-political grounds as well as the degree of destruction of civilian houses and structures in the Tskhinvali region/South Ossetia, which resulted from the use of weapons with indiscriminate effect in urban areas. These violations call for individual accountability, including for bearers of command responsibility, to the extent that they amount to grave breaches of international humanitarian law. At the same time, the Representative would urge the parties to consider comprehensive amnesties for militia and civilians who took up arms without committing international crimes, in order to facilitate the reintegration of certain displaced populations.

51. Until a more comprehensive solution to the conflict is found, the Geneva discussions³¹ or other appropriate forums can provide a venue for the conflict parties to come to pragmatic agreements that improve the situation of internally displaced persons and other conflict-affected populations. As a first step, building on the example set in Akhalkori, the conflict parties should allow the local population freedom of movement across the administrative boundary line, while taking all measures to protect the civilian population from harassment and extortion by border forces.

52. The conflict parties also need to cooperate to help locate, mark and remove land mines and unexploded ordnance, including explosive remnants of cluster munitions of cluster projectiles, to guarantee the safety of returning internally displaced persons and other affected population. The Representative also calls on the Governments of Georgia and the Russian Federation to consider acceding to the

³⁰ A/HRC/10/13/Add.2, para. 59.

³¹ The Geneva discussions are a forum bringing together delegations from Georgia, the Russian Federation, the United States of America and the Abkhaz and South Ossetian *de facto* authorities, along with representatives of the European Union, the United Nations and the Organization for Security and Cooperation in Europe (OSCE), to discuss security and humanitarian questions.

Convention on Cluster Munitions, which prohibits all use, stockpiling, production and transfer of these weapons.

53. While the Tskhinvali region/South Ossetia currently does not require emergency humanitarian assistance, the policies on both sides effectively deny humanitarian actors the access needed to provide other important assistance, in particular assistance to reconstruct housing for the most vulnerable. The current access policies on both sides are not in line with the Guiding Principles and are notably more intransigent than approaches taken in other conflict areas visited by the Representative. The Representative recommends that the Government of Georgia and the South Ossetian *de facto* authorities revisit their respective stance and provide access to all international assistance and personnel necessary for addressing the needs of internally displaced persons and other conflict-affected populations in the Tskhinvali region/South Ossetia through the route that is most suitable, safe and economic in each case. This would mean that access from both South and North should be facilitated. The Representative welcomes efforts of the Government of Georgia to amend the Law on the Occupied Territory in line with the recommendations of the Venice Commission to allow entry of emergency humanitarian assistance from the North, but urges the Government to also facilitate the entry of non-emergency assistance necessary for recovery activities that allow internally displaced persons to find durable solutions.

54. The Representative would like to highlight that there is still a group of 3,500 internally displaced persons in collective centres in Tskhinvali/South Ossetia, who were displaced from across the administrative boundary line during the 1991-1992 conflict. The Representative urges the South Ossetian *de facto* authorities and other actors to initiate housing and livelihood programmes that allow these people to normalize their living situation and the international community to support such efforts. This would not detract from their right to return and the right to restitution of their property, or where this is impossible, compensation or other just reparation.
