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NEW YORK

EXECUTIVE OFFICE OF THE SECRETARY-GENERAL

CABINET DU SECRETAIRE GENERAL

17/05/12

To: Ms. Malcorra,

Kindly find enclosed the draft report of the Secretary-General on the Status of internally displaced persons and refugees from Abkhazia, Georgia and the Tskhinvali region / South Ossetia, Georgia for your approval.

The report, which followed last year's reporting process, was written by UNHCR and reviewed by DPA. UNRGID, UNICEF, UNDP Georgia and OHCHR were consulted in the drafting process.

The report provides an update on the Geneva international discussions between the parties and the current scope of displacement, return and local integration of IDPs. In this regard, in view of an amended Law on the Forcibly Displaced Persons and remaining challenges to durable solutions, the report stresses the importance of upholding the rights of all IDPs as defined in international law. The report also refers to temporary restrictions of freedom of movement and access to social infrastructure of persons crossing to and from the Gali district (Abkhazia) on the Inguri River Bridge in view of procedures introduced by the Georgian authorities.

It further notes that whereas the UN was able to maintain access in Abkhazia, access for UN humanitarian agencies to the Tskhinvali region / South Ossetia has still not been made possible.

The report concludes that many security, humanitarian, human rights and development challenges remain, and that the UN stands ready to continue to support the Geneva international discussions and to further humanitarian engagement on the ground.

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Please note that in previous years, the report has been sensitive for ~~one~~ Georgia ~~Member State~~ and continues to be so. The Political Unit has reviewed the report with DPA and UNHCR to ensure that the language and wording is balanced.

(for Georgia, this is the UN. report that most serves to keep the issue alive – right to return of Georgians forced to flee Abk and S.O.)

Political Unit
17 May 2012

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Confidential

Note to Ms. Malcorra

Draft report on the "Status of internally displaced persons and refugees from Abkhazia, Georgia and Tskhinvali region/South Ossetia, Georgia"

1. Please find attached, for the Secretary-General's approval, the draft of his report pursuant to General Assembly resolution 65/287 of 29 June 2011 on the "Status of internally displaced persons and refugees from Abkhazia, Georgia and the Tskhinvali region/South Ossetia, Georgia". In the resolution, the Secretary-General was requested to submit a comprehensive report on its implementation at the sixty-sixth session of the General Assembly. The draft draws on information from a number of United Nations entities. It was reviewed by DPA.

2. The draft takes into account and reflects, where appropriate, the Georgian views and concerns conveyed to the Secretariat. Among these concerns is the consistent usage of "Georgia" following every reference to "Abkhazia or Tskhinvali Region/South Ossetia". In line with previous years' practice, Georgian geographical names are used and references to Abkhazia or Tskhinvali Region/South Ossetia are minimized in order to avoid the issue of adding ", Georgia" each and every time. Tbilisi has also expressed its expectation that the report clearly state that the right/exercise of return cannot be linked/contingent to progress on political issues.

3. Georgia has also expressed its expectations that the report, in particular, duly reflect two specific concerns: i) to avoid any perception that the lack of humanitarian access to South Ossetia is caused by Tbilisi (and to attribute it to the *de facto* authorities) and ii) to make a reference that the planned Kavkaz 2012 military exercise has been discussed at the Geneva discussions. We have taken into account these concerns, to the extent possible, in the draft report in consultation with UNHCR and UNR Turunen.

4. Georgia has asked that the report be issued by June, when it intends to circulate a draft resolution in the General Assembly.

B. Lynn Pascoe
30 April 2012

cc: Mr. Janz

Pol/09/004

United Nations A/66/xxx

General Assembly

Distr.: General
xx May 2012
Original: English

Sixty-sixth session
Agenda item 35
Protracted conflicts in the GUAM area and their implications for international peace, security and development

Status of internally displaced persons and refugees from Abkhazia, Georgia and the Tskhinvali region / South Ossetia, Georgia

Report of the Secretary-General

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Approved on behalf of the Secretary-General.

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I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 65/287 of 29 June 2011, in which the Assembly requested the Secretary-General to submit a comprehensive report at its sixty-sixth session on the implementation of the resolution. The report covers the period from 1 April 2011 to 30 March 2012 and draws on information received from a number of United Nations entities.

2. In accordance with the provisions of the resolution, the report focuses on: (a) the right of return of all refugees and internally displaced persons and their descendants, regardless of ethnicity; (b) prohibition of forced demographic changes; (c) humanitarian access; (d) the importance of preserving the property rights of refugees and internally displaced persons; and (e) the development of a timetable to ensure the prompt voluntary return of all refugees and internally displaced persons to their homes.

