

RIGHT TO FREEDOM OF MOVEMENT OF INTERNALLY DISPLACED PERSONS (IDPS)

A Legal Analysis on the Right to Freedom of Movement of internally
displaced persons (IDPs) in Georgia after Russia/Georgia War in August
2008



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Dedication

This thesis is dedicated to the internally displaced persons (IDPs) in Georgia on the respect for their human rights.

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1 Introduction

Internally displaced persons (IDPs) are often the victims of the armed conflicts, when persons have been forced to migrate and abandon their place of residence or occupation within the national territory because their lives, security or freedom to free movement have been rendered vulnerable and threatened due to the existence of the hostilities, widespread violence, tensions, massive violations of human rights or the circumstances that can drastically disturb public order. Danger of war and general insecurity cause the large-scale displacement all over the world.

Once it occurs, internal displacement brings about a set of circumstances that renders those affected highly vulnerable. Most obviously, it forces people from their homes, depriving them of shelter and the basic protection it can provide. Cut off from their land, traditional livelihood and means of generating income, and compelled to leave all but a few possessions behind, IDPs suddenly find themselves stripped of their means of survival.¹

This thesis will examine the conception of internal displacement as a result of an armed conflict by considering the key challenges associated with the right of freedom of movement of internally displaced persons (IDPs) in Georgia's conflict areas of Abkhazia and South Ossetia after Russia/Georgia war in August 2008. This 21st century tragic war between these two countries caused many problems, including killings of innocent, peaceful citizens and forced displacement in Georgia. First, the paper will discuss the legal analysis and the different points of view of the right to freedom of movement as a human right. Second, it will explore whether

¹ Erin Mooney, 'The Concept Of Internal Displacement And The Case For Internally Displaced Persons As A Category Of Concern', *Refugee Survey Quarterly*, Vol. 24, Issue 3, (UNHCR 2005)15

there are violations of the right of freedom of movement in the conflict areas in South Ossetia and Abkhazia. Third, it will identify the conditions of IDPs today as a category of concern. It will also explore the debate as to who has the responsibility to take measures and solve the problems of IDPs in the breakaway regions: Russia, Georgia or the international community.

1.1 HISTORICAL OVERVIEW

Since the break-up of the Soviet Union, two unresolved conflicts in South Ossetia and Abkhazia have undermined democracy and stability in the country. Both entities seek independence, while internationally they are still recognized as parts of Georgia.

After the powerful and successful Rose Revolution of November 2003, Georgia has been engaged in large-scale reform of inefficient post-Soviet institutions and tried to improve a deeply dysfunctional economy by implementing economic reforms and rebuilding various institutions. There are still remaining challenges that need to be resolved by the new government administration. Among them, the most important problem facing the country is the territorial integrity and the conflict areas of Abkhazia and South Ossetia. The unresolved armed conflicts that affect the democratization process in Georgia need to be resolved peacefully with the help of international society.

The administration is in conflict with its powerful Russian neighbor in South Ossetia, Abkhazia. Reason of Russia's possible aggression towards Georgia is that Georgia obtained a clear NATO membership promise at the Bucharest Summit in Spring 2008, and is already the part of the European Neighborhood Program. Because of this fact, Russia is concerned about losing control over Georgia, especially on the border of its own North Caucasus. After considering such aggression and political conflicts, Georgia turned to the United States and European Union for their support.

1.2 WHO IS AN IDP?

There is no legal definition as there is for a refugee, however, a United Nations report; Guiding Principles on Internal Displacement uses the definition:

“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.”

The definition of the term IDP (Internally displaced person) together with its abbreviation form – IDP(s)’ was coined only in 1990s when the phenomenon of uprooted people seeking refuge within the borders of their own country began to increase in severity after the end of the cold war. ²

Very often the inventory of causes of internal displacement begins with the effects of armed conflicts. The previous and current cause for the internal displacement in Georgia’s break-away regions in Abkhazia and South Ossetia is the same -the historically provoked armed conflicts since 1990s when these two parts of Georgian territory were taken away from the Russian government in order to control these parts of Georgia in their jurisdiction.

Internally displaced people are considered as the one of the most vulnerable groups of persons all over the world nowadays together with refugees. These groups of peoples are devastated highly by the armed conflicts or other severe disasters that happened in their home countries that caused a great fear of persecution among them by losing everything they got. Therefore, IDPs and refugees are adversely affected by the conflicts in their countries and deserve to be consulted and supported by their governments and international community.

However, there have been developed a system of international protection and assistance for refugees by the United Nations, while those who are displaced internally fall under the domestic jurisdiction and responsibility of the state, without there being specific legal or institutional basis for their protection and support internationally.

