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**Internally Displaced Person in Georgia:  
Gaps in Law and Practice**

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## Summary

This thesis examines three different conflicts in two different areas in Georgia, which created 254,000 Internally Displaced Persons (IDPs) in the country.

This thesis examines whether Georgia fulfills its obligations under international law towards these two groups of IDPs. The definition of the IDPs is compared according to the *Guiding Principles* of the United Nations and the *Law of Georgia on Forcibly Displaced Persons-Persecuted Persons*, to uncover what are some differences and similarities between them.

The right to not be discriminated is next issue which will be discussed under International and national law and what problems IDPs are facing according to this issue and basic human rights standards that they should enjoy under international law. The paper looks in addition into the right to adequate housing according to international and national legislation and eviction.

The thesis aims to discuss the gaps in Georgian law and practice as and will compared to the requirements under international law, specifically taking into account the different treatment of old and new IDPs from Abkhazia and South Ossetia.

In the conclusion it is discussed that both domestic law and the practice of the State fail the needs and right of IDPs which means, that State does not always comply obligations under international law. Many IDPs does not equally enjoy their rights which they have according as domestic as well as international law. However, there are still many gaps which need to fill with specific and suitable law for IDPs.

## **Preface**

I would like to take this opportunity and thank to my supervisor, Göran Melander, for his kind advice and suggestions, I have been lucky to have a supervisor like him. I would like to thank to Annabel Raw, who wholeheartedly gave support and encouragement during the whole period of my studies.

I would like to thank my brother who gave me help and assistance for living in Sweden.  
I would like to dedicate this thesis to my father.

## **Abbreviation**

ECHR	European Convention on Human Rights
GYLA	Georgian Young Lawyers Association
ICCPR	International Covenant Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDP	Internally Displaced Person
MRA	Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

## 1 Introduction

The problem of internally displaced persons (IDPs) is one of the biggest unsolved problems over several years in Georgia. Nowadays Georgia has an estimated 254,000 IDPs in a country of only 4.5 million inhabitants. In most cases, they are the victims of military operations, which are or were being conducted in the vicinity of their places of residence. This puts their lives at risk which is why these people are forced to give up their homes and move elsewhere within the country.<sup>1</sup>The majority of IDPs live in various regions controlled by Georgia but there are ethnic Georgians and Abkhazians who did not abandon their houses and still live in the conflict zone, their number amounts to 45,000.<sup>2</sup>

However, with forced displacement a lot of problems follow, including constraints in housing, food, water, medical and financial assistance.<sup>3</sup> Yet IDPs often do not have the benefit of the same international assistance as refugees. According to the 1951 Convention Relating to the Status of Refugees a “refugee” is a person who has crossed an international border because of well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or owing to such fear, is unwilling to return to it.”<sup>4</sup> Similar to Refugees, IDPs are displaced for reasons beyond their control but unlike refugees, IDPs have not crossed an international border. With respect to IDPs, the state is obligated to protect them, equal with other citizens of the state within its jurisdiction.

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<sup>1</sup>Edward Newman and Joanne Van Selm, (eds), “*Refugees and Forced Displacement :International Security, Human Vulnerability and the State*”, United Nations University Press: Tokyo 2003, p. 159.

<sup>2</sup>Giorgi Tarkhan-Mouravi, “*Assessment of IDP Livelihoods in Georgia: Facts and Policies*”, Tbilisi, February 2009, p.17.

<sup>3</sup> Ibid.

<sup>4</sup> See, United Nations General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951.

Unfortunately, the State is sometimes incapable or not willing to provide adequate support for IDPs.<sup>5</sup> What protection can we then expect for IDPs under international law in a place such as Georgia?

This thesis focuses on persons who have moved from South Ossetia during two periods: in 1990-1992, and in 2008 during which was known as the five days war. Between 1992-1994 people moved from Abkhazia as well. The result of these conflicts brought to Georgia death of innocent populations, forced displacement and occupied territories.

This paper starts to examine in general, the protection of IDPs under international law and Georgian law. I will discuss, in particular, the issues of the rights to housing and non-discrimination in practice and eviction between “old” and “new” IDPs in Georgia. So-called “old” IDPs (who have had displacement from South Ossetia and Abkhazia from early 1990) are still residing in kindergartens, hospitals and other public institutions. Their living conditions are very difficult and many do not have the basic living conditions.<sup>6</sup> In contrast, the so-called “new” IDPs from South Ossetia (who appeared in the result of the 2008 war between Georgia and Russia) at a glance have a better conditions as the State has built homes for them.

These “old” IDPs often complain that they were not offered the same conditions of life in comparison with the “new”.

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<sup>5</sup> Guy S. Goodwin-Gill and Jane McAdam “*The Refugee in International Law*”, (Third edition), Published by Oxford University Press Inc. New York, 2007, p. 481.

<sup>6</sup>See, the UN Refugee Agency (UNHCR) “*Protection of Internally Displaced Persons in Georgia: A Gap Analyses*”, July 2009, p. 25.

## **1.1 Purpose and Research Questions**

The aim of this thesis is to explore and analyze the protections afforded to IDPs from Abkhazia and South Ossetia under international law. The aim of my thesis is to find support in law for the needs of IDPs of Abkhazia and South Ossetia's wars. As a result of these wars IDPs have lost family members, homes and personal property, the majority of the IDPs still are living in very poor conditions they do not have access to adequate housing and no material means to create that the basic economic and social conditions for themselves and their future. My interest in this Subject is from a desire to explore what protection exists in international law and national law for IDP in Georgia, as well as to make proposals for improvement of the current legal framework.

Georgia was chosen for the case study because of my personal connection and understanding of the situation through IDPs friends and relatives from Abkhazia and South Ossetia. I know their social-economical situation. I have seen their house and living conditions. This people faced and still are facing numerous difficulties in since they were displaced. Objectively, Georgia is also a good case study for the international law of IDPs because of large numbers of IDPs in the country and the fact that Georgia has passed domestic laws in an effort to deal with the problem.

One would be either blind or heartless not to see or to pass over in silence their social and economic conditions and to have a role of the ostrich, pretending that everything goes well for these people. It is with this in my mind that I want to use international law and human rights law to examine this problem in Georgia. I will analyse the general problem and as well as the positive and negative actions on the part of the State, of course if there are any. I will also speak about the reasons that led to the internally displacement from their houses.

I also would like to talk about the internal state and the international legal protection mechanisms. Besides I will talk about the domestic legislation of the IDPs with regards to



protection of the rights of IDPs which is *Law of Georgia on Forcibly Displaced Persons-Persecuted Persons*, which was adopted by the Parliament of Georgia on 28, June 1996. This law is based on the Constitution of Georgia and certain principles of international law. It determines the status of IDPs from the occupied territories and the termination of IDPs status, as well as the legal, economic and social guarantees. I hope that more local and international organizations will pay attention to the issues of IDPs, as at the moment. IDPs do not have almost any conditions to feel secure legally or socially. It is for this reason that I think the research is important and relevant.

My main research questions are:

- What State obligations does Georgia have according to the international Law vis-à-vis towards IDPs?
- Does Georgia comply with its international obligations regarding IDPs right to housing and right not to be discriminated?
- In addition, what is missing to protect fully the rights of IDPs in Georgia?

This paper examines if Georgia complying international obligations for those people which became IDPs after those conflicts in Abkhazia and South Ossetia. I will talk about right to housing in Georgia, I will examine why the Georgian government does not treat “old” and “new” IDPs as equals, and what problems are facing these people because of their bad living conditions, is that discriminatory or not on behalf of the Georgian government? This paper shows violations of the right of the non-discrimination of IDPs by the Georgian government. The right to non-discrimination it is a very important right which supposed to be enjoyed by everybody. I will look at the Law of Georgia and will see if there are any gaps in law towards IDPs and will I will examine, what is missing to protect fully the rights of IDPs in Georgia.

## 1.2 Method and Material

To answer all of my questions, I will look at both international and national laws. I will analyze and compare the Rules and standards of *the Guiding Principles*<sup>7</sup> on *Internal Displacement* which defines IDPs and *Law of Georgia on Forcibly Displaced-Persecuted Persons*, which defines IDPs in a different way.

This thesis will make a comprehensive assessment of the situation of IDPs in Georgia, on focusing on the major problem areas for IDPs. In particular, this paper includes the following topics: the social-economical situation; adequate housing and living conditions, non-discrimination between “new” and “old” IDPs regarding housing and eviction from the collective centers.

The questions I examine are mostly related to what state obligations Georgia has according to the international law vis-à-vis regarding right to housing, right to adequate living conditions and right not to be discriminated.

The empirical sources in this thesis partly come from the information in reports from international and domestic organizations on the situation of IDPs in Georgia understood through the view of my own interaction with IDPs in Georgia. The sources of law that I will use include the domestic Law of Georgia (legislation and the Constitution), International Law, International Human Rights Law and reports by other international and national organizations who working on IDP issue.

My method will be to conduct a legal analysis of the state’s compliance with these international obligations.

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<sup>7</sup>See, Principle(1) of the *Guiding Principles on Internal Displacement*, 11 February 1998, E/CN.4/1998/53/Add.2.

### **1.3 Limitations**

There are many issues and problems on IDPs in Georgia, which are important as well, but fall outside of my thesis. My thesis does not go into detail on the full spectrum of the rights that are threatened. For example, I am not going to look at rights to education and health, or the psychological problems faced by IDPs, or sexual and gender-based violence.

An important reason why I am not going to write on the above- mentioned issues is that, research problems which I am investigating, in Georgia there is a lack of estimation range to how many people are with a lack of education. There is a lack of information on how many IDPs are sexually abused, as many people are afraid or culturally limited to speak about this issue for fear of being discriminated against by society. There areas reveal questions for further research which I will not deal with here.

Instead, in my thesis I will focus on housing and discrimination, with a brief look at eviction from the collective centers and I hope will show some insight into ways that protection can be better and where the gaps are.

## 2 Background of Conflicts

Georgia is located on the Black Sea coast, and is neighbors with Russia, Turkey, Armenia and Azerbaijan.<sup>8</sup> After the break-up of the Soviet Union, Georgia faced big social-economic and political problems and civil war. The main problems are related to the territorial integrity of Georgia which remains unsolved for several of years. The areas that are most contested are Abkhazia and South Ossetia, which both seeks self-determination and have made unilateral secession from Georgia, which has caused conflicts.