II. Background

3. Following an escalation of conflict in 1992, which caused significant displacement of civilians, armed hostilities between the Georgian and Abkhaz sides ended with the signing in Moscow on 14 May 1994 of the Agreement on a Ceasefire and Separation of Forces (see S/l994/583 and Corr.1). This agreement was preceded by the signing in Moscow on 4 April 1994 of the quadripartite agreement on the voluntary return of refugees and displaced persons (see S/1994/397), in which the parties agreed to cooperate and interact in the planning and conduct of activities to guarantee the safe, secure and dignified return of people who had fled from areas in the conflict zone to areas of their previous permanent residence. Armed hostilities between the Georgian and South Ossetian sides ended with the 24 June 1992 Sochi Agreement, which established a ceasefire between the Georgian and South Ossetian forces and the creation of the Joint Control Commission and Joint Peacekeeping Forces.

4. Following the hostilities which started in the Tskhinvali region / South Ossetia on 7 and 8 August 2008, in line with the six-point plan of 12 August 2008 and the implementing measures of 8 September 2008 (see S/2008/631, paras. 7-15), international discussions were launched in Geneva on 15 October 2008, under the co-chairmanship of the European Union, the Organization for Security and Co-operation in Europe (OSCE) and the United Nations (see S/2009/69 and Corr.1, paras. 5-7). The international discussions were to address the issues of security and stability and the return of internally displaced persons and refugees. By the end of the reporting period, 19 rounds of the Geneva international discussions had been held, with participants meeting in two parallel working groups.

5. In June 2011, the General Assembly approved the budget for the United Nations Representative to the Geneva International Discussions (A/RES/65/288). The establishment of a special political mission has facilitated the continued engagement of the United Nations in the Geneva process. The United Nations Representative and his/her team are responsible for preparing, in consultation with the co-chairs, the sessions of the Geneva international discussions. They are also responsible for preparing, convening and facilitating the periodic meetings of the Joint Incident Prevention and Response Mechanism (IPRM) under United Nations auspices in Gali (see S/2009/254, paras. 5 and 6).

6. During the reporting period, participants in Working Group 1 of the Geneva international discussions continued to discuss the security situation on the ground and concerns expressed with regard to detentions, procedures for crossings and other

developments, including reports of military-related activities and planned military exercises as well as restructuring. They also continued discussions on the key issues of non-use of force and international security arrangements. I am encouraged by the increased direct contacts between participants in the margin of the latest rounds of the Geneva international discussions.

7. During the reporting period, efforts made in Working Group 2 addressed the rights of displaced persons, including their right to return and the humanitarian needs of all affected populations. The discussions focused *inter alia* on finding consensus on a framework document affirming the fundamental, internationally-recognized principles governing the treatment of displaced persons, the need for humanitarian access and the importance of finding durable solutions to displacement, including voluntary return in safety and dignity.

8. Working Group 2 also systematically reviewed the situation on the ground and discussed possible humanitarian measures to meet specific needs of the internally displaced. Several participants briefed on their respective humanitarian and infrastructure programmes and projects. Access to gas supply and to potable and irrigation water remained on the agenda. The challenges to agricultural production caused by the *Hyphantria cunea* and a possible consolidated response, including prevention and mitigation measures in the affected area, was one of the issues most extensively discussed, though different views prevailed among the participants. Participants regularly exchanged views on the human rights situation on the ground. The Office of the High Commissioner for Human Rights (OHCHR) has proposed a technical mission aimed at updating the High Commissioner and the participants of the Geneva discussions on the human rights situation on the ground. Another topic given substantial attention by all participants was related to persons missing from the conflict whose fate have not yet be clarified.

9. I note with appreciation the understanding shown by all participants of Working Group 2 for the plight of the families of the missing and the commitments made to engage meaningfully on the issue, in particular by supporting the related work of the International Committee of the Red Cross (ICRC). I also note the progress reported by the OSCE on some of the water projects. While many other humanitarian issues remain unresolved, the Geneva international discussions continue to offer an opportunity to raise, in a constructive manner, such issues and present a chance for participants to liaise with United Nations humanitarian agencies, funds and programmes located in Geneva.

10. To allow for more informed debates, special "information sessions" were conducted in conjunction with the formal Geneva sessions, and on one occasion in the context of the Gali IPRM, allowing participants to benefit from the experience and advice of the United Nations, non-governmental organizations (NGOs) and other external experts. Participants were given the opportunity to deepen their understanding of, *inter alia*, when displacement is considered to have ended, various aspects related to the confidence-building measures, the challenges and best practices related to the search for missing persons, and the preservation of cultural heritage.

11. At present, the Geneva international discussions remain the only forum for relevant stakeholders to meet and address the issues identified in General Assembly resolution 65/287.