² Wendy Devies, *Rights Have No Borders: Internal Displacement Worldwide* (Norwegian Refugee Council, Global IDP Survey 1998)

“For the same reason, internal displacement poses a challenge to the international community to develop norms, institutions and mechanisms for preventing it, addressing its consequences and finding durable solutions, with the responsibility of sovereignty as the starting point.”³

The only international legal document which refers to the IDPs rights is the Guiding Principles on Internal Displacement developed by the UN Human Rights Commission in 1997. This legal document describes the problem of IDPs as follows: “Internal displacement, affecting some 25 million people worldwide, has become increasingly recognized as one of the most tragic phenomena of the contemporary world. Often the consequence of traumatic experiences with violent conflicts, gross violations of human rights and related causes in Which discrimination features significantly, displacement nearly always generates conditions of severe hardship and suffering for the affected populations. “

Thus, the creation of the Guiding Principles demands in depth understanding of the global problem internal displacement. Since then governments have become more responsible to support their IDPs and respond effectively to the phenomenon of internal displacement. Principle 3 refers that, national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction. However, the Guiding principles are non-binding that is a big gap in international law.

“The Guiding Principles are also intended to cover the three phases of the normative needs and rights of internally displaced people: to be protected from arbitrary displacement, and to be assured of durable solutions through safe return and reintegration or alternative settlement.”⁴

To conclude this section, IDPs are in need of worldwide protection, especially when many of the displaced are the victims of the armed conflicts and where the government of the central state is in doubt, there is no local authority willing to provide support and protection for their own displaced like on the example on Georgia/Russia 2008 war, as many of the displaced still

³ Wendy Davies, *Rights Have No Borders: Internal Displacement Worldwide* (Norwegian Refugee Council, Global IDP Survey 1998) 5

⁴ Wendy Davies, *Rights Have No Borders: Internal Displacement Worldwide* (Norwegian Refugee Council, Global IDP Survey 1998) 10

remain in the conflict areas in the bad conditions under the Russian control and restrictions. Unlike the case of refugees, there is no international humanitarian institution which has the overall responsibility of protecting and assisting the internally displaced as well. Also an absence of a binding international legal document remains a challenge to the international community. Establishing an effective system of international protection and support for internally displaced people is therefore as much a humanitarian and human rights concern as it is very important issue for regional and international peace and security.

1.3 SCOPE AND LIMITATIONS OF THE THESIS

Thematic: The paper studies the legality of the reasons of becoming IDPs in the conflict areas of Georgia in Abkhazia and South Ossetia and the main focus will be made on the Right to Freedom of Movement of IDPs and what are the challenges they are facing after the war between Russia and Georgia in august 2008. The cases will be provided to show the evidence and facts of the violations of the rights of internally displaced persons as a result of the wars between Russia and Georgia, especially why is the right of freedom of movement so important right for IDPs in the conflict areas, are other human rights derived from it? How it affects the internally displaced people and what is the gap in this matter that needs to be researched and observed by both national and international law.

The current case study will be provided: Georgia the Application to the International Court of Justice against the Russian Federation under the 1965 international Convention of All forms of racial Discrimination (CERD) to establish the international responsibility of the Russian Federation for its actions on and around the territory of Georgia in breach of CERD.

1.4 STRUCTURE OF THESIS

The paper compares practice and national and regional human rights norms and standards regarding the IDPs situation in Georgia, examining the country reports from the international NGOs about the IDPs problems and conditions in the conflict regions after the wars, as well as focusing on the current situation of the IDPs and their legal status.

In the introduction there will be given the analysis of the main problem, its historical background how the conflict started and what are the consequences until nowadays, how is the

fundamental human right to Freedom of movement is violated and also will be shown the method to be used for the thesis.

Second chapter will demonstrate the background of the IDPs situation in the breakaway regions since 1992 when the war started first time. The third chapter will analyze the legal framework applicable to IDPs with a focus on the law that will be legal ground for the protection of internally displaced persons, the right to Freedom of Movement will be the main right to be discussed and researched in the paper. There will be discussed as international as well as domestic national law and what regulations are provided in order to protect IDPs by both levels. The fourth chapter will focus on the challenges facing the victims of wars, the IDPs before and nowadays as the conflicts has started between Russia and Georgia. The final chapter will be conclusion and possible recommendations for the improving the situation of IDPs in the conflict areas and how the both sides of the war should fulfill the state obligations and provide legal support for internally displaced people without violating their human rights and their right to freedom of movement.

1.5 METHODOLOGY AND MAIN SOURCES

I will use the legal positivist method of developing my thesis topic, also provide the analysis of legal texts and comparing them with the empirical data, I will use descriptive method to describe about the human rights violations of IDPs in Georgian conflict areas with data and sources from published reports, articles.