The Republic of Georgia consisted of three autonomous entities: the autonomous Republic of Abkhazia, the autonomous Republic of Adjara and the autonomous region of South Ossetia. In the 1991-1992 an armed conflict broke out Georgia and South Ossetian separatists, and in 1992-1993 between Georgia and Abkhazian separatists<sup>9</sup> in 2008 between Georgia and the South Ossetia with support of Russian which ended with Georgia losing control of over large parts of territories as it is South Ossetia and Abkhazia. The conflict between 1991 and 1992 finished with the *de facto* secession of South Ossetia; in 1992 conflict ensued in Abkhazia, also resulting in its *de facto* secession. However, while South Ossetia and Abkhazia declared their independence from Georgia, no other state recognized them as independent until the 2008 August war.<sup>10</sup>

Since the August 2008 war, Abkhazia and South Ossetia have been recognized as independent states by Russian Federation, followed by few other countries: Russia, Nicaragua, Nauru, South Ossetia voted to Abkhazia and Abkhazia voted to South Ossetia. Nowadays, these territories are considered being outside of the jurisdiction of the Georgia.<sup>11</sup>

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<sup>8</sup> See, Regions of Georgia, “*The Territorial Arrangement*”, (Own translation), available at: [http://saqartvelos-regionebi.blogspot.se/2012/06/blog-post\\_13.html](http://saqartvelos-regionebi.blogspot.se/2012/06/blog-post_13.html).

<sup>9</sup> ZurabBurduli and Anna Dolidze, ‘Housing and Property Restitution in the Republic of Georgia’, in *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons*, S Leckie (ed) , Published by Transnational Publishers Inc. 2003, p. 317.

<sup>10</sup> See, Amnesty International “*Civilians in the Line of Fire: the Georgia- Russia Conflict*”, 2008, p. 8.

<sup>11</sup> Georgian Institute of Public Affairs, “*Georgia and Euro-integration: problems and Perspectives*”, (Own translation), Tbilisi 2008, p. 5

The August 2008, war between Georgia and Russia made clear that these conflicts were of international nature, because Russia provided essential support to South Ossetians and Abkhaz separatists after their attacks<sup>12</sup> which caused forced displacement and “ethnic cleansing” towards Georgians between 1991-1993.<sup>13</sup>

The problems caused by these conflicts affected the whole of the Republic of Georgia, the inhabitants in these region and surrounding territories have suffered particularly painful impacts since many of them have been displaced from their homes. The above stated conflicts resulted in the deaths of thousands of Georgian citizens, and forced displacement of around 254.000<sup>14</sup>

The Russian Federation has played an important role in these conflicts in aggravating the situation between Georgia and Abkhazia and South Ossetia. Russia was directly involved in military operations and was permanently preventing the resolution of the conflicts.<sup>15</sup>

Beside above stated issue there is another important legal issue which relates to the conflicts and the relations between Georgia and Russia and it is the so-called “Russian Passportisation”. The “Russian Passportisation” means that Russian citizenship is given to persons who live in Abkhazia and South Ossetia, and the current majority of the population from these areas are today carrying Russian passports.<sup>16</sup> Nowadays the *de facto* governments of South Ossetia and Abkhazia with support of the Russian Federation control the situation in these territories.

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<sup>12</sup> See, Application of the International Convention on the Elimination of all forms of Racial Discrimination, Georgia v. Russia Federation, International Court of Justice (ICJ), 12 August, 2008, para 6.

<sup>13</sup> See, Application of the International Convention on the Elimination of all forms of Racial Discrimination, Georgia v. Russia Federation, International Court of Justice (ICJ), 12 August, 2008, para. 9.

<sup>14</sup> See, “Georgia: Internal Displacement Estimate Rises”, 12 September 2008, Available at: <http://www.unhcr.org/48ca3d5f2.html>

<sup>15</sup> Government of Georgia, “*State Strategy on Occupied Territories: Engagement through Corporation*”, 27 January, 2010. page.3.

<sup>16</sup> See, European Union Committee 3<sup>rd</sup> Report of the Session 2008-2009 “*After Georgia the EU and Russia: Follow up Report*”, published by House of Lords, 12 February 2009, para. 29.

## 2.1 The Conflict in South Ossetia 1991-1992

South Ossetia was an Autonomous “Oblast” (In Russia and Soviet Union Oblast is an administrative division) within the republic of Georgia. The region of South Ossetia located along Georgia’s northern frontier in the southern foothills of the Caucasus maintains, and it borders to North Ossetia, an Autonomous Republic of the Russian Federation.<sup>17</sup>The Ossetian people are descendants of the Alanian and Scythian tribes that migrated from Persia to the Caucasus in the early middle age.<sup>18</sup> The Georgian sources claim that Ossetian people have settled in Georgia in seventeenth century.<sup>19</sup>

In August 1989 the Georgian authority drafted regulations which would have made Georgian the main language all over Georgia. The South Ossetians believed that it would affect South Ossetia in a bad way. Meetings were set up between the two sides, Georgia and South Ossetia, in an attempt to solve the problem, but it brought even more tension.<sup>20</sup> On 10 November 1989, the Regional Public Council of the South Ossetian Autonomous District formally requested to the central government of Georgia to grant the region the status of “Autonomous Republic” instead of district. In Georgia’s views the request for higher political status and independence was as an illegitimate claim that threatens its territorial integrity.<sup>21</sup> The language issue was problematic and it continued to increase tensions between Georgians and South Ossetians.

On 20 September 1990, the regional Public Council of South Ossetian Autonomous oblast adopted the declaration on the “Sovereignty of South Ossetian” which clearly

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<sup>17</sup> Dennis Sammut and Nikola Cvetkovski, Confidence-Building Matters “*The Georgia-South Ossetia Conflict*”, ISBN: 1-899548-06-8, March 1996, p.6.

<sup>18</sup>See , Human Right Watch “*Bloodshed in the Caucasus Violations of Humanitarian Law and Human Rights in the Georgia-South Ossetia Conflict*”, (formerly Helsinki Watch), March 1992, ISBN 1-56432-058-8, p.8.

<sup>19</sup>Avtandis SongulaShvili, “*South Ossetia in Georgia*” (Own translation), Tbilisi 2009, p. 66.

<sup>20</sup>See, “*Bloodshed in the Caucasus Violations of Humanitarian Law and Human Rights in the Georgia-South Ossetia Conflict*”, p.6.

<sup>21</sup>*Ibid*

stated its separation from Georgia.<sup>22</sup> Furthermore, on 28 November 1990, the Regional Public Council of the South Ossetian Autonomous District re-named the “Soviet Republic of South Ossetia” by themselves.<sup>23</sup> In December 1990, after South Ossetia, had its elections for their Supreme Soviet, the Georgian government abolished South Ossetia’s autonomous status.<sup>24</sup> Georgia was the first country which was separated from the Soviet Union on 9 April 1991, and to become an independent country. The independence in was preceded by tragic events, when Soviet forces killed Georgian demonstrators on 9 April 1989,<sup>25</sup> which caused the relationship between Georgia and Russia to get even worse.

The armed conflict started in 1991 between the Georgian State and Ossetian separatists who had support by Russian forces. The Georgian government announced the state of emergency in the Tskhinvali (capital of South Ossetia). The Russian forces soon arrived, and even though the Georgian authorities demanded the Russian forces to withdraw, the Russian forces intervened into sovereign Georgian territory.<sup>26</sup> Moscow did not pay attention to the Georgians demand, why on 5 January the Georgian government sent militia to Tskhinvali to maintain order in this region.<sup>27</sup> The Ossetia’s answered to Georgian militias with armed fight.<sup>28</sup>

After Zviad Gamsakhurdia fell (first president of Georgia in 1991-1992) Eduard Shevardnadze became president in 1992, and after that change in presidency the conflicting parties found the way back to negotiate. On 10 June 1992, Shevardnadze met

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<sup>22</sup> See, Application of the International Convention on the Elimination of all forms of Racial Discrimination, Georgia v. Russia Federation, International Court of Justice (ICJ), 12 August, 2008, para 24.

<sup>23</sup> *Ibid*, para 9.

<sup>24</sup> Julie A. George “*The Politics of the Ethnic Separatism in Russia and Georgia*”, first published by Martins Press LLC, New York, December 2009. p.110.

<sup>25</sup> See, Suzane Goldenberg and Jonathan Steele “*Pride of Small Nations the Caucasus and Post-Soviet Disorder*”, the First Account of the Post-Soviet Caucasus Highly Recommended, published by zedbooks London and New Jersey 1994. P. 95.

<sup>26</sup> Julie A. George “*The Politics of the Ethnic Separatism in Russia and Georgia*”, first published by Martins Press LLC, New York, December 2009. p.111.

<sup>27</sup> See, “*Bloodshed in the Caucasus Violations of Humanitarian Law and Human Rights in the Georgia-South Ossetia Conflict*”, p.8

<sup>28</sup> Julie A. George “*The Politics of the Ethnic Separatism in Russia and Georgia*”, first published by Martins Press LLC, New York, December 2009. p.111.

with the Russian president at that time, Boris Yeltsin, in Kasbegi to discuss the issue of South Ossetia and how to solve the Georgian-South Ossetian conflict.<sup>29</sup> On 24 June of 1992 in Sochi representatives of South Ossetia and, North Ossetia President Eduard Shevardnadze and Boris Yeltsin signed an agreement to settlement of the Georgian South Ossetian conflict and provided Joint Peacekeeping Forces (JPKF) to South Ossetia.<sup>30</sup>

The main task of the peacekeeping force is to observe the ceasefire, and keep the conflict away between parties and provide security in the conflict areas.

There is not exact information about how many people were wounded, or displaced, but according to the Amnesty International report 10.000 people died hundreds of thousands were displaced, and the government of Georgia lost control over South Ossetias region.<sup>31</sup>

## 2.2 The Conflict in Abkhazia 1992-1993

Before the conflict broke out in Abkhazia in 1989, the Abkhaz constituted, 18 per cent, of the total population and the ethnic Georgians approximately, 46 per cent, Armenian 15 per cent, Russian 14 per cent and Greek 3 per cent.<sup>32</sup> The Abkhaz are a people close in language and origin to the North Caucasian peoples of the Adyghe group. Although they lived under Turkish rule from the late 15th to the early 19th centuries and some of them were converted to Islam during that period, there are few Moslems now left in Abkhazia.<sup>33</sup>

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<sup>29</sup> See, Marietta König, *"The Georgian-South Ossetian Conflict"*, 2003, p. 241

<sup>30</sup> *Ibid*, p. 241

<sup>31</sup> See, Amnesty International Report, *"In the Waiting Room Internally Displaced People in Georgia"*, 2010, p.9.