III. Right of return

A. Scope of displacement, return and local integration

12. No major developments took place during the reporting period with regard to refugees and internally displaced persons exercising their right to return. No further major returns were observed to the areas adjacent to the Tskhinvali region / South Ossetia, Georgia. While more than 100,000 individuals who were displaced during the 2008 conflict have returned to their homes, the Office of the United Nations High Commissioner for Refugees (UNHCR) considers that about 34,000 persons who have returned to these adjacent areas continue to live in an IDP-like situation as they still have some specific protection needs related to their former displacement. Further returns to these areas are hampered by security concerns, the destruction of houses, and limited livelihood and economic opportunities due to the lack of functioning irrigation systems and access to fields, orchards and traditional grazing grounds.

13. Proposals were made in the previous reporting period by concerned participants in the Geneva international discussions in relation to the return of displaced populations to the Akhalgori district. UNHCR is continuing its consultations on the proposals with a view to secure the safe and voluntary nature of any return to the district. In this context, further steps are needed to ease the crossing procedures in the area to allow individuals not only to maintain contact and follow developments in their home communities, but also to make a free and informed choice as to whether to return or to integrate in areas of displacement or elsewhere.

14. According to the Ministry for Internally Displaced Persons from the O ccupied Territories, Accommodation and Refugees of Georgia, as of end of March 2012 there were 265,295 registered internally displaced persons. This represents an increase from 256,528 persons registered at the end of 2010, which is mainly attributable to children born among internally displaced families, displaced individuals returning to Georgia from third countries and late registrations. This number includes 242,592 persons displaced during the earlier conflicts, 18,789 displaced during the August 2008 conflict and 3,914 persons displaced twice. In addition, approximately 300 persons from areas most adjacent to the Tskhinvali region / South Ossetia remain in displacement due to security concerns or loss of livelihoods; they are considered by UNHCR to fall under the IDP definition of the Guiding Principles on Internal Displacement, but do not have access to IDP status under national legislation. Moreover, it is estimated that some 10,000 persons remain displaced within the Tskhinvali region / South Ossetia.

15. The Government of Georgia continues with the implementation of its State Strategy on Internally Displaced Persons (IDPs). Efforts under the "Action plan for the implementation of the State strategy on IDPs for 2009-2011" have resulted in significant progress in the provision of durable housing solutions to internally displaced persons. According to the Ministry for Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees, by the end of 2011, 23,600 IDP households, consisting of about 69,400 persons, had been provided with durable housing solutions in new settlements or rehabilitated and privatized former collective centres. Also, an additional 5,388 IDP families received monetary assistance in order to meet their housing needs. The Government has finalized its preparation of the "Action plan for the implementation of the State strategy on IDPs for 2012-14", which addresses the areas of (i) durable housing solutions, (ii) access to social services, (iii) livelihoods, and (iv) improvement of information and participation of IDPs. The drafting process of the action plan, which involved UNHCR, non-governmental organizations and donors, was concluded at the end

of the reporting period and the formal adoption of the action plan by way of a Government Decree is scheduled for May 2012.

16. Amendments made in December 2011 to the national legislation governing the treatment of IDPs have clarified a number of issues and enhanced the protection of IDPs against discrimination. At the same time, however, terminology and definitions were introduced and resulted in a situation in which not all IDPs - as defined in international law and practice - can enjoy the benefits of the retitled and amended *"Law on the Forcibly Displaced Persons - Persecuted from the Occupied Territories of Georgia"*. While acknowledging that States have some discretion in the establishment of national legislation governing the treatment of IDPs, the rights of all IDPs as defined in the Guiding Principles on Internal Displacement must be respected and protected in law and in practice.

17. Relocations, and related evictions, conducted in the context of the Government's efforts to provide internally displaced families with durable housing solutions have on some occasions led to grievances among internally displaced persons. Upon advocacy from UNHCR and other actors, the Government has adjusted its approach and is now offering more housing solutions in urban and economic centres and is trying to avoid relocations from urban areas to more remote locations. Other projects, such as rural housing combining shelter with agricultural land, have expanded the housing options. The Government standard operating procedures, developed with a view to enhance the transparency of the relocations process and the protection of internally displaced persons subject to relocation, were generally respected. It is important that in any relocation process the rights of internally displaced persons be respected and protected, and that the process is transparent and offers legal safeguards.

18. Given the scale of the displacement, challenges concerning the integration of internally displaced persons remain. The Government of Georgia assessed (subject to inflation and exchange rate fluctuations) that $749 million ($449 million for the construction of new buildings and $300 million for financial housing assistance) would be required to fully meet the remaining housing needs of all internally displaced persons. However, the provision of durable shelter is an essential, but not the only, aspect of integration. The socio-economic aspects, such as sustainable livelihoods and access to quality education, medical and social services, must be addressed as well. The United Nations agencies, funds and programmes, donors and other stakeholders will continue their efforts to address the needs of the displaced population, work towards durable solutions and assist the Government in protecting and ensuring the rights of the affected population. In order to bridge the gap between humanitarian response and development activities, the United Nations Development Programme (UNDP) and UNHCR have developed a joint programme aimed at improving the livelihoods of IDPs and returned IDPs in Shida Kartli, and they are considering replicating such a programme in other displacement-affected regions.