This paper relies on data from reports, studies and policy papers by governmental institutions, non-governmental organizations, and international organizations. Other sources are universal and regional treaties, international law, international human rights law, and judgments by international and regional institutions.

- The Geneva Conventions 1949
- International Human rights and Humanitarian Law, International Criminal Law
- Reports of Human Rights Watch, Amnesty International, International Crisis Group, UN
- ICJ (International Court of Justice Judgments)
- Case study
- Information from some international law journals

- 1948 Convention on the Prevention and Punishment of the Crime of Genocide, UN
- UN Guiding Principles on Internal Displacement

2 The right to freedom of movement of IPDs in International Human Rights Law

2.1 Universal Declaration of Human Rights, Article 13. UN General Assembly

In the rapidly changing world of globalization and communication people increasingly move across borders. On the contrary, the challenges associated with the internal displacement and forced migration remains one of the biggest obstacles of an independent state and international community nowadays. All these types of migratory movements are closely linked to the legal framework of the freedom of movement. In this section of my thesis chapter I will describe the comprehensive understanding of one of the most important human rights – a right to move freely across the boundaries of states. Here I would like to pursue a general legal understanding and beginning of the freedom of movement in international human rights treaties.

Vincent Chetail in his article “Freedom of movement and transnational migrations: A Human rights Perspective” states, that – “Freedom of movement across borders cannot be found in international human rights instruments. The general concept of freedom of movement finds its normative expression through the right to leave any country and to return to one’s own country. This right is embodied in numerous multilateral instruments relating to human rights both at the universal and regional level. ”

The right to freedom of movement is one of the fundamental rights of international human rights law. It takes its roots from the Universal Declaration of Human rights 10 December 1948 (UDHR). Art.13 (2) acknowledges that: "Everyone has the right to leave any country including his own and to return to his country". The concept of freedom of movement is respected in the constitutions of numerous states including Georgia. In its newly revised constitution Article 22 recognizes the right to freedom of movement, which states, that everyone within the territory of Georgia shall have the right to liberty of movement and freedom to choose his/her residence.

Also Art.22 (2) of the Georgian Constitution declares: “everyone legally within the territory of Georgia shall be free to leave Georgia. Citizen of Georgia may freely enter Georgia”. As we see this right gives the liberty, though it can be restricted in certain cases when the limitation is necessary for the democratic society and according the law regulations. I will refer to this matter later in other chapters of my thesis in detail.

However, review of the history and the origin of right to free movement, it is very much connected to the issue of all forms of discrimination.

Historically the infringement of the freedom of movement was closely linked to the world segregation problem when the people had unequal liberties in this discriminatory system. As James W. Nickel writes:

“A person who is imprisoned or even under house arrest suffers greatly reduced abilities to act in a multitude of areas. Freedom of movement is the liberty to go –and stop- where one pleases within the limits of respect for the liberty and rights of others.”⁵

As we know, the reason of historic severe segregation was to keep blacks away from association with whites, though it caused many other restrictions of basic equal liberties of a person, including the free choice of residence and right to move. According James Nickel- “Residence is closely related to movement, it is a liberty to choose a new place as one’s temporary or permanent home, along with the liberty to resolutely stay in one’s native place if one wishes”.⁶ For example, during segregation as we know, black people were unwelcome in many areas, so those people had no right to freedom of movement and suffered a lot because of so many restrictions. African-Americans were expected to reside in their own neighborhoods, and in case they moved it had to be from one black territory to another, otherwise they would be punished by the authority. According to this, we can note, that discrimination in housing is closely related to the free movement and to enjoy freely the basic right to move, which is so important for any human being and must be protected by the states and law treaties internationally.

In order to prevent the segregation problem and impose the obligation on State parties, we have the 1965 International Convention on the Elimination of all forms of Racial Discrimination,

⁵ James W. Nickel, *Making Sense of Human Rights* (2nd edn, Malden, Mass. : Blackwell Publishing 2007)

⁶ Ibid.

which is ratified worldwide and Art.5 proclaims: “to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights (including notably) (ii) The right to leave any country, including one’s own, and to return to one’s country”.

There are various dimensions of right to move enshrined in international agreements or treaties. For example, Article 28 of the Geneva Convention relating to the Status of Refugees proclaims, that for travelling purposes appropriate documents to be issued for refugees wishing to travel abroad.