<sup>32</sup> See, Internal Displacement Monitoring Centre, *"Displacement due to Conflict in Abkhazia in the 1990s"*, 20 March 2012, available at: [http://www.internaldisplacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/B3F1F1A48DC005B3C12579C30072B658?OpenDocument](http://www.internaldisplacement.org/idmc/website/countries.nsf/(httpEnvelopes)/B3F1F1A48DC005B3C12579C30072B658?OpenDocument).

<sup>33</sup> Alexei Zverev, *"Ethnic Conflicts in the Caucasus 1988-1994"*, Chapter 1, 1996 available at: <http://poli.vub.ac.be/publi/ContBorders/eng/ch0103.htm>



In 14 August 1992, conflict broke out over the attempted secession of the Autonomous Region of Abkhazia from the newly-independent former Soviet Republic of Georgia.<sup>34</sup> Abkhazias strategically located on the Black Sea in the North West coast. However, the sixteen-month conflict ensued between, on the one hand, Abkhaz forces and, on the other hand, the central government of Georgia, in the form of National Guard, paramilitaries and volunteers.<sup>35</sup> The Abkhaz fought for expanded autonomy and ultimately full independence from Georgia; the Georgian government sought to maintain control over its territory. Intensive battles raged on land, air and sea.<sup>36</sup>

The armed conflict in Abkhazia got even worse by the involvement of Russia, also this time on the Abkhaz side, especially during the war's primary stages. While Russia endorsed the territorial integrity of the Republic of Georgia, Russian armed forces found their way into Abkhaz hands. Russian air planes bombed civilian targets in Georgian controlled territory, Russian military vessels, manned by supporters of the Abkhaz side, were made available to shell Georgian held Sukhumi, and at least a handful of Russian trained and Russian paid fighters defended Abkhaz territory in Tkvarcheli (region in Abkhazia).<sup>37</sup> The ceasefire agreement was reached on 3 September 1992 in Moscow between Georgia, Abkhazia and Russian Federation.<sup>38</sup>

The majority of Georgian populations fled to other parts of Georgia, and since that time these IDPs had no chance to return to their home again.

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<sup>34</sup> Erin D Mooney, *International Displacement and the Conflict in Abkhazia, International responses and their protective effect*, Kluwer Academic Publishers, Printed in Netherland in 1996. P 197.

<sup>35</sup> See, Human Rights Watch, *Georgia / Abkhazia: Violations of Laws of War and Russia's Role in the conflict*, vol.7 No7. March 1995, available at: <http://www.hrw.org/reports/1995/Georgia2.htm>.

<sup>36</sup> See, Human Rights Watch, *Georgia / Abkhazia: Violations of Laws of War and Russia's Role in the conflict*, vol.7 No7. March 1995, available at: <http://www.hrw.org/reports/1995/Georgia2.htm>.

<sup>37</sup> Ibid

<sup>38</sup> United Nations Observer, Mission in Georgia, 2009, Available at: <http://www.un.org/en/peacekeeping/missions/past/unomig/background.html>

The result of this conflict brought to Georgia 8,000 deaths, 18,000 wounded, and 200,000 forcibly displaced persons.<sup>39</sup> The ethnic Georgians who were uprooted and displaced after the Abkhaz forces occupied the Georgia's territory.

### **2.3 The Conflict of South Ossetia in 2008**

On 7 August 2008, representatives of the Georgian government said that bombs were dropped on the Georgian capital of Tbilisi, by Russian bombers. Heavy fights started in South Ossetia, especially in the city of Tskhinvali and its surroundings, and very soon it spread to other areas of Georgia and the, war lasted over a period of five days. The provocation by the Russian Federation was clear and particularly obvious was it in 2008 during the so called "August war". The Russian Federation invaded Georgia with, armed forces, tanks and airplanes and started a broad scale attack which destroyed civilian houses<sup>40</sup> and throughout villages, towns and cities they were killing and beating innocent Georgian population. Georgian authority were accused of launching an attack on economic infrastructure, the Russian fighter jets blockaded Poti Port, Vaziani airfield and in the capital of Tbilisi they were blowing up a main road to connecting the southern part of Georgia with the east.<sup>41</sup> This qualifies as "disproportional use of force" which is war crimes, "grave breaches" according to the Geneva Convention of 1949, Additional Protocol I of 1977 and it is further prohibited under International Criminal Court Statute to attack civilians and damage civilian objects.<sup>42</sup>

In response, Georgia launched a military operation against Tskhinvali, which is local capital of Georgia's South Ossetian region, and against other places in the separatist regions. The Georgian governmental armies advanced into the Tskhinvali region only one

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<sup>39</sup> See, Human Rights Watch, "*Georgia / Abkhazia: Violations of Laws of War and Russia's Role in the conflict*", Vol. 7, No.7, March 1995,

<sup>40</sup> See, Human Rights watch, Georgia/Russia: Use Rocket Systems can harm civilians, August 12, 2008, available at: <http://www.hrw.org/news/2008/08/11/georgiarussia-use-rocket-systems-can-harm-civilians>

<sup>41</sup> Elene Gotsadze, "*Fighting with Russian spreads to cities across Georgia*", CNN report 09 August 2008, Available at: <http://cnn.com/2008/WORLD/sseti/08/08ssetia.ossetia/index.html>.

<sup>42</sup> See, Article 51 (5) (b) and 85 (3) (b) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. See, Article 8 (2) (b) (iv) UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6.

day after intensive shelling that caused civilian death in villages under Georgian control.<sup>43</sup> The separatist regimes with support of Russian armed forces forced ethnic Georgians from their homes and Russian forces did everything to make it difficult for the then IDPs to deprive their rights to return their home land. The 2008 Russia-Georgia “five days war” brought a new wave of IDPs from South Ossetia, and the total number of IDPs in Georgia increased with 26.000.<sup>44</sup>

On 10 August, the Georgian government announced a unilateral ceasefire and withdrew Georgian troops from South Ossetia. Despite the ceasefire from the Georgian side, the opposite parties did not stop fighting and Russian troops entered even deeper into territories of Georgia and disposed different cities of Georgia such as Gori, Zugdidi Poti Porti.<sup>45</sup>

On August 12, Nicolas Sarkozy (French President) in his capacity as Chairman of the European Council, came to Tbilisi and Moscow to stop the military confrontation and ceasefire agreement was reached on August 12, 2008, between Georgian President Mikheil Saakashvili, Russian President Dmitry Medvedev and France President Nicolas Sarkozy.<sup>46</sup> The document was providing for the immediate suspension of military operations and withdrawal of Russian forces back to the positions they had before the conflict.

The ceasefire agreement had six points:

- “1. Refrain from the use of force
2. Permanently end hostilities

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<sup>43</sup> See, Georgian Daily Independent Voice, “*Timeline of Russian Aggression in Georgia*”, Document by the Government of Georgia, 25 August 2008, available at: [http://georgiandaily.com/index.php?option=com\\_content&task=view&id=6625&Itemid=65](http://georgiandaily.com/index.php?option=com_content&task=view&id=6625&Itemid=65).

<sup>44</sup> Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and refugees of Georgia, “*IDP Issue - General Information*”, available at: <http://mra.gov.ge/main/ENG#section/33>.

<sup>45</sup> See, United Nations Security Council “Security Council Holds Third Emergency Meeting as South Ossetia Conflict Intensifies, Expands to other Parts of Georgia”, SC/9419, 10 August 2008.

<sup>46</sup> David L Philips, Implementation Review: “*Six-point Ceasefire Agreement Between Russia and Georgia*”, the National Committee on American Foreign Policy and Institute for the Study of Human Rights, August 12, p.10.

3. Provide access for humanitarian aid
4. Ensure Georgian military forces return to their normal bases
5. Ensure Russian military forces return to their pre-war positions. Pending an international mechanism, Russian peacekeeping forces will implement additional security measures.
6. Start international negotiations on security and stability arrangements in Abkhazia and South Ossetia. □<sup>47</sup>

Despite the ceasefire being declared South Ossetian militia continued to occupy additional territories, such as Akhagori district which had been under Georgian administration until the August 2008 conflict.<sup>48</sup> If the ceasefire agreement were to end the conflicts in the conflict zone, military forces should be replaced by peacekeeper who keeps peace and security in this problematic area, but in my opinion Russia does not want a peace.

On 17 September 2013, Russian occupation forces renewed fences in Ditsi village, in the Gori district and the occupation line has moved forward several hundred meters into Georgian controlled territories. Russian and the de facto border forces continued demarcation of the so-called border in another village of Dvani, in Kareli district which is Georgian controlled territory as well.<sup>49</sup>

Because of this reason several of families were left homeless. The inheritance population are destroying their own houses and moving away 100 meters because they do not have a right to live at same places anymore.<sup>50</sup>

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<sup>47</sup> See, Implementation of ceasefire agreement for August 2008 Conflict, 12 August 2008, available at: [http://smr.gov.ge/uploads/file/cf\\_text\\_w\\_\\_sig.pdf](http://smr.gov.ge/uploads/file/cf_text_w__sig.pdf)

<sup>48</sup> See, Human Rights Watch, “*Russia: Protect Civilians in Occupied Georgia*” “South Ossetian militias are running wild attacking ethnic Georgians in Akhagori,” November 25, 2005, available at: <http://www.hrw.org/news/2008/11/25/russia-protect-civilians-occupied-georgia>

<sup>49</sup> See, Dvani after Ditsi, Occupation Crawling Ahead, 25 September 2013, available at : <http://www.humanrights.ge/index.php?a=main&pid=17101&lang=eng>

<sup>50</sup> See, What is happening in Dvani (own translation), 29 September 2013, available at: <http://news.ge/ge/news/story/65283-ra-khdeba-dvanshi>

The war ended with hundreds of civilian deaths, thousands of injured and forced displacement, which is estimated 26,000 people, the large majority of Georgian ethnic origin, remains unable to return home.<sup>51</sup>

### 3. Applicable Bodies of Law and Relevant International Sources

#### 3.1 Guiding Principles

In 1992, at the requested of the Commission on Human Rights, the Secretary-General of the United Nations appointed a representative on internally displaced persons to study the causes and consequences of internal displacement.<sup>52</sup> Dr. Francis Deng, presented the “*Guiding Principles on Internal Displacement* to the UN Commission on Human Rights.<sup>53</sup> The Guiding Principles are not legally binding unlike Refugee Convention 1951. “These *Guiding Principles* address the specific need of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.”<sup>54</sup>

According Principle 5 of the *Guiding Principles* all authorities and international actors shall respect and ensure respect for their obligations under international law, human rights law and humanitarian law. In all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.<sup>55</sup> The state has primary duty and

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<sup>51</sup> See, Amnesty International Report, “In the Waiting Room Internally Displaced People in Georgia”, 2010, p. 10.