19. It is estimated that over 45,000 people may have spontaneously returned, or are in the process of returning, to their homes in the Gali district. Seasonal movements were also observed. These individuals are officially considered internally displaced persons by the Government of Georgia and as such are eligible for assistance. More precise and comprehensive, independently-verified data on the numbers and profiles of those who have returned, or on the other conflict-affected communities residing in the Gali district, are not yet available. For a number of years, my former Representative on the human rights of internally displaced persons and the United Nations High Commissioner for Refugees have called for a verification and profiling exercise as a first step in assessing the protection and assistance needs of spontaneous returnees to the district and their host communities. The conducting of such an exercise, as initially agreed to in 2005, was supported by the Security Council in its resolutions 1752 (2007), 1781 (2007) and 1808 (2008). Unfortunately, no

consensus has been reached on its implementation, and the issue remains on the agenda of Working Group 2 of the Geneva international discussions.

20. During the first eight months of the reporting period, a number of developments had impacted positively on the humanitarian and security situation of the population in the Gali region and on the reintegration prospects of those who have returned or are in the process of returning. These included reduced crime rates, significantly fewer incidents of extortion during the hazelnut harvest season, and a variety of infrastructure and construction measures, which also brought about some income-generating opportunities. Unfortunately, this positive trend was disrupted as of December 2011 by a number of serious incidents, including homicides, the use of improvised explosive devices (IEDs), alleged acts of terrorism and recurrence of other crimes. The temporary restriction of movements over the Inguri River from 22 February 2012 to 6 March 2012 had to some extent hampered access of the affected population to services and markets, and promptly resulted in an increase of prices for food, raising concerns among the affected population. Thus, despite some noteworthy improvements, including infrastructure construction and repair and significant humanitarian efforts, the reintegration process has not yet concluded as many persons still have needs and vulnerabilities resulting from their earlier displacement. Those who have spontaneously returned or are in the process of returning continue to express concerns about the security situation, including the level of crime, and the need for support in rebuilding housing and re-establishing sustainable means of subsistence.

21. Since the conflict in August 2008, the United Nations agencies, funds and programmes have had no operational access to the Tskhinvali region / South Ossetia, and are therefore not in a position to verify or closely monitor displacement or return movements. However, in preparation for the sessions of the Geneva international discussions, the co-chairs and United Nations staff were able to visit the Tskhinvali region / South Ossetia and to familiarize themselves with the noticeable progress made on a number of the multifaceted rehabilitation efforts undertaken. Information made available to UNHCR by the Federal Migration Service of the Russian Federation indicates that 4,269 families (5,346 persons) from Georgia (citizens and stateless persons) applied for recognition as refugees in the Russian Federation during the period from 2005 to 2011. Of this total, 1,805 families (2,278 persons) applied in 2008, 1,211 families (1,525 persons) in 2009, 524 families (641 persons) in 2010 and 280 families (314 persons) in 2011. A total of 152 families (199 persons) from Georgia were recognized as refugees in the Russian Federation between 2005 and 2011. Of this total, 60 families (68 persons) were recognized as refugees in 2007, 35 families (46 persons) in 2008, 39 families (60 persons) in 2009, 7 families (11 persons) in 2010 and 8 families (11 persons) in 2011. Moreover, 2,642 families (3,103 persons) from Georgia (citizens and stateless persons) were granted temporary asylum from 2005 to 2011. Of this total, 386 families (444 persons) were granted temporary asylum in 2008, 1,520 families (1,782 persons) in 2009, 429 families (525 persons) in 2010, and 270 families (286 persons) in 2011.

22. The actual number of refugees and others displaced from Georgia in the Russian Federation is considered to be significantly higher, as many are not reflected in the official statistics, having regularized their residence status outside of refugee protection mechanisms or as a result of losing refugee status upon acquisition of Russian citizenship.

B. Institutional framework and operational measures

23. In 2005, UNHCR, the Danish Refugee Council, the Norwegian Refugee Council and the Swiss Agency for Development and Cooperation developed, in consultation with all stakeholders, the initiative "Strategic directions: promoting confidence building for

displaced and war-affected persons in Abkhazia". The strategic directions were aimed at supporting a "bottom-up" peace-building approach based on self-reliance and community involvement. They integrate protection and assistance efforts through returnee monitoring, addressing their concerns in discussions with relevant authorities and targeted assistance. Since April 2009, the strategic directions have been complemented by a strategic framework for continued humanitarian assistance which seeks to achieve durable solutions for returnees through integrated protection and assistance activities and promotion of their rights, with a view to preventing renewed displacement of the population in the Gali, Ochamchira and Tkvarcheli districts.