There exist also other common political legal restriction on freedom of movement; I’d like to mention one of such restrictions –official identity cards example of Russia\Georgia conflict that was demanded by the Russian authority controlling the South Ossetia and Abkhazia conflict areas. This case was about issuing the licenses from the side of Russian government produced on demand against the Georgian IDP population residing on those conflict territories after the Russia\Georgia wars, in order to restrict their right to free movement to enter their home country freely if they wanted. The Georgian IDPs could only do so and travel to their homeland by only accepting the Russian citizenship and those internal passports in order to travel to Georgia. This is a current severe restriction and infringement of the right to movement, which causes many problems for the Georgian IDPs residing in these de-facto territories. The IDPs number raised more after the recent 2008 August war between Georgia and Russia.

2.2 Freedom of movement as a human right

As we know freedom of movement is enshrined in the foundation document of the human rights –the Universal Declaration of Human Rights. Free movement is one of the important aspects of free life that means better life chances for the well-being and liberty of individual. Freedom of movement as one of the human rights is considered in the ICCPR in greater details that gives the right to leave and return a broad conventional basis ratified by 167 states worldwide.

According to Article 12(2) and (4): “Everyone shall be free to leave any country; including his own...No one shall be arbitrarily deprived of the right to enter his own country”.⁷

“The universal declaration proclaims two broad categories of rights: civil and political rights, on the one hand, and economic, social and cultural rights on the other”.

One of the civil and political rights is the right to freedom of movement. IT recognizes the right of everyone to leave any country, including his own, and to return to his country”. Also guaranteed are the right “to seek and to enjoy in other countries asylum from persecution” and the right to a nationality⁸.

Principle 14 of the UN Guiding Principles states:

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

“In April 1998 the first international standards for internally displaced persons were introduced into the United Nations Commission on Human Rights. Entitled Guiding Principles on Internal Displacement, they were developed by the team of international lawyers under the direction of the Representative of the UN Secretary-General on Internally Displaced Persons. Although not a legally binding document like a treaty, the Guiding Principles reflect and are consistent with international human rights and humanitarian law.”⁹

⁷Thomas Buergenthal, Dinah Shelton, David P. Stewart, *International Human Rights in a Nutshell*,(West Group, 3rd edn, 2004) 36

⁸ Ibid. 37

⁹ Roberta Cohen, ‘The Development of International Standards to Protect Internally Displaced Persons’ in Anne F. Bayefsky and Joan Fitzpatrick (eds), *Human Rights and Forced Displacement* (Martinus Nijhoff Publishers 2000) 76

Besides the above mentioned UN Guiding principles for the protection of internally displaced, there are several General Comments adopted by the Human Rights Committee of the ICCPR (International Covenant on Civil and Political Rights) that refers to the rights of IDPs and the right of freedom of movement. General Comment 27, 02.11.1999 describes:

1.” Liberty of movement is an indispensable condition for the free development of a person. It interacts with several other rights enshrined in the Covenant, as is often shown in the Committee's practice in considering reports from States parties and communications from individuals. “¹⁰

According the author Martin Scheinin: “the general right to freedom of movement and to choose residence within the territory of a country (paragraph I) makes forced displacement of a person or a group *prima facie* unacceptable under the ICCPR. Any such measure would, at least, mean a restriction to or an interference with freedom of movement and would have to pass a justification test under paragraph 3. The scope of legitimate restrictions under Article 12, paragraph 3, may relate to specific areas where the movement and settlement of the population is generally controlled (e.g., military areas or nature conservation areas) or to certain individuals (e.g., asylum-seekers or accused persons who have not been detained but whose free movement is limited while their case is being considered). The acceptability of internal banishment as a form of restriction of a person’s freedom of movement is somewhat open under the ICCPR.”¹¹

A General Comment on freedom of movement (Article 12) 1999:

3. States parties should provide the Committee in their reports with the relevant domestic legal rules and administrative and judicial practices relating to the rights protected by article 12, taking into account the issues discussed in the present general comment. They must also include information on remedies available if these rights are restricted.

¹⁰ UNCHR ‘General Comment 27:Freedom of movement (Art.12)’(2 November 1999) UN Doc CCPR/C/21/Rev.1/Add.9

¹¹ Martin Scheinin ‘Forced Displacement and the Covenant on Civil and Political Rights’ in F. Bayefsky and Joan Fitzpatrick (eds), *Human Rights and Forced Displacement* (Martinus Nijhoff Publishers) 67

According to the General Comment on freedom of movement, 1999 –

“5. The right to move freely relates to the whole territory of a State, including all parts of federal States. According to article 12, paragraph 1, persons are entitled to move from one place to another and to establish themselves in a place of their choice. The enjoyment of this right must not be made dependent on any particular purpose or reason for the person wanting to move or to stay in a place. Any restrictions must be in conformity with paragraph 3.