<sup>52</sup> See, the Guiding Principles on Human rights, E/CN.4/1998/53/Add.2 , 11 February 1998, para. 2.

<sup>53</sup> UN Commission on Human Rights, *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement*, 11 February 1998, E/CN.4/1998/53/Add.2,

<sup>54</sup> UN Economic and Social Council (ECOSOC), *Guiding Principles on Internal Displacement*, 22 July 1998, E/CN.4/1998/53/Add.2, Introduction and purpose.

<sup>55</sup> See, Principle 5 of *Guiding Principles on Internal Displacement*, 22 July 1998, E/CN.4/1998/53/Add.2.

responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.<sup>56</sup>

However, the *Guiding Principles* can be argued to have legal force in so far as they are based on or reflect international human rights and international humanitarian law. However, the *Guiding Principles* are considered as a compilation of international standards which State uses when determining the legal position of IDPs. It should be mentioned that many provisions in the *Guiding Principles* flow from international human rights and international humanitarian law which many states as well as Georgia, are parties.<sup>57</sup>

### **3.2 Human Rights Law**

The human rights law provides the fundamental basis for addressing their plight. Human rights law composes the obligations of states to ensure the survival, well-being and dignity of all persons its territorial jurisdiction.<sup>58</sup> The aim of human rights instruments is to protect individuals from abuses of the state: state has no right to treat their citizens as they wish with impunity.<sup>59</sup> They remain entitled to enjoy the full range of human rights as well as those guarantees of international humanitarian law that are applicable to the citizens of that country in general.<sup>60</sup>

The provisions of human rights law which apply to IDPs, gives the same protection as anyone else in the country.<sup>61</sup> According Article (2) of the Universal Declaration of

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<sup>56</sup> See, principle 3 of *Guiding Principles on Internal Displacement*, 22 July 1998, E/CN.4/1998/53/Add.2.

<sup>57</sup> G.Chkeidze, K. Korkelia, Report on the Guiding Principles on Internal Displacement and the Law of Georgia in R. Cohen, W. Kälin and E. Mooney, “*The Guiding Principles on Internal Displacement and the Law of the South Caucasus: Georgia, Armenia and Azerbaijan*”, published by the Brookings Project and the American Society of International Law (ASIL), June 2003, p.3.

<sup>58</sup> Erin D. Mooney, “Principles of Protection for Internally Displaced Persons”, Published by Blackwell Publishers in 2000, p. 82.

<sup>59</sup> Catharine Phuong, “The International Protection of Internally Displaced Persons”, Cambridge University Press (2004), p. 44.

<sup>60</sup> W. Kalin, “The Guiding Principles on Internal Displacement as International Minimum Standard and Protection Tool,” *Refugee Survey Quarterly* (2005), Vol. 24, Issue 3, p.28.

<sup>61</sup> Catharine Phuong, “The International Protection of Internally Displaced Persons” Cambridge University Press (2004), p. 44.

Human Rights everyone is entitled to all rights and freedoms set forth in this Declaration, without any discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>62</sup>

Building upon the UDHR and incorporating its principles into legally instruments are two Covenants, together with the UDHR, these are: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Both documents became international law in 1976. Together with the UDHR, these two Covenants comprise “International Bill of Rights.” However, none of these instruments specifically address internal displacement, but they do cover a range of risks that IDPs are facing.

The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa named as a “Kampala Convention,” which was adopted by the African Union in 2009.<sup>63</sup> The Kampala Convention is the first national legal Convention to secure protection for IDPs in Africa. The Convention is special in its clear provisions regarding the obligations of civil society organizations in addition to state actors. The convention says that “State party shall provide sufficient protection and assistance to internally displaced persons, and where available resources are inadequate to enable them to do so, they shall cooperate in seeking the assistance of international organizations and humanitarian agencies, civil society organizations and other relevant actors.”<sup>64</sup> This Convention does not, however, apply to IDPs in Georgia.

### **3.3 Humanitarian Law**

Meanwhile international human rights law is one of the basic and important for the protection of IDPs, but other bodies of international law have much to offer to this

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<sup>62</sup> See, Article 2 of UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948.

<sup>63</sup> See, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 22 October 2009.

<sup>64</sup> See, Article 5 (6) of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 22 October 2009.

vulnerable group of people. However, when internal displacement happens in situations of armed conflict, either international or non-international armed conflict, international humanitarian law comes into effect.

However, many provisions of international humanitarian law reproduce and reinforce protection which is provided under human rights law, because a number of human rights guarantees may be significantly limited or derogated in situations of armed conflict, the protection which is provided by humanitarian law in armed conflict is particularly important.<sup>65</sup>

The humanitarian law contains rules regulating means and methods of war. The core provisions of humanitarian law can be found in the Four Geneva Convention<sup>66</sup> and their two additional Protocols 1977.<sup>67</sup> The reasons of displacement many often are armed conflicts which cause of forced displacement and at this moment humanitarian law has a vital role to protect IDPs.<sup>68</sup>

The humanitarian law offers to the internally displaced persons exactly same protection which is provided for all civilians in situation of armed conflict. Different provisions are applicable to the International armed conflicts and non-international armed conflicts, for that reason, different provisions are applied, in each situation. The conflict Russia, South Ossetia and Georgia is international and at the same time internal conflict because the South Ossetia territory counts as a Georgians territory according to the Constitution of Georgia,<sup>69</sup> in this case all Geneva Conventions are applied to the IDPs of Georgia.

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<sup>65</sup> Erin D. Mooney, *“Principles of Protection for Internally Displaced Persons”*, Published by Blackwell Publishers in 2000, p. 82.

<sup>66</sup> See, Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949.

<sup>67</sup> See, Protocol Additional to the Geneva Conventions of 12 August 1946, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 and See, Protocol Additional to the Geneva Conventions of 12 August 1946, and Relating to the Protection of Victims of non-International Armed Conflicts (Protocol II), 8 June 1977.

<sup>68</sup> Catharine Phuong, *“The International Protection of Internally Displaced Persons”*, Cambridge University Press (2004), p. 44.

<sup>69</sup> See, the Constitution of Georgia, Article 7.



By rules of International humanitarian law, civilians during displacement are protected if they do not take direct part of hostilities according Article 53 (3) to the Additional Protocol I<sup>70</sup> and Article 13(3) Additional Protocol II<sup>71</sup>

### 3.4 Georgian law

Georgia is a party to the Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); Convention of the Rights of the Child Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); (CCR) and four 1949 Geneva Conventions and two Additional Protocols. Moreover, Georgia joined the Council of Europe and ratified the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in 1999.<sup>72</sup>

The Constitution of Georgia provides for the direct application by the national courts of international treaties ratified by Georgia. Article 6 of the Constitution provides for the supremacy of international treaties and agreements signed by Georgia over national legislation as long as they do not contradict the Constitution or constitutional agreements.<sup>73</sup> Article 7 of the Constitution of Georgia says that: “the State recognizes and protects universally recognized human rights and fundamental freedoms as eternal and supreme human values.”<sup>74</sup>

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<sup>70</sup>See, Article 51 and 75, See, Protocol Additional to the Geneva Conventions of 12 August 1946, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

<sup>71</sup>See, Article 4 and 5, Protocol Additional to the Geneva Conventions of 12 August 1946, and Relating to the Protection of Victims of non-International Armed Conflicts (Protocol II), 8 June 1977.

<sup>72</sup> See, Ratification of International Human Rights Treaties-Georgia, available at: <http://www1.umn.edu/humanrts/research/ratification-georgia1.html>

<sup>73</sup> See, the UNHCR, “*Protections of Internally Displaced Persons in Georgia: a Gap Analysis*,” July 2009. p. 12.

<sup>74</sup>See, the Constitution of Georgia Article 7

At the domestic level, the Georgian Constitution guarantees several of basic rights and freedoms, but there is a specific *Law of Georgia on Forcibly Displaced Persons-Persecuted Persons*, initially adopted in 1996 by the parliament of Georgia.

As stated in its Preamble, the *Law of Georgia on Internally Displaced Persons – Persecuted Persons* is based on the Constitution of Georgia, universally recognized principles of international law and Georgian legislation. It defines the legal status of persecuted persons in Georgia establishes their legal, economic and social guarantees their rights and obligations. The law provides for the state obligation to ensure IDPs with temporary housing within Georgia’s territory and necessary first aid,<sup>75</sup> and ensures respect and realization of their rights and legal interests.<sup>76</sup>

On 2 February, 2007, the government of Georgia adopted Decree # 47, the State Strategy for on Internally Displaced Persons, Georgian government has two main objectives such as create conditions for dignified and safe return of IDPs and support decent living conditions for the displaced population and their integration in society.<sup>77</sup> The strategy mainly contains general norms, and declares that the government of Georgia takes into account UN guiding principles on IDPs protects universally recognized rights and freedoms on IDPs.

On 28 May, 2009 Georgian government adopted another Decree # 403 about “Adoption of the Action Plan for the Implementation of the State Strategy on IDPs during 2009-2012,” the aim of the document is to provide a long-term solution for the problems faced both, “new” and “old” IDPs, the core goal of the State Strategy is to promote IDPs socio economic integration and improve their living conditions.<sup>78</sup>

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<sup>75</sup> See, Article 5 of the *law of Georgia on Forcibly Displaced Persons - Persecuted Persons*, 28 June 1996, Preamble.

<sup>76</sup> See, the *law of Georgia on Forcibly Displaced Persons - Persecuted Persons*, 28 June 1996, Preamble.

<sup>78</sup> See, Decree of the Georgian Government, Decree # 575 11 May, 2010. Regarding the amendment to the Government Decree # 403 “*Adoption of the Action Plan for the Implementation of the State Strategy on IDPs during, 2009-2012* ” 28 May, 2009, Introduction 1.1.

To achieve this goal, the Action Plan treys to provide a long-term solution to the accommodation needs of the IDPs, this is hard to reach, after twenty four years IDPs still are having socio-economic problems and they are not integrated with the rest of society. However, the amendments and the adoptions of new laws have increased the rights and protections of IDPs, but legislation of Georgia does not fully comply with the international instruments providing for IDPs, examples will be shown below.