24. Under the overall coordination of the United Nations Resident Coordinator, these efforts bring together as strategic partners UNHCR, UNDP, the United Nations Children's Fund (UNICEF), the World Food Programme, the Swiss Agency for Development and Cooperation and international non-governmental organizations (NGOs), namely *Action Contre la Faim International*, the Danish Refugee Council, the Norwegian Refugee Council, *Première Urgence* and World Vision International.

25. In July 2010, the Government of Georgia complemented its "State strategy on the occupied territories: engagement through cooperation" (adopted by Order N107 of 27 January 2010) with the "Action plan for engagement" (adopted by Order N885 of 3 July 2010, amended on 26 January 2011). The plan envisages the undertaking of a number of steps aimed at building trust and confidence among divided communities. These measures were followed in October 2010 by the issuance of the "Regulation of the Government of Georgia on the approval of modalities for conducting activities in the occupied territories of Georgia". In this context, the United Nations agencies, funds and programmes will continue to engage in humanitarian action on the basis of their respective mandates and in the framework of multilateral and bilateral agreements governing privileges and immunities of the United Nations.

26. As noted in my previous reports (A/64/819, para. 13 and A/65/846, para 21), for any operational framework and/or liaison mechanism to be effective and serve its aims, it must be accepted and supported by all sides. In this regard, I note with appreciation the establishment by UNDP, in consultation with the United Nations Country Team and all relevant authorities, of a status-neutral liaison mechanism which aims to facilitate dialogue and interaction between divided communities and to support the implementation of projects and activities. The liaison mechanism offers a framework of engagement that strictly respects the humanitarian mandates of the relevant United Nations actors and NGOs, clarifies basic rules of engagement, and allows participatory and human rights-based approaches in the design, planning and implementation of projects. I am encouraged that the mechanism established has offered important support to a number of humanitarian efforts undertaken on the ground. I express the hope that consensus can be secured to maintain this mechanism and to preserve its status-neutral and humanitarian nature. I urge all stakeholders to engage in a cooperative manner with a view to ensure the effectiveness of the liaison mechanism and to consider ways to introduce such a mechanism to address the humanitarian assistance requirements of the population living in the Tskhinvali region / South Ossetia.

27. Over the past year, UNDP has expanded the range and scope of its work to further improve local conditions for affected areas and populations. UNDP now reaches almost all areas with activities aimed at ensuring accessibility to high quality social services, including in the education, health, and water and sanitation sectors. Necessary improvements in infrastructure are taking place, and UNICEF is helping to improve the skills of health and educational professionals as well as to assess water, health and sanitation conditions in schools and overall conditions and practices used in primary healthcare facilities. UNDP's involvement in HIV/AIDS and drug-prevention activities

concentrates on ensuring improved outreach to rural areas with a mobile laboratory, guaranteeing improved testing, counseling and advocacy. Special attention is given to youth and their connectivity to the rest of the world. In collaboration with several local NGOs engaged in youth activities, Internet cafés/youth centres are being established in some larger cities. Besides ensuring that youth have access to information in general, opportunities to improve practical skills are created through access to online training courses. In close collaboration with several international actors, UNDP supports civil society development and efforts to reduce tensions.

28. During the reporting period, the United Nations agencies, funds and programmes continued to assess and respond to various emerging humanitarian needs. Building on the successful 2010 immunization campaign reaching 98 percent of population under the age of 18 (A/65/846, para 22), UNICEF continues to strengthen the routine immunization infrastructure in the region by providing cold-chain equipment, an immunization data-base and training for medical professionals. Moreover, UNICEF engaged in community-based activities aimed at increasing access to basic social services – such as maternal and child healthcare, education, and social protection - including for children with disabilities. This work was done in cooperation with other UN partners, World Vision International and a range of local partners and communities.

29. In 2011, UNHCR supported the construction of 189 houses for more than 750 returnees and other vulnerable populations, as well as the establishment of social community centres in Chuburkhindji, Gumurishi and Gvada villages. These community centres are designed to mobilize local communities and address some key obstacles to sustainable return by providing, *inter alia*, medical assistance, and income and educational opportunities. In addition, 105 persons benefited from live-stock or business grants; five business development centres have been expanded and have diversified their activities; 50 young adults were trained through vocational and professional skills training; and 180 people benefited from a basic and advanced business development training programme. Moreover, multi-dimensional counseling services were offered which address medical, psycho-social and legal-advice needs, *inter alia,* to strengthen prevention and response to sexual and gender-based violence (SGBV). At the end of the reporting period, UNDP focused particular attention on the development of a comprehensive project addressing the challenges to agricultural production caused by the *Hyphantria cunea.*

30. Taking up an initiative of the co-chairs of the Geneva international discussions, a joint UN activity involving UNICEF, UNDP and UNHCR has commenced to rehabilitate the Gali School No.2, with a view to enhancing access to education and supporting the co-education of students of different ethnic backgrounds.