7. Subject to the provisions of article 12, paragraph 3, the right to reside in a place of one's choice within the territory includes protection against all forms of forced internal displacement. It also precludes preventing the entry or stay of persons in a defined part of the territory. Lawful detention, however, affects more specifically the right to personal liberty and is covered by article 9 of the Covenant. In some circumstances, articles 12 and 9 may come into play together.”

2.3 Right to freedom of movement under international human rights law

It is widely recognized in the international human rights treaties that the right to freedom of movement is one of the important human rights of every person on earth. It gives freedom to a man to take many chances and possibilities that will lead him to success in life in many fields and to move freely worldwide in order to fulfill their goals without any obstacle to use their freedom of movement. The Universal Declaration of human Rights contains several provisions addressing an individual's right to move freely. For example, Article 13 includes a right to move freely within the borders of a nation, and also includes a right to exit one's home country, an opportunity more commonly known as a right to emigrate.¹²

¹² Joy M. Purcell, 'A Right to Leave, but Nowhere to Go: Reconciling an Emigrant's Right to Leave with the Sovereign's Right to Exclude' *The University of Miami Inter-American Law Review* (Vol.39:1, 2007) <http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/unmialr39&div=10&id=&page=>

Let's discuss the origin of the universal legal right to freedom of movement. It was first mentioned as early as 1215 in the English Magna Carta by King John of England. Section 42 of the Magna Carta recognizes the liberty to enter or leave England:

It shall be lawful in future for anyone to leave our kingdom and to return, safe and secure by land and water, except for a short period in time of war, on grounds of public policy- reserving always the allegiance due to us.¹³

Though there were some exceptions accordance with the law such as prisoners, outlaws and natives of any country which were at war with England at that time. Also there is no other older reference to the freedom of movement in any older national constitutions.

As known Human rights theory is founded upon the convergence of two seemingly unrelated fields of law: legal theory and international law. Philosophers such as John Locke and Jean Jacques Rousseau set forth philosophical theories on the rights of man and the organization of governments during the Age of Reason and the Enlightenment. Both Locke and Rousseau believed that each person was endowed with "natural rights" upon birth, and that these rights could only legitimately be restricted through voluntary concession. Their focus on individual worth and autonomy forms the centerpiece of human rights theory, as the basic premise rests upon the principle that all men are born with the same inalienable rights. The theory behind human rights is also rooted in international law in that universal human rights are made possible by individual nations' deference to international standards that may restrict their sovereign powers. Applying this interpretation to immigration, a universal right to emigrate emerges from recognition of a natural right to freedom of movement, followed by 182 formal declarations by sovereign nations that they will protect their citizens' right to freely exit and re-enter their home country.¹⁴

¹³ The Magna Carta 1215, Section 42

¹⁴ Joy M. Purcell, 'A Right to Leave, but Nowhere to Go: Reconciling an Emigrant's Right to Leave with the Sovereign's Right to Exclude' *The University of Miami Inter-American Law Review* (Vol.39:1, 2007)
<http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/unmialr39&div=10&id=&page=>

Freedom of movement is discussed in the fundamental document of human rights, the Universal Declaration of Human Rights 1948. As the following provisions are enshrined in the Article 13 of the treaty:

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

In more details to consider, it declares, that everyone may seek asylum from persecution in other countries and enjoy freely their liberty for better life chances. Also the preamble of the 1948 Declaration proclaims this list of rights ‘as a common standard of achievement for all peoples and all nations’ and in Art. 2 declares that ‘the rights and freedoms’ must be enjoyed ‘without any distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.

Freedom of movement is the ‘first and most fundamental of man’s liberties’. Without it, other rights are precarious. Universally recognized values, such as mutual aid, humanity, hospitality, good faith, all depend on the right to free movement for their efficacy. The world order depends on freedom of movement. Whether one is looking at the encouragement of peace by the easing of demographic resources, or the pursuit of humanitarian objectives, freedom of movement has a central role to play in the modern global order. All are fundamentally interconnected and indivisible from one another.¹⁵

The access to a foreign territory is a necessary component of the right to free movement. This is because it enables individuals everywhere to have the essential alternative of participating in the social processes of another state in an effort to develop their own freedom and appreciation of life.¹⁶

Human rights are important when the country is dealing with vulnerable human beings such as IDPs and refugees, who are in great danger of losing all they have and facing the hardest

¹⁵ Satvinder S. Juss, ‘Free Movement and the World Order’, *International Journal of Refugee Law*, (2004) 16 (3): 289-335