#### **4. Definition of Internally Displaced persons**

When the issue, internal displacement arose on the international agenda in the beginning of the 1990s, no definition of “Internally displaced persons” existed. The definition of IDPs was very important to identify populations of concern, collect data, evaluate their special needs, and build laws and policies to assist them.<sup>79</sup>

In 1998, the Representative of the United Nations Secretary-General on Internally Displaced Persons, Dr. Francis Deng, presented the “*Guiding Principles on Internal Displacement*” to the UN Commission on Human Rights.<sup>80</sup> The Principles address the specific needs of the IDPs all over the world, and determines rights, of forcibly displacement persons that are displaced in different areas of their own country.<sup>81</sup>

The *Guiding Principles* are not a legally binding document. Unlike declarations, treaties and resolutions, they have not been negotiated by State and for that reason the document

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<sup>79</sup> See Article of Erin Mooney, “*The Concept of the Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern*”. Refugee Survey Quarterly, Vol. 24, Issue 3, DOI: 10., 1093/rsq/hdi049. 2005, p 10.

<sup>80</sup> UN Commission on Human Rights, *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission Resolution 1997/39. Addendum: Guiding Principles on Internal Displacement*, 11 February 1998, E/CN.4/1998/53/Add.2,

<sup>81</sup> See, UN Commission on Human Rights, Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: *Guiding Principles on Internal Displacement*, 11 February 1998, E/CN.4/1998/53/Add.2, Introduction: Scope and Purpose, para. 1.

is at best a part of the “soft law” and they are not legally binding for States Parties.<sup>82</sup> However, it is important to note that the *Guiding Principles* they are based on and consistent with international human rights and humanitarian law and refugee law by analogy.<sup>83</sup>

The *Guiding Principles* provide a definition of the term “internally displaced persons”:

“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”.<sup>84</sup>

The two core elements of the definition are: (1) involuntary movement and (2) such movement take place within national borders.<sup>85</sup> Internally displaced persons or groups of persons are different from refugees because they did not cross the international borders, they have stayed within internally recognized State borders.

The principles apply to persons who have left their homes or places of habitual residence must have fled for several reasons in particular as a result of the need to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters.

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<sup>82</sup> Alan Boyle, *Soft Law in International Law-Making*, M.D. Evans (edition 2nd), International Law, Oxford University Press 2006, p. 141-143.

<sup>83</sup> G S. Goodwin-Gill and J McAdam “*The Refugee in International Law*”, *op. cit.*, p. 484.

<sup>84</sup> See, See the *Guiding Principles on International Displacement*, Introduction: Scope and Purpose, para.2.

<sup>85</sup> E Mooney, “*The Concept of the Internal Displacement and the Case for Internally Displaced Persons as a category of concern*”, p. 10.

#### 4.1 Definition of Internally Displaced Persons under Georgian Law

The key document which take care the rights on IDPs and responsibilities of Government of Georgia for IDP is the *Law of Georgia on Forcibly Displaced Persons-Persecuted Persons (Law of Georgia)*. The document was adopted by the Parliament of Georgia on 28 June 1996, which was amended in 2001, 2005 and in 2006.<sup>86</sup>

Article 1 says:

“A citizen of Georgia or a stateless person permanently residing in Georgia can be considered a Persecuted Person, if he/she was forced to leave his/her place of residence and has been displaced (within the territory of Georgia) on the grounds of threat to life, health or freedom of him/her or of his/her family members, as a result of aggression from a foreign state, internal conflict or wholesale violation of human rights”.<sup>87</sup>

According to this definition, a person can be considered internally displaced, if he or she fall a number of requirements.

The person has to be a citizen of Georgia or stateless person permanently residing in Georgia who was forced to leave a place of habitual residence and become displaced (within territory of Georgia). However, as we see definition of the *Law of Georgia on Forcibly Displaced Persons- Persecuted Persons*, it is in some ways different from *the Guiding Principles*, which requires “persons or groups of persons”. In contrast, the Law of Georgia considers IDPs as a “citizen of Georgia or a stateless person permanently residing in Georgia” which means *the Georgian law* applies individual persons unlike the *Guiding Principles*. In this way, the Georgian law is different from the *Guiding Principles*.

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<sup>86</sup> See, the *Law of Georgia on Forcibly Displaced Persons - Persecuted Persons* [Georgia], 28 June 1996.

<sup>87</sup> *Ibid*, Article (1).

While we may see differences between the Law of Georgia and the Guiding Principles, they do have similarities as well. One similarity is that the person(s) who “was forced to leave a place of habitual residence and become displaced” may be considered an IDP. This small part of definition emphasizes the forced, involuntary displacement that is found in both definitions. In addition they are similar in that person should not have to cross an internationally recognized State borders: the displacement must happen within borders.

The *Law of Georgia on IDPs* requires that a person flees: “on the grounds of threat to life, health or freedom of him/her or of his/her family members, as a result of aggression from a foreign state, internal conflict or wholesale violation of human rights”. In this way, the Law of Georgia considers not only person who themselves have been in trouble, but also his or her family members can be considered as IDP. Furthermore, according to this definition, reasons for displacement could include “aggression by foreign power, internal conflicts, or large-scale human rights violation”.

According to the *Law of Georgia’s* definition, we can say that this definition is much broader because it gives IDP status even to a person who has fear to be persecuted. The Guiding Principles definitions do not count these people as IDPs.

In the world many people are forced to leave their houses and move to another places as a result of natural disasters, unfortunately, Georgia is not an exception and people are facing natural disasters as it is earthquake, flood and landslides which is major natural disaster in Georgia and people are facing in highland regions very often. Nowadays, Georgia has 35,204 families houses have been damaged by natural disasters and 11,000 families still are living in houses which have been damaged by natural disaster and need immediate resettlement,<sup>88</sup> these people have repaired their damaged houses themselves to continue their lifestyle again, because there is not big willing from state to help to them in this vulnerable situation. The Georgian *Law of IDPs*, it is unlike of *Guiding Principles* on

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<sup>88</sup>See, Human Right House Network □”*Georgian Law leaves eco-migrants without Protection*”, 15 April 2011, available at: <http://humanrightshouse.org/Articles/16278.html>.

the issue of natural or human-made disasters. Unlike under the definition in the *Guiding Principles* that explicitly mentions movement cause by “natural or human-made disasters” (including so-called eco-migrants), According to the Law of Georgia on IDPs the person who have left their homes because of natural or human made disasters are not considered as IDPs. While it is possible that eco-migrants could fall under the part of the *Law of Georgia on IDPs* definition that includes “grounds of threat to life, health or freedom”, this is qualified by the phrase “as a result of aggression from a foreign state, internal conflict or wholesale violation of human rights.” This would seem to exclude eco-migrants from the *Law of Georgia* definition and means that victims of natural disasters are not able to apply for IDP status, which may close the door for access to protections and assistance from government.

## **5. Right to Housing**

### **5.1 International Human Rights Law**

International Human Rights law declares that adequate standard of living, including adequate housing is one of the most important rights, which is universally recognized.<sup>89</sup> Regardless of this right the IDPs are not adequately housed in Georgia. Georgia is a party to the *ICESCR* which means that the Government is obligated to provide adequate housing and living conditions for everybody, without discrimination.

The right of housing is protected by several international treaties, including *UDHR*. Article 25 (1) of UDHR says:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, and housing and medical care

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<sup>89</sup> See, UN Office of the High Commissioner for Human Rights, “The Human Rights to Adequate Housing, November 2009, No. 21/Rev.1, p.7

and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”<sup>90</sup>

The above-mentioned article is very specific, it declares many rights of people, which is very important for this vulnerable group. Unfortunately in most cases these rights are violated for IDPs in Georgia. While the UDHR may not be binding international law, many say that its provisions are customary international law and so are binding even if this is only a declaration. The right, nevertheless, finds place in other treaties too.

As previously mentioned the *ICESCR* Article 11(1), provides similar guarantees to the right to housing and an adequate standard of living:

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”<sup>91</sup>

The *Guiding Principles*, in principle 18 describes social and economic guarantees for IDPs. Subsection (1) says:

“All internally displaced persons have the right to an adequate standard of living,” and subsection (2) of above-mentioned principle says that “at the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:

- (a) Essential food and potable water;
- (b) Basic shelter and housing;
- (c) Appropriate clothing; and
- (d) Essential medical services and sanitation.”

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<sup>90</sup>See, Article 25 (1) of the *UDHR*

<sup>91</sup>See, Article 11(1) of the *ICESCR*



Subsection (3) says that “special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.”<sup>92</sup>In this paragraph, women are involved and women have important place to coordinate food and other materials.

## **5.2 Domestic Law**

In Georgia several acts were adopted to regulate the issue of IDPs. The Acts provide protection and assistance and aim to solve the problems which IDPs are facing most often. However, in some cases there exist gaps in national law. At the same time, practice does not always match the law and for that reason IDPs face serious problems such as adequate housing and living conditions, and evictions of IDPs from their residences.

This chapter will examine the problems and gaps in Georgian legislation as well as the gaps in practice in relation to the standards required under international law.

Aside from the provisions in the Georgian Constitution, the Parliament of Georgia has adopted *the Law of Georgia on Forcibly Displaced Persons- Persecuted Persons*<sup>93</sup> which regulates the rights of IDPs and duties of the Government of Georgia towards IDPs. Article 5 (2) of above mentioned law offers the following benefits to IDPs: accommodation; temporary employment according to their profession and qualification; monthly allowances; costs of medical treatment to be covered by the Government, the Constitutional right to education and free primary and secondary education; and the provision of temporary residence and provisions within the framework of norms established in Georgia.<sup>94</sup>

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<sup>92</sup>See, Principle (18) of the Guiding Principles on Internal Displacement.

<sup>93</sup>See, the *Law of Georgia on Forcibly Displaced Persons - Persecuted Persons*.

<sup>94</sup>See, Article 5 (2) the *Law of Georgia on Forcibly Displaced Persons - Persecuted Persons*.

According to *The Law of Georgia on Forcibly Displaced Persons-Persecuted Persons*, IDPs have many rights and assistance, but in most of cases, these rights are violated in practice. In many cases, the Government is unable or unwilling to meet their obligations in practice to provide protection and assistance according the Georgian law, for example housing, Georgian Government do not offers adequate housing to all IDPs in equal measure, which means in some cases the Government is unwilling to support some group of IDPs.

The Constitution of Georgia is one of the most significant instruments at the national level which gives basic rights and freedoms to everybody.<sup>95</sup> The Constitution declares rights such as the right to life<sup>96</sup>, the prohibition of torture,<sup>97</sup> and the right to education,<sup>98</sup> but it does not say anything about right to housing or adequate living conditions. However, according to Article 39, “The Constitution of Georgia shall not deny other universally recognized rights, freedoms and guarantees of an individual and a citizen, which are not referred to herein but stem inherently from the principles of the Constitution.”<sup>99</sup>

However, the national law of country has primary legal basis for the issue of IDPs, and every State has to make sure that their national law is good enough to protect and give all protection and assistance to IDPs. It is important that the legislation on the national level gives effect to IDPs rights on the international level if the State is to fulfill its obligations. Every specific law on IDPs must be well written to give maximum rights to this people. How is it possible that a specific law on IDPs is drafted in Georgia but does not consider adequate housing and living conditions, the very issue that is most crucial for IDPs? The State is obligated to ensure that the national law is suitable for this vulnerable group so that they can to enjoy their rights and freedoms equally with other citizens of country. It is important that these rights exist in national law so that people can enforce them properly.