31. During the reporting period, the issue of freedom of movement of the local populations, including through a possible increase in the number of crossing points, was repeatedly discussed as part of the agenda of the Joint Incident Prevention and Response Mechanism chaired by the United Nations (see S/2009/254, para. 5). I note that the local population was in principle able to continue to cross the Inguri River Bridge or enter the Akhalgori district to the same extent as during the previous reporting period. The simplified permit system introduced in 2010 which facilitates crossing, albeit only via the Inguri River Bridge, is being upheld. While welcomed by some, it continues to add to travel distances and places a significant burden on the population, particularly those residing far from the town of Gali. Unfortunately, plans to open additional crossing points, which may mitigate this burden and facilitate movements, did not materialize during the reporting period. At the beginning of September 2011, the Georgian authorities introduced procedures according to which the documents of persons crossing the Inguri River Bridge would regularly be checked and the persons would be registered at the check points. While these procedures as such had no impact on movements, in late summer of 2011, a number

of individuals residing in the Gali district, in particular younger men, temporarily abstained from movements, due to concerns regarding such measures. I also note with concern that movements were temporarily disrupted and blocked on the northern side of the Inguri River on a number of occasions or in the context of special events. Such temporary restrictions of freedom of movement and prevailing uncertainty regarding the effective implementation of informal crossing arrangements for school children and teachers between Nabakevi and Kurcha, also had some negative impact on school attendance.

32. Many members of the population in the Gali district, including spontaneous returnees and persons in the process of return, remain concerned about their freedom of movement and access to social infrastructure, including medical facilities, markets and family members in the Zugdidi district. The establishment of a crossing regime which meets these concerns remains crucial for improving living conditions of the local population, advancing the reintegration of returnees and preventing renewed displacement. In this context it is essential to identify solutions for the provision of documentation in conformity with international law, including human rights law, and the principles governing the prevention and reduction of statelessness.

33. The principles and factors governing the implementation of the return of internally displaced persons outlined in my report on the status of internally displaced persons and refugees from Abkhazia, Georgia (A/63/950), in particular, in paras. 8-14, remain valid. There is a complex nexus between the individual right to and the principle of voluntary, safe and dignified return and the establishment of conditions conducive to such return. The individual's right to return, in the case of an internally displaced person, derives from his or her right to freedom of movement as stipulated in article 12 (1) of the International Covenant on Civil and Political Rights and, in relation to a refugee, from article 12 (4) of the Covenant, according to which "no one shall be arbitrarily deprived of the right to enter his own country". In accordance with article 12 (3) of the Covenant, freedom of movement as established in article 12 (1) and (2) can only be subject to restrictions "which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights" recognized in the Covenant. Progress made with respect to integration, locally or by resettlement, does not result in a loss of the right to return.

34. Thus, the right to return and its exercise by an internally displaced person cannot be directly linked to political questions or the conclusion of peace agreements. It is essential to recognize return as both a human right and a humanitarian issue that must be addressed irrespective of any solution to an underlying conflict. At the same time, it is primarily for the individual to assess the risks and make a free and informed choice whether or not to return at a given time. In doing so, a displaced person must be able to take into account all factors which could affect his/her safety and dignity and ability to exercise basic human rights.

35. The United Nations is committed to assist States in the search for durable solutions for displaced populations and its engagement is based on the understanding that voluntary return in safety and dignity is one durable solution, together with local integration and resettlement. The role of the United Nations in the facilitation, design and implementation of organized return operations must be guided by the need to avoid causing harm or contributing to the exposure of persons of concern to possible human rights violations. Therefore, activities related to organized returns must be based on a careful risk assessment, taking into consideration the existing security and human rights conditions and concerns, access to livelihoods and basic services, and the voluntary nature of return. Unhindered humanitarian access and the ability of the United Nations and its mandated agencies, funds and programmes to effectively monitor all these factors is another aspect to be taken into account.