¹⁶ Satvinder S. Juss, ‘Free Movement and the World Order’, *International Journal of Refugee Law*, (2004) 16 (3): 289-335

obstacles of displacement inside or outside the state. As the Secretary-General to the United Nations, Kofi Annan, once said: ‘human rights are what make us human. They are the principles by which we create the sacred home for human dignity: are the expression of those traditions of tolerance in all cultures that are the basis of peace and progress: properly understood and justly interpreted are foreign to no culture and native to all nations. Freedom of movement may be one of the tolerant traditions common to all cultures based on peace and progress.’¹⁷

Even in the Universal Declaration of Human Rights, for those who face the fear of persecution, it can be IDPs or refugees alone, have the right to seek and enjoy asylum in different states.¹⁸

2.4 What other human rights if any derive from the right to freedom of movement?

International right to freedom of movement may include some other human rights that derive from this fundamental right to move. For example, the rights of freedom of speech and association may be closely linked to the right to freedom of movement. Freedom of speech plays an important role in the democracy building process of any country and it is also impossible to guarantee the other rights of the European Convention either.¹⁹

Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfillment.

Although without the freedom of movement it would be difficult to exercise the freedom of speech as it contains to receive and spread the information across the countries and as well as beyond its borders, which can be only guaranteed by the free exercise of the right of freedom of movement.

Freedom of movement, and particularly the freedom to move to another territory, can therefore be said to be a basic human right, like the right to be free from ‘arbitrary interference with a

¹⁷ Ibid.

¹⁸ Universal Declaration of Human Rights 1948, Art. 14

¹⁹ *Fressoz And Roire V. France* (1999) App no 29183/95 (ECHR, 21 January 1999)

person's privacy, family, home' or to be free from attacks on his 'honor and reputation', or 'the right to marry and to found a family', or the right not to be discriminated against, all of which are also enshrined in the Universal Declaration of Human Rights.²⁰

There is also a close link between the right to emigrate and the human right to freedom of movement. According to the social contract theory developed by Jean Jacques Rousseau, particularly applicable to the right to emigrate, is his emphasis on the right of rescission- the citizens should have a right to rescind the social contract they entered into and seek refuge elsewhere if the government takes action in conflict with the will of the people.²¹

The right of rescission supports a right to freedom of movement because in reality a group of citizens who feel mistreated by their government cannot simply dissolve the government and return to a state of nature. However under social contract theory they may withdraw from the government's jurisdiction and emigrate from that society.

Finally, the existence of a universal right to emigrate engages international law. Even if a nation does not allow its own citizens to emigrate, other nations that do will work to protect it. Therefore, each individual not only enjoys the rights guaranteed by his own nation, but also those recognized by international law.²²

The other rights derived from the fundamental human right of freedom of movement are: the right to stay, the right to leave any country, the right to enter one's own country and the liberty of movement and freedom to choose residence. All these rights are closely connected to the issue of internal displacement and the clear starting point for addressing the international forced displacement is under the ICCPR (International Covenant on Civil and Political Rights) in Article 12, relating to freedom of movement. The provision states:

- Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. (Paragraph 1);

²⁰ Satvinder S. Juss, 'Free Movement and the World Order', *International Journal of Refugee Law*, (2004) 16 (3): 289-335

²¹ Joy M. Purcell, 'A Right to Leave, but Nowhere to Go: Reconciling an Emigrant's Right to Leave with the Sovereign's Right to Exclude' *The University of Miami Inter-American Law Review* (Vol.39:1, 2007) <http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/unmialr39&div=10&id=&page=>

²² Ibid.

- Everyone shall be free to leave any country, including his own. (Paragraph 2);
- No one shall be arbitrarily deprived of the right to enter his own country. (Paragraph 4).²³

Now let's discuss one of these provisions separately in the next parts of my thesis.

2.5 Right to stay – as the right included in the freedom of movement

The human wish to settle down or to not to be moved is very common and evident for each person everywhere in this world. To live in one place for a long time from generation to generations makes a longstanding ties between peoples of the same roots and family background, which gives a great security and support for each member of the community and the feeling that that place is there home, which becomes the absolute center of their life. It is always tragic, when moving to a different neighborhoods and places, this type of major change breaks such ties and the relationships between the relatives, friends and families of the same society, which causes stress and nostalgia for a long time for the members. It is clear, that the right to stay has found its very strong influence both as in domestic and international legal provisions too. It should not be surprising that a desire as strong and deep as the desire to stay is reflected in the law. Indeed, once one begins to think in terms of a right to stay, or begins to see it everywhere, in both domestic and international practice.²⁴

The right to stay as a separate notion is not mentioned in any of international treaties, but it is included in some very important human rights and is linked closely to them, such as right to freedom of residence, right to property, freedom of expulsion and the rights to privacy and home, which I will be discussing separately in the following co-sections of this paper.