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<sup>95</sup> See, Preamble of the Constitution of Georgia, Adopted on 24 August 1995.

<sup>96</sup> See, Article (15) the Constitution of Georgia.

<sup>97</sup> See, Article (17) the Constitution of Georgia.

<sup>98</sup> See, Article (35) the Constitution of Georgia.

<sup>99</sup> See, Article (39) the Constitution of Georgia.

### 5.3 Domestic Practice

In the 1990s, when first wave of IDPs arrived in Tbilisi (the capital city of Georgia), the Georgian government gave shelter to them in collective centers such as hospitals, schools, hotels and kindergartens, while some of them found a place to stay with relatives.<sup>100</sup> Most of these buildings are not suitable for long-term living. Many have no toilets or kitchens in the right places and they have to share these private places with other people.

Despite these bad conditions, those IDPs who are living in countryside they have the worst conditions. Only 6 % of IDPs in rural areas have their own toilet and only 30% their kitchen or cooking area.<sup>101</sup> Aside from this, IDPs received unbelievably small spaces for living plus in many cases the roves of their dwellings were is damaged and water leaks through.<sup>102</sup> In most instances, the collective centers do not meet the minimum standards of adequate living.<sup>103</sup> The Representative of the Security-General on Human Rights of Internally Displaced Persons (RSG) visited Georgia in 2005 and was “shocked by miserable living conditions of many IDPs in Georgia and concluded that these conditions violate to right to adequate housing”.<sup>104</sup>

Amnesty International visited a collective center which was recently renovated. Even in this building there was no running water.<sup>105</sup> The Government promised IDPs that it was merely temporary shelter but for many IDPs, the situation has become permanent. In many cases, IDPs have been living in this shelter more than 20years and many of them still are living in the same inadequate places and under the same inhuman conditions. Nowadays these IDPs from 1990s are entitled so-called “old” IDPs.

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<sup>100</sup> See, Amnesty International, *“In the waiting room: Internally displaced people in Georgia”*, 4 August 2010, p. 11.

<sup>101</sup> See, UNHCR, *“Protection of Internally displaced Persons in Georgia: A Gap Analysis”*, July 2009, p.26.

<sup>102</sup> See, Public Defender of Georgia *“Report on the Human Rights Situation of Internally Displaced Persons and Conflict-Affected Individuals in Georgia”*, January-July 2010.

<sup>103</sup> See, Amnesty International, *“In the waiting room: Internally displaced people in Georgia”*, *op.cit.*, p.11

<sup>104</sup> See, UNHCR, *“Protection of Internally displaced Persons in Georgia: A Gap Analysis”*, *op.*, *cit.*, p.25

<sup>105</sup> See, Amnesty International, *“In the waiting room: Internally displaced people in Georgia”*, *op.cit.*, p.20

In 2008 when the “new” wave of IDPs arrived in Tbilisi, Georgians stood together and everyone was willing to help these vulnerable people. People from the capital collected food, clothing, and money to help them as much as it was possible. At the same time, the Georgian Government started a durable housing project. The Government built new houses only for so-called “new” IDPs, which, these people could move into pretty soon.<sup>106</sup> The Government was proud that they gave help and assistance quickly. However it was only “new” IDPs that received settlements which were equipped with furniture, cooking facilities and garden plots.<sup>107</sup> In total 3,963 houses have been built in after 2008 August war.<sup>108</sup>

However at that time Georgia had thousands of “old” IDPs from Abkhazia without adequate living conditions. While International Human Rights Law do not obligate States to build housing for everyone,<sup>109</sup> but under the *UN International Covenant on Economic Social and Cultural Right (ICESCR)* Article 11 (1) says:

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”<sup>110</sup>

Article 2 (1) of the ICESCR obliges State to take steps to the maximum of its available resources to progressively achieve the full realization of the rights under the Convention. However, for those Georgian IDPs who are still living within Georgia since they left their land, many are still living in the same conditions as they did 20 years before. This is neither “progressive realization” or is the “continuous improvement” of the right to an adequate standard of living. The State’s failure to progress realizing these rights is made worse by the discrimination between the two groups of IDPs.

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<sup>106</sup> See, Amnesty International, “*In the waiting room: Internally displaced people in Georgia*”, *op.cit.*, p.12

<sup>107</sup> See, Amnesty International, “*In the waiting room: Internally displaced people in Georgia*”, *op.cit.*, p.22

<sup>108</sup> See, Transparency International Georgia, “*Cottage Settlements for Georgia’s New IDPs: Accountability in Aid Construction*”, April 2010.

<sup>109</sup> See, UNHCR, *Handbook on Housing and Property Restitution for Refugees and Displaced Persons, Implementing the ‘Pinheiro Principles’* March 2007, p.49

<sup>110</sup> See, Article 11 (1) of (*ICESCR*) and Article 25(1) of (*UDHR*)

There are more problems for IDPs concerning this right because of the several waves of forced evictions of IDPs from temporary accommodation and collective centers in Tbilisi (the capital of Georgia). The majority of the these IDPs were from the 1990s conflicts of Abkhazia and South Ossetia the forced evictions were undertaken during July and August 2010 and between November 2010 January 2011.<sup>111</sup> In 24 collective centers of Tbilisi, IDPs have been informed that the shelters they are living in are not the places of compact settlements and for that reason cannot be engaged for long-term of living.<sup>112</sup>

Article 5 (4) of the IDP law of Georgia gives some protection from unlawful eviction which says:

“before the restoration of Georgia’s jurisdiction on the respective part of the territory of Georgia, IDPs shall not be expelled from their places of temporary residence unless:

- a) A written agreement has been reached with IDP;
- b) Respective space of residence is allocated where IDPs living conditions may be worsening;
- c) Force major or other catastrophes take place, which entails specific compensation and is regulated according to the general rules;
- d) Space is occupied illegally in violation of the law”.<sup>113</sup>

The Government of Georgia has offered US\$ 10, 000 to each IDP family to secure their eviction. Some families received financial compensation and left the collective centers. Many IDPs refused to accept the alternative housing offered, as it was located in rural areas lacking infrastructure, basic services and employment opportunities.<sup>114</sup> Besides

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<sup>111</sup> See, Annual Report of The Public Defender of Georgia, “*The Situation of Human Rights and Freedoms in Georgia*”, 2011, p. 153.

<sup>112</sup> See, Human rights in Georgia “*Human Rights Center Requests Stopping the Mass Eviction of IDPs from the Compact Residence Places.*” 17 December 2010. available at: <http://www.humanrights.ge/index.php?a=main&pid=12694&lang=eng>

<sup>113</sup> See, Article 5 (4) of the *Law of Georgia on Internally Displaced Persons*, Last amended 9 June 2006.

<sup>114</sup> Jenny Söderström “*Evictions of IDPs cause Public Outcry in Georgia*”, 16 February 2011, available at: <http://old.cacianalyst.org/?q=node/5500>

this, for many IDPs this amount of money cannot buy any place to live, and for that reason they preferred to remain in same in the same collective centers.

However, eviction process started from Tbilisi compact settlements which occurred between June-August 2010 and January 2011.<sup>115</sup> The first wave of eviction happened in summer, and the second happened before the New Year period.<sup>116</sup> There were further problems between these evicted IDPs and the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees (MRA). First of all, there was not any written agreement between IDPs and government of Georgia and so the IDPs who were being evicted have no legal security to know their needs would be met. Second, the Georgian Government did not offer better housing and living conditions: they moved these IDPs from bad conditions to worse conditions.

The mass eviction is also contrary to the State Strategy on IDPs which is created by the board of supervisors to ensure their long-term shelters in collective centers. According to the Strategy, if IDPs have to leave their accommodation for some or other reason, it has to be voluntary and they have to be informed about the resettlement process. *Action Plan 1.5* says: “ensure participation of internally displaced women and men in the planning process and well-informed choice in all the decisions that affect them.”<sup>117</sup>

According to the Georgian Young Lawyers' association (GYLA) during the first wave of evictions, IDPs were complaining about violations of procedure that the Government to submit a written warning. The only “warning” given was posted on one of the Collective

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<sup>115</sup> See, Amnesty International, “*Uprooted again: Forced evictions of the Internally Displaced Persons in Georgia*”, August 2011, p. 5

<sup>116</sup> See, Human rights in Georgia “*Human Rights Center Requests Stopping the Mass Eviction of IDPs from the Compact Residence Places.*” 17 December 2010, available at: <http://www.humanrights.ge/index.php?a=main&pid=12694&lang=eng>

<sup>117</sup> See, introduction 1.5 of Action Plan for the Implementation of the State Strategy on IDPs during 2009-2012. Decree #575 of the Georgian Government, 11 May, 2010 Tbilisi.

Center's building. This notification had no signature of any authorized individual<sup>118</sup> and most of the notices of evictions were limited to verbal "warnings" by police officers.<sup>119</sup>

In the report of January-July 2010, public defender of Georgia made comments about problems of forced eviction. Firstly in the report is mentioned that it was very limited time frame, IDPs were given the eviction notice five days period. Short time deadline for eviction did not allow them to leave buildings and remove belongings.<sup>120</sup>

Before the mass evictions, 90,000 IDPs lived in Tbilisi, 5 % out of which have been already evicted and the half of the rest live in the private sector, and another half in 350 settlements in Tbilisi.<sup>121</sup>

According to the *UN basic Principles and Guidelines on Development-Based Eviction and Displacement*, paragraph 1 (5) says that:

"forced evictions constitute a distinct phenomenon under international law and are often linked to the absence of legally secure tenure, which constitutes as essential element of the right to adequate housing. Forced evictions share many consequences similar to those resulting from arbitrary displacement, including population transfer, mass expulsions, mass exodus, ethnic cleansing and other practices involving the coerced and involuntary displacement of people from their homes, lands and communities."<sup>122</sup>

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<sup>118</sup> See, "State Policy on IDPs: Deficiently analysis." Was edit and published in the Georgian Young Lawyers' Association, vol. 300 Tbilisi Georgia 2011, p 21.

<sup>119</sup> See, Amnesty International, "Uprooted again: Forced evictions of the Internally Displaced Persons in Georgia", *op. cit.*, p. 14.