IV. Prohibition of forced demographic changes

36. International human rights standards, as they have evolved in recent decades, provide guidance on managed population movements, including evacuations, and thereby strictly limit forced movements that result in demographic change. Under principle 6 of the Guiding Principles on Internal Displacement, every human being has the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence. A number of provisions of international law, such as article 12 of the International Covenant on Civil and Political Rights, guarantee not only the right to freedom of movement but also the freedom to choose one's residence, including the right to remain there.[1]

37. While no major new displacement has been observed during the reporting period, the demographic consequences of earlier displacement remain. In this context, I recall the observations of my former Representative on the human rights of internally displaced persons in his report (A/HRC/13/21/Add. 3 and Corr.1 and 2, paras. 7-14) and referred to in my previous report (A/64/819, paras. 22 and 23).

V. Humanitarian access

A. International legal foundations governing humanitarian access

38. The need to establish and maintain humanitarian space is essential in order to effectively meet the humanitarian needs of conflict-affected and displaced populations, to mitigate suffering and to enable United Nations agencies, funds and programmes to exercise their mandates. In this context, it remains important that all sides respect their obligations and act in good faith to fully implement the principle of humanitarian access which is rooted in international humanitarian and human rights law. Free passage of relief goods and facilitation of humanitarian operations are correlated to a number of human rights, including the right to life, the right to a decent standard of living and the right to protection against discrimination. Moreover, building on the practice of the United Nations human rights treaty bodies, there is growing acceptance that the obligation of States to respect, protect and fulfill human rights includes a duty to invite, accept and facilitate international (humanitarian) assistance, in particular if the State's resource capacities or other obstacles, such as lack of effective control of parts of the territory, limit its capacity to effectively address all humanitarian needs.

39. In the context of international conflict situations, international humanitarian law requires the establishment of conditions for rapid and unimpeded passage of all relief consignments, equipment and personnel. In non-international conflicts, States must organize relief actions for the civilian population, without any adverse distinction. The universal acceptance of these rules has established, as a norm of customary law in both

[1] Universal Declaration of Human Rights (arts. 12 and 13); International Covenant on Civil and Political Rights (arts. 12, paras. 1, and 17); American Convention on Human Rights (arts. 11 and 22, para. 1); African Charter on Human and Peoples' Rights (art. 12, para. 1); European Convention on Human Rights (art. 8) and Protocol No. 4 thereto (art. 2, para. 1); Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (arts. 49 and 147), Additional Protocol I thereto (arts. 51, para. 7, 78, para. 1, and 85, para. 4) and Additional Protocol II thereto (arts. 4, para. 3 (e), and 17); and International Labour Organization Convention No. 169 (art. 16).

international and non-international conflicts, that parties to a conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need.

B. Operational challenges

40. Following the amendments introduced by the Government of Georgia to the Law on the Occupied Territories, taking into consideration recommendations issued by the European Commission for Democracy through Law (Venice Commission) of the Council of Europe in October 2010, the Government of Georgia issued the "Regulation of the Government of Georgia on the approval of modalities for conducting activities in the occupied territories of Georgia" which, *inter alia*, serves as the guideline for the implementation of the Law. During the reporting period, the issuance of the modalities had no impact on the activities of the United Nations agencies, funds and programmes.

41. The United Nations agencies, funds and programmes were able to maintain humanitarian access and to implement protection and humanitarian assistance activities in Abkhazia as planned. However, a communication received in late March 2012 by some United Nations agencies, funds and programmes as well as other international organizations, announcing restrictions relating to the transport of construction materials northward across the Inguri Bridge, raised some concerns among humanitarian actors. However, negotiations in the margins of the Geneva international discussions helped to explain tender procedures and practices as related to local purchases, as well as to find a practical solution; thus after a brief interruption, movements of humanitarian goods continued until the end of the reporting period. In this context, I call on all stakeholders to take a flexible approach regarding the supply lines for humanitarian assistance. Due consideration must be given to available local sources, logistical challenges, costs and cost effective purchases, with a view to maximizing the efficiency and effectiveness of humanitarian assistance.

42. The future impact of legislation and administrative practices affecting humanitarian access and humanitarian operations will need to be carefully monitored, as well as the practical approaches and measures taken by stakeholders. The liaison mechanism, with established offices in Tbilisi and Sukhumi, continues to provide a framework for engagement and was successfully used on a number of occasions. Consultations also continued with all relevant stakeholders in order to ensure up-to-date information on the humanitarian needs of the population and to improve coordination and information flow.