It is known that, “in both its urban and rural manifestations, the desire to stay where one is, and not to be moved is deeply rooted in the human psyche”.²⁵

²³International Covenant on Civil and Political Rights 1976, Art.12

²⁴ Patrick M. Mcfadden, ‘The Right to Stay’, *Vanderbilt Journal of Transnational Law* (1996) Vol. 29 (1) 4

²⁵ Patrick M. Mcfadden, ‘The Right to Stay’, *Vanderbilt Journal of Transnational Law* (1996) Vol. 29 (1) 2

Probably the biggest victims of the freedom to stay and forced movements are the internally displaced persons and the refugees, who have been for various reasons forcibly taken away from their homes and property. The prior question to address remains how to keep people from being moved forcibly in an unpleasant environment and not deprived their human right to stay where they live? But there is no concrete answer to solve this problem at first, as we are unable to control the unexpected reasons of displacements caused by various factors: natural disasters, wars, political interference or internal fights, that may be one of the reasons for such urgent massive movements and to survive and find a new shelter the victims just have to be moved to possible safer places.

A right to stay has been protected in international law as mentioned before; first context is in war of law, concretely in Article 49 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva Convention), which provides:

“Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent that proper accommodation is provided to receive the protected persons that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.”²⁶

This international convention was finished after World War II and has universal support and influence ever since. It contains very strong and comprehensive clauses on forced movement.

²⁶ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War. 12 August 1949, Art. 49

Concerning the freedom to choose one's residence linked to the right to stay, it involves a right not to be moved.

Still the 'freedom to choose one's residence' is an elusive freedom, and only partially protects a right to stay. A freedom to choose clearly covers the initial decision to move to a place, but not so clearly the continuing residence in a place. The connection between the two is one of logic and standard legal interpretation.²⁷

As we see, a universal right to stay has several aspects, but how it is interpreted in international human rights law documents is the most significant, because it applies to all human beings living within the state's borders without any limitations. These treaties don't specifically contain the term of 'right to stay', but in their closely related rights, they collectively prohibit the forced movement of persons or groups on an international level. For example, nearly every major human rights treaty created since World War II recognized a right not to be expelled from one's own country, a right to be protected against arbitrary interference with one's home and a right to choose residence. Universal Declaration was one of them which condemned the arbitrary exile in Art. 9:

No one shall be subjected to arbitrary arrest, detention or exile.²⁸ And in art. 12 states: no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.²⁹

2.6 (a) Freedom to leave any country, including one's own –Art.12 International Covenant on Civil and Political Rights (ICCPR)

The Human Rights Committee developed a General Comment on freedom of movement (Article 12) in October 1999, which is very interesting for the legal interpretation.

Freedom to leave the territory of a State may not be made dependent on any specific purpose or on the period of time the individual chooses to stay outside the country. Thus travelling abroad is covered, as well as departure for permanent emigration. Likewise, the right of the individual

²⁷ Patrick M. McFadden, 'The Right to Stay', *Vanderbilt Journal of Transnational Law* (1996) Vol. 29 (1) 35

²⁸ Universal Declaration of Human Rights 1948, Art.9

²⁹ Universal Declaration of Human Rights 1948, Art.12

to determine the State of destination is part of the legal guarantee. As the scope of article 12, paragraph 2, is not restricted to persons lawfully within the territory of a State, an alien being legally expelled from the country is likewise entitled to elect the State of destination, subject to the agreement of that State.³⁰

A potential area of overlap between freedom of movement under the ICCPR and refugee law is the right of everyone “to leave any country, including his own”, proclaimed in Article 12, paragraph 2. Although this issue does not pertain to safeguards against forced displacement as such, it might be highly relevant for victims of forced displacement.³¹ In order to enable the individual to enjoy the rights guaranteed by article 12, paragraph 2, obligations are imposed both on the State of residence and on the State of nationality. Since international travel usually requires appropriate documents, in particular a passport, the right to leave a country must include the right to obtain the necessary travel documents. The issuing of passports is normally incumbent on the State of nationality of the individual. The refusal by a State to issue a passport or prolong its validity for a national residing abroad may deprive this person of the right to leave the country of residence and to travel elsewhere. It is no justification for the State to claim that its national would be able to return to its territory without a passport.³²

Additional focus on the right to freedom of movement and the right to leave any country is also enshrined in the Additional Protocol N.4 (Strasbourg, 16 September 1963) to the European Convention on Human Rights (Rome, 2 November 1950) in its Article 2:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.