<sup>120</sup> See, Public Defender of Georgia "Report on the Human Rights Situation of Internally Displaced Persons and Conflict-Affected Individuals in Georgia", *op. cit.*, p.63.

<sup>121</sup> See, Human rights in Georgia "Government Continues to forcefully Evict IDPs", 21 August 2011, available at: <http://www.humanrights.ge/index.php?a=main&pid=13697&lang=eng>

<sup>122</sup> See, Paragraph 1(5) UN "Basic Principles and Guidelines on Development- Based Eviction and Displacement", Annex 1 of the report of the Special Reporter on adequate housing as a component of the right to an adequate standard of living A/HRC/4/18

Forced evictions are protected against under the *ICESCR*, Article 11 (1). As it mentioned above, Georgia is obligated under human rights treaties, as it is (*ICESCR*); (*ICCPR*). *The Georgian Constitution* Article 39 says: “the Constitution of Georgia Shall not deny other universally recognized rights, freedoms and guarantees of an individual and a citizen, which are not referred herein but stem inherently from the principles of the Constitution”<sup>123</sup> which means that Georgia is responsible even according to the Constitution of Georgia.

The notice which was sent for IDPs to indicate that they had leave place there was inadequate as well, even under domestic law as the notice letter had no any identification from whom it was sent. According to the *UN basic Principles and Guidelines on Development-Based Eviction and Displacement*, Paragraph 3 (37) says that it must be:

- (a) “appropriate notice to all potentially affected persons that eviction is being considered and that there will be public hearings on the proposed plans and alternatives”<sup>124</sup>.

These Principles and Guidelines further note that a reasonable time period should be granted. This did not happen in the Georgians case only 5 days notice was given. The Georgian Government failed again to comply responsibilities according to the international law as articulated in best practice in the Principles and Guidelines mentioned above.

With respect to the forced evictions, however, unlike the general rights to adequate housing, there was detailed domestic law on the issue but the Government just did not comply. In both the broad right to adequate housing and the specific happening of forced evictions, the Georgian Government has failed IDPs in law and practice but also in meeting international standards.

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<sup>123</sup>See, Article (39) of the Constitution of Georgia.

<sup>124</sup> See, UN Basic Principles and Guidelines on Development Based Eviction and Displacement, Annex 1 on the Report of the Special Reporter on adequate Housing as a Component of the Right to an Adequate Standard of Living A/HRC/4/18.



On a broader strategic level, before 2007 there was no any State strategy document in Georgia regarding of problems of IDPs and for that there was not any plan to solve these problems, which IDPs are facing every day. On February 2, 2007 the Government of Georgia adopted Decree number #47, the State Strategy on IDPs.<sup>125</sup> The purpose of this document is to improve housing conditions of IDPs and to assist their socio-economic integration into public life. Special attention is to be given to building social capital of IDPs (social network of IDPs) to not facilitate their integration; displacement results in isolation and lower participation in civil spheres. IDPs also participate less in the creation of formal social structures.<sup>126</sup> It is important that IDPs can access social networks so that they can find way to access resources, which they might not get from the state, by other ways. In many cases, because some IDPs have been displaced for 20 years, it is important that social displacement does not become permanent.

The preamble of the strategy document has two main aims which are: to create conditions for dignified and safe return of IDPs and to provide decent living conditions for the displaced population and their participation in society.<sup>127</sup>

Chapter II talks about the problems in Georgia to the conditions of IDPs which are: “Lack of material recourses, lack of land and other immovable problems, unemployment, housing conditions, health and education, quality of social services, representation of IDP interests, and syndrome of dependence on assistance and lack of initiative, difficulties related to the return and insecurity of returnee IDPs.”<sup>128</sup>

Chapter III of the strategy explains the goals and objectives of the government of Georgia and it considers the *UN Guiding Principles* on IDPs, it protects internationally recognized human rights and freedoms, and shows up its political will for peaceful resolution of the

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<sup>125</sup> See, Decree #47 of the Government of Georgia “ *State Strategy for Internally Displaced Persons*”, 2 February 2007.

<sup>126</sup> See, chapter II, 1.5 of the Decree #47 of the Government of Georgia “ *State Strategy for Internally Displaced Persons*”.

<sup>127</sup> See, preamble of Decree #47 of the Government of Georgia, “*State Strategy for Internally Displaced Persons*”.

<sup>128</sup> See, chapter II of Decree #47 of the Government of Georgia , *State Strategy for Internally Displaced Persons*”,

conflicts in Georgia, which shall become the grounds for safe and dignified return of IDPs to their permanent places of residence.<sup>129</sup>

On May 28, 2009, the government of Georgia elaborated its previous state strategy on IDPs and adopted decree number #489 “Adoption of the Action Plan for the implementation of the State Strategy on IDPs” which covers a new view of IDPs from August war on 2008. The document has been amended several times.

Despite these efforts in making strategies and that there exist rights in law and in the Constitution, the general situation in Georgia for IDPs regarding housing still does not reach basic minimum living standards, most “old” IDPs are living in inadequate situations. Government is unfair towards “old” waves of IDPs, these people are living 20 years in this condition and did not benefit from the new settlements which were built after the 2008 August war. The, government gave new houses only to “new” IDPs. The governments of Georgia built these new settlements in 3 months, for the “new” IDPs. There is maybe a good reason to assume then that the government has the resources and ability to provide settlement for “old” IDPs too, in a relatively short time, but that it chooses not do this.

In sum, international law lays strong protections against non-discrimination and for equality. Georgia is also bound by the provisions of ICESCR that says it must progressively realize the right to adequate living and housing. While there are national laws specific for IDPs and the Constitution gave rights, there is nothing specific about adequate standards of housing and living. There is progress to see Strategy Documents that aims to improve the situations of IDPs and that recognize Guiding Principles but because the situations especially for “old” IDPs have not improved, we cannot say these laws and strategies are observed. I can say there is a gap between the law and reality for IDPs, even though the legal protection on national level is maybe less than what international law demand.

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<sup>129</sup> See, chapter III of Decree #47 of the Government of Georgia, *State Strategy for Internally Displaced Persons*.

## 6. Non-discrimination

### 6.1 International Human Rights Law

The right to not be discriminated against is a fundamental and non-derogable principle of human rights which has been recognized in the *United Nations (UN) Charter*<sup>130</sup> and the *Universal Declaration of Human Rights (UDHR)*.<sup>131</sup> Non-discrimination is closely related to equality and idea that “All human beings are born free and equal in dignity and rights” (Article 1 of UDHR) Equality and non-discrimination are described in several international human rights instruments.

According to Article 1 (3) of the *UN Charter* describes the purpose of the *UN* as:

“to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”.<sup>132</sup>

According to Article 7 of the *UDHR*:

“all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”<sup>133</sup>

The *ICESCR* in Article 2 (2) and 26 says:

“The State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any

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<sup>130</sup> See, the *Charter of the United Nations*, adopted at San Francisco, on 26 June 1945

<sup>131</sup> See, the *Universal Declaration of Human Rights (UDHR)*, adopted at Paris, on 10 December 1948

<sup>132</sup> See, Article 1 (3) of the *Charter of the United Nations*, Adopted at San Francisco, on 26 June 1945.

<sup>133</sup> See, Article 7 of the UN General Assembly, (*UDHR*), 10 December 1948.

kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>134</sup>

Article 26 of *ICESCR* says: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>135</sup>

European Social Charter, Article 31

“The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.”<sup>136</sup>

Non-discrimination is thus strongly protected against in international law. All of these international treaties prohibit any kind of discrimination. The above-mentioned provisions are clear and specific that everyone has to be treated equally. As we see discrimination may have many different causes, including grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority and person can be discriminated by State or society. Relevant to this paper, however, I want to talk about discrimination between two groups of IDPs in Georgia.

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<sup>134</sup> See, Article 2 (2) of the *Covenant on Economic, Social, and Cultural Rights (ICESCR)*, adopted by the General Assembly of the UN on 16 December 1966. Entry into force 3 January 1976.

<sup>135</sup> See, Article 26 of the *Covenant on Economic, Social, and Cultural Rights (ICESCR)*, adopted by the General Assembly of the UN on 16 December 1966. Entry into force 3 January 1976.

<sup>136</sup> See, Article 31 of the *European Social Charter*, 18 October 1961, ETS 35

But there are some instruments who are addressing specific grounds for discrimination, for example the Convention Elimination all forms of Racial Discrimination against woman (CEDAW) Article (1) and the International Convention on the Elimination of all forms of Racial Discrimination (CERD) Article (1) which states that “In this Convention, the term racial discrimination shall mean any discrimination, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”<sup>137</sup>

## 6.2 Domestic Law

The Constitution of Georgia clearly emphasises equality of its citizens. Article 14 says: “everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence” (my emphasis).<sup>138</sup> According to the Constitution, Article 31 says that State have to take care “for the equal socio-economic development of the whole territory of the country with the view of ensuring the socio-economic progress of the high mountain regions special privileges shall be determined by law.”<sup>139</sup>

Article 38 declares a right to equality non-discrimination, which says:

“Citizens of Georgia shall be equal in social, economic, cultural and political life irrespective of their national, ethnic, religious or linguistic belonging. In accordance with universally recognised principles and rules of international law, they shall have

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<sup>137</sup> See, Article 1 (1), UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965.

<sup>138</sup> See, Article (14) of the Constitution of Georgia.

<sup>139</sup> See, Article (31) of the Constitution of Georgia.

the right to develop freely, without any discrimination and interference, their culture, to use their mother tongue in private and in public”.<sup>140</sup>

Therefore, the Constitution supports that people should be equal before law and should be treated equally by the government.

### 6.3 Domestic Practice

It is not surprising that many so-called “old” IDPs who were displaced from Abkhazia and Tskhinvali regions in 1991-1993, think that the Government of Georgia cares more for the “new” IDPs that were displaced by the war in August of 2008. Officials of the Government of Georgia are proud that unlike previous president, the current one has provided comfort for “new” IDPs.<sup>141</sup> A person from the Tskhinvali region who is considered an “old” IDP said that “we are considered as IDPs of Shevardnadze (the former president of Georgia) and nobody pays attention to us.”<sup>142</sup>

However, the *UN Guiding Principle 1* on Internal Displacement emphasizes equality, where it says that:

“Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.”<sup>143</sup>

While the above-mentioned principle may only be soft law at best, it is clear that it reflects binding international law in other provisions that give more universal prohibition

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<sup>140</sup>See, Article (38) of the Constitution of Georgia.