43. During the reporting period, discussions were renewed on possible humanitarian access for the United Nations to the Tskhinvali region / South Ossetia. During their visits, the United Nations Representative and the other co-chairs of the Geneva international discussions were able to witness noticeable progress on a number of the ongoing humanitarian, infrastructure and reconstruction projects in Tskhinvali and Akhalgori valley, but also the level of destruction prevailing in and around the villages of Kurta and Eredvi. UNHCR has developed a project which aims to serve persons displaced from Akhalgori district by improving their livelihoods in a way which preserves and strengthens their links to their places of origin and keeps the prospects open for a gradual voluntary return process. Activities include the provision of free–of-charge minibus tickets, seeds and other agricultural support. Unfortunately other proposals for the humanitarian engagement of the United Nations have not yet materialized. Access for the United Nations humanitarian agencies has not been possible due to the continuing lack of agreement on the modalities governing humanitarian access. At the same time, the International Committee of the Red Cross continued to implement a number of projects throughout the area and an international NGO is preparing for engagement in complementary medical projects.

VI. Property rights of refugees and internally displaced persons

44. Property-related issues remained on the agenda and were repeatedly addressed during the meetings of Working Group 2 of the Geneva international discussions. The resolution of these issues remains contentious, in particular due to the gaps in property registration and prevailing disagreement over applicable norms. The matter is further complicated by the historical legacy of multiple legal transition processes related to property following the dissolution of the former Soviet Union.

45. These factors, as well as unclear, nontransparent and inconsistent practices, have resulted in significant legal insecurity as regards property rights and related transactions. Fears with regard to violations of property rights prevail and have a negative effect on the local population, including returnees, but also IDPs and refugees or former refugees considering return. Their concerns in relation to the protection of their property rights have been aggravated by registration of so called "abandoned property", as well as other regulative and administrative measures taken. The Law of Georgia "On property restitution and compensation on the territory of Georgia for the victims of conflict in the former South Ossetia district" is not yet implemented in practice and has not resulted in restitution of property.

46. I reiterate my call on all parties to fully respect and protect the property rights of refugees, internally displaced persons and their descendants and to adhere to the principles on housing and property restitution for refugees and displaced persons (referred to as the "Pinheiro principles") and the underlying norms of international law, including human rights law.[2] I encourage the parties to resolve the complex legal and political issues that impede progress and implement restitution or compensation measures in order to ensure the full enjoyment of their property and housing rights by the displaced populations. The United Nations agencies, funds and programmes remain committed to providing the necessary assistance in meeting these challenges.

VII. Timetable for the voluntary return of all refugees and internally displaced persons

47. No timetable for the voluntary return of all refugees and internally displaced persons has been developed given the prevailing environment and continued discussions among the parties. As long as the conditions for organized returns in safety and dignity are not fulfilled and mechanisms for property restitution are not established, the design of a comprehensive timetable or road map for returns must remain an open matter. These challenges should not prevent the parties, acting on their own and in cooperation, from working towards identifying durable solutions for all displaced persons, giving particular attention to the implementation of the right to return. I would like to reiterate my call upon all participants in the Geneva international discussions to engage constructively on this issue, building on international law and relevant principles.

48. In the absence of conditions conducive to organized returns and appropriate implementation mechanisms, the United Nations entities will continue to concentrate their efforts on providing the conflict-affected population, including spontaneous returnees or persons in the process of returning, with humanitarian assistance and support for their

[2] During the earlier reporting period, on 26 July 2010 a specific information session dedicated to property related rights and the Pinheiro Principles was organized by Working Group 2 during round 12 of the Geneva international discussions.

reintegration. The United Nations agencies remain committed to proceeding at the appropriate time, in consultation and cooperation with all parties concerned, with the development of a timetable or road map addressing all components outlined in my report (A/63/950), in particular paragraph 20.

VIII. Conclusion

49. Over the past three and a half years, the Geneva international discussions, co-chaired by the European Union, OSCE and the United Nations, have remained the single forum for the key stakeholders to discuss security and stability, as well as humanitarian issues, in particular those related to the return of refugees and internally displaced persons. These efforts, together with humanitarian engagement by a variety of UN agencies, funds and programmes as well as other actors, have contributed to some improvements in the security and humanitarian situation on the ground. However, many security, humanitarian, human rights and development challenges remain unresolved. Despite the difficult nature of the discussions, the complexity of the issues and divergent positions, participants in the Geneva discussions have continued to engage on a regular basis. The United Nations-facilitated "information sessions" on relevant best practices and lessons learned have helped to enrich the formal sessions of the Geneva international discussions. The United Nations stands ready to continue to support such information-sharing along with its further humanitarian engagement on the ground. Regular and genuine engagement in the Joint Incident Prevention and Response Mechanisms is also essential. Continued and more energetic efforts are needed to reach an agreement on practical steps to further strengthen the security situation and meet the pressing humanitarian concerns of the affected population, including of the internally displaced persons. I call upon all stakeholders to uphold their engagement in the Geneva process, to preserve and expand humanitarian space and to guarantee the rights of refugees and internally displaced persons in accordance with international law, including the Guiding Principles on Internal Displacement. I invite donors to continue their support of the multifaceted humanitarian, development and confidence building efforts.