<sup>141</sup>See, Human Rights in Georgia “*What is Difference Between “Old” and “New” IDPs?*”, 27 August 2009, available at : <http://www.humanrights.ge/index.php?a=main&pid=7801&lang=eng>

<sup>142</sup>Ibid.

<sup>143</sup>See, Principle(1) of the *Guiding Principles on Internal Displacement*, 11 February 1998, E/CN.4/1998/53/Add.2.

on discrimination and provide for the right to equality. Further, national authorities have the responsibility to assist and protect IDPs, according to the Guiding Principle (3). “Here it says National authorities have the “primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.”<sup>144</sup>

From the above, it is clear that International Law strongly protects all people from discrimination and requires equality between groups of people. From the description, it shows that, in reality “new“ and “old“ IDPs get very different treatment from the Georgian Government and they experience big differences in living conditions. While for both “new“ and “old“ IDPs, living conditions are often poor, “old“ IDPs suffer much more and continue to be ignored by the government. This infringes on these groups of people’s rights to equality and not to be discriminated against. To understand the Government of Georgia’s specific obligations to IDPs further, the right to housing will be examined.

## **7. Analysis and Comparison**

In Georgia several acts were adopted to regulate the issue of IDPs. The acts provide protection and assistance and aim to solve the problems which IDPs are facing most often. However, in some cases there are gaps in national law. At the same time, practice does not always match the law and for that reason IDPs face serious problems such as financial support, adequate housing and living conditions, and evictions of IDPs from their residences.

This chapter will discuss the problems and gaps in Georgian legislation as well as the gaps in practice in relation to the standards required under international law.

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<sup>144</sup>See, Principle (3) of the *Guiding Principles on Internal Displacement*.

According to *the Law of Georgia on Forcibly Displaced Persons-Persecuted Persons*, IDPs have many rights and assistance, but in most of cases, these rights are violated in practice. In many cases, the Government is unable or unwilling to meet their obligations in practice to provide protection and assistance according the Georgian Law, for example housing, the Georgian government does not offered adequate housing to all IDPs equally, which means in some cases the government is unwilling to support some groups of IDPs.

As I have mentioned before, the vast majority of IDPs do not have adequate housing and living conditions. They do not enjoy the minimum standards of living conditions in Georgia. This is one way in which *Georgian Constitutional Law* and the *Law of Georgia*, in my understanding, have gaps on a legal level regarding adequate housing. This is because the *Law of Georgia* does not specifically declare this as a right that IDPs can enforce. Also, while the law makes provision for the benefits of accommodation and temporary accommodation, it does not say specifically what is required for that residence to be “adequate”. The result on the ground means IDPs live in awful conditions and have little legal means to enforce the rights they do have.

IDPs can also not rely on constitutional law to find this right domestically because in this case people have no specific right to housing. There is not mention of adequate housing and living conditions. If we compare Georgian law to international law, there are few similarities between them in this aspect. Most of international treaties basically cover adequate housing and living conditions.

For these reasons, I argue there are gaps in law as well as in practice on the right to adequate living environment or adequate housing under international law. The Government has the administration instrument in the *Law of Georgia* to provide for adequate housing and so I can argue that the fact that IDP’s do not enjoy this right in reality is largely because the Government is not willing to provide. But also because the law does not provide for a clear and detailed right for adequate housing. IDPs cannot legally enforce the right if the government does not give it.



This people are thinking that they are discriminated by the Government of Georgia. However, first of all Georgian Government has to resolve old IDPs problems, because they are living in this horrible situation more than 20 years and Government has to do priority for them to make their life bit better. Before 2008 war government was unveiling or incapable? Situation looks like more unveiling then incapable, because after this war suddenly they have got willing and capacity at the same time and offer new settlements for “new” IDPs and they got almost all protection and assistance which was most important primary. All of these reasons make “old” IDPs to think that they are treated differently and they feel that they are discriminated from “new” once.

## 8. Conclusion

In this paper, I have tried to use international law to look at the problem of IDPs in Georgia and to try find out how and where both the domestic law and the practice of the Georgian State meet and fail the needs and rights of IDPs and the State's obligations under international law. I have showed several examples here, Discrimination, housing, to look at where some gaps are between domestic law and practice and the requirements of international law.

I have found, that firstly, IDPs do not enjoy a special binding international law regime that is independent of the rights they enjoy as human beings (regardless if they are displaced or not) through international law, particularly human rights law. This is a very different situation compared to refugees who face similar circumstances and difficulties, except that unlike refugees, IDPs are still in their country of origin.

Looking at the definition of IDPs under non-binding international instruments and under domestic Georgian law shows that there is no clear, universal definition that is broad enough to protect the special needs of IDPs. In particular, people can become displaced from their homes, communities, livelihoods and families for many reasons beyond their control- neither the international definition nor the Georgian definition have a broad enough scope to cover many of these imaginations of ways that can cause people to be displaced. The problem of eco-migrants may, for example, become a bigger problem in the future in Georgia and the definition as it stands does not include people who might be displaced against their will because of natural or environmental problems.

However, applying human rights law shows that there are many laws under international law that should provide binding obligations on the Georgian Government to secure the needs of IDPs. The Government is obligated to respect, protect and fulfill the human rights of IDPs and not to discriminate against them. But I have found that in effect, IDPs do not enjoy many of the rights they have under international law and in some cases, even where domestic law provides for rights, or at least benefits, the reality is very different. IDPs do not in reality experience the privileges and often are discriminated against.

As we saw above there is many gaps in domestic law which does not fully protect IDPs and, besides this, there are gaps in practice from even these domestic laws. For these reasons, these people are left in many cases without help or they never get enough help from Government.

Many IDPs from Abkhazia, despite many years passed since the displacement, lack accommodation and continue to experience serious socio-economic problems, including adequate living conditions and housing and many other resources important for their livelihoods. Because of these socio-economic conditions, many IDPs are more vulnerable than other citizens of Georgia. The *State Strategy*'s purpose was to improve the socio-economic conditions of IDPs but social-economic conditions for IDPs have not changed yet or at least not enough to meet the international law requirements.

Many times in Georgia IDPs were not protected from illegal eviction. They were evicted from the compact settlement by police, which is contrary to international law. In addition, these, evictions were in consistent with *Law of Georgia*, Article 5 (4) and the *State Strategy*. The evictions were unlawful because they were involuntary. The Government has resettled IDP sand instead of better or similar conditions, some IDPs are living so far a way that it is difficult for them to reach schools or get medical care.

However, most of the time warning letters have been sent 5 days before resettlement. This time frame was so limited that in most cases IDPs did not have enough time to even collect their belongings. The Georgian Government failed again to comply with their responsibilities under both Georgian law as well as international law.

The Issue of the different treatment between “old” and “new” IDPs is also a problem. I cannot say that any of them, “old” or “new”, have perfect living conditions in Georgia, but fortunately, “new” IDPs primary problems are better provided for at least housing which is so important for everyone not only for IDPs. If we compare “old” and “new” IDPs there is a different situation and treatment between them.

However, for some reason, it is often perceived by “old” IDPs that their conditions are much lower than the “new” IDPs, as it is mentioned above, “old” IDPs were created during the old Government (in that time Eduard Shevardnadze was president of Georgia) and “new” IDPs are from the new Government (under president is Mikheil Saakashvili). So called “new” Government in that time was trying to show a good face to Europe that they are take care of their IDPs, after August war in 2008. It can be said that therefore that there is a perception that appears to be supported by the facts that there are political reasons behind the unequal treatment of “old” and “new” IDPs that ends in a different sense of political responsibility for the needs of the two groups of IDPs.

The thesis showed what problems existing and what types of protections are needed for IDPs in Georgia from 1991 till now. The country was facing several of conflicts and the State lacked capacity, to deal with many political and economic problems from 1990s” but at the same time the country got lot of help from the non-governmental organizations, which assistance was intended for IDPs. In my opinion these people did not get all the help which was intended for them. This probably shows that the State mismanaged their economic resources which were intended for IDPs.

Despite this ongoing mistreatment and hopelessness, even IDPs that were displaced more than 20 years still have a hope that one day they will return to their land and homes which will bring to them willing to life and they will live in places which is dream for them.

As we know under International Law the State has primary responsibility to provide protection and assistance for IDPs. I think the Georgian Government has enough resources to improve Georgian Law. They have to correct all the errors which exist in relation to the IDPs to fill the gaps where the law is insufficient. However, I think the law on IDPs is not only area of domestic law which needs correction, generally Georgian law needs to be improve in many areas that are just not covered by law. The legislation of Georgia on IDPs, does not contains specific provision which declares, for example, the right to adequate housing and living conditions; the right to life; protection of certain groups and many other important rights are

missing. Where there is law, it is often not specific enough to allow citizens to enforce it against the Government.

However, Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia has to take care at least of the living conditions and housing, because IDPs main problem remains in the lack of adequate housing and living conditions. These people are living between damp walls, in unhealthy and inadequate living conditions that may increase the risk of illnesses.

Local integration is problematic issue as well. Even where IDPs are living more than 20 years in different parts of Georgia, they are often feeling that they are not welcome in rest of society. In Georgia it is widely believed in settled communities that these IDPs brought criminal activities or that the streets got “dirtier” because IDPs are selling products outside. Unfortunately people who did not suffer same pain and hardships can never understand the difficulties IDPs have. It may be difficult to understand why, for example, IDPs are selling products outside on the streets of Tbilisi, when most Georgians can spend more than 14 GEL for lunch the amount of money an IDP family will receive per month.

I have discussed many problems faced by IDPs above, but this is not all of them. IDPs those have been living a long time in different areas of Georgia and they have been resettled several times from one place to another place this results in them having no opportunity to show their skills and develop their ability. One can be sure that IDPs are strong and resilient with potential because of this hard life they experience.

It is true that IDPs have many problems and to solve these problems will be pretty difficult, especially for a country which for the past 20 years has been at war. While it is clear that all the problems cannot be solved in one or two years, the State would do well to involve IDPs and ask to them what they need most of all and start solving the problems there. IDPs will feel better and see themselves as part of the citizens if the Government seeks their views and meets their needs.

These problems ask for solutions from many different places- political will, the economy, international politics, social opinion, and more. Can human rights law solve all these problems? Maybe no, but what international law and international human rights law gives us, however (as I hope I have shown in this thesis), is an important tool to show us that all human beings have similar human needs. International law gives us a way to show the State that IDPs, as equal human beings, have rights which the government has responsibility to protect, promote and fulfill. In a small way, this helps us understand that even if local people do not have sympathy for IDPs, there is a strong obligation in law for society to treat them like human being. International law also gives activists and IDPs themselves a tool to fight for the things they need and to show the Government how and where laws and policies can be improved.

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