If we look through the global treaty law how is developing the right to free movement and its components right to leave, to stay, to enter and choose a residence, it has been recognized by

³⁰ UNCHR ‘General Comment 27: Freedom of movement (Art.12)’ (2 November 1999) UN Doc CCPR/C/21/Rev.1/Add.9 (Para 8)

³¹ Anne F. Bayefsky and Joan Fitzpatrick (eds), *Human Rights and Forced Displacement* (Martinus Nijhoff Publishers 2000) 66-67

³² UNCHR ‘General Comment 27: Freedom of movement (Art.12)’ (2 November 1999) UN Doc CCPR/C/21/Rev.1/Add.9 (Para 9)

various major conventions worldwide, starting from the Universal Declaration of Human Rights (Art.13), then it was followed by the ICCPR (Art.12), also by the American Convention on Human Rights (Art.22) and the African Charter on Human and Peoples' Rights (art.12). But in spite of this universal recognition of the right to leave still has not meant true freedom of international movement in real life, as restrictions on passports and decisions of administrations may easily prevent the citizen of any real possibility to travel, emigrate or even leave the homeland.

International travel today requires appropriate travel documents, generally a passport, and possession of such documents thus may be an integral part of the right to leave and return.³³

The right to leave may be the subject of restrictions, which are recognized by law, are necessary to protect public order, national security, public health or morals or the rights enshrined in the Covenant on Civil and Political Rights.³⁴ These conditions show that although the right to leave is, under Article 12, paragraph 3, subject to restrictions and not an absolute right, the obligations that follow are not limited only to a person's "own country". Another state may be interpreted to be under an obligation to allow a foreigner to enter a space within the jurisdiction of that state as a part of the right to leave, even if the determination of the right of the person to enter the territory of that state has not yet been decided and might entail issues not governed by Article 12 of the ICCPR.³⁵

2.7 (b) The right to enter one's own country

Even though that other human rights instruments proclaim the right to enter or return to one's country in absolute terms, as it is expressed in Universal Declaration of Human Rights in its art.13: "everyone has the right to leave any country, including his own, and to return to his

³³Hurst Hannum, *The Right to Leave and Return in International Law and Practice: International Studies in Human Rights* (Martinus Nijhoff Publishers 1987) 20

³⁴ International Covenant on Civil and Political Rights. Art.12 (3)

³⁵ Anne F. Bayefsky and Joan Fitzpatrick (eds), *Human Rights and Forced Displacement* (Martinus Nijhoff Publishers 2000) 68

country”, the International Covenant on Civil and Political Rights provides the following provision: “No one shall be arbitrarily deprived of the right to enter his own country”.³⁶

In normative terms, the right to leave a country cannot be fully exercised without a corresponding right to enter another country...Accordingly, it has been argued that there must thus be a corresponding right to admit a person who has left his own country...if there is an obligation upon a state to let everyone leave it, there must be a corresponding obligation on other states to let people enter it without discrimination.³⁷

According to the legal interpretation of the provisions of UDHR Art.13 and the Covenant (ICCPR, Art.12) individuals should be allowed to travel and reside wherever they desire, while there exists an universally recognized right to freedom of movement, this human right is restricted only to the freedom to leave one’s country, the freedom to re-enter one’s country, and the freedom to choose residence anywhere in one’s own country. International Covenant on Civil and Political Rights in its Article 12, paragraph 4 states: “No one shall be arbitrarily deprived of the right to enter his own country”.

Nowhere in the freedom of movement articles is there language, either explicit or implicit, which indicates that a sovereign has an obligation to allow people into its country. Nor has any state accepted any express obligation to allow aliens to enter its territory in any international human rights treaty.³⁸

The Human Rights Committee in the case *Stewart v. Canada* (Communication No.538/1993)³⁹ state that the phrase “his own country” is broader than the concept “country of his nationality” and may apply to individuals who, while not nationals in a formal sense, are also not “aliens” within the meaning of Article 13. ICCPR.⁴⁰

³⁶ International Covenant on Civil and Political Rights. Art.12 (4)

³⁷ Satvinder S. Juss, ‘Free Movement and the World Order’, *International Journal of Refugee Law*, (2004) 16 (3): 289-335

³⁸ Margaret Benenati, ‘The Exclusion of HIV-positive Aliens: United States Immigration Policy and International Human Rights Law’ *Journal of Transnational Law & Policy* (1995)

³⁹ *Stewart v. Canada* (Communication No.538/1993, UN Doc.CCPR/C/58/D/538/1993(1996)

⁴⁰ Anne F. Bayefsky and Joan Fitzpatrick (eds), *Human Rights and Forced Displacement* (Martinus Nijhoff Publishers 2000) 69

The wording of article 12, paragraph 4, does not distinguish between nationals and aliens (“no one”). Thus, the persons entitled to exercise this right can be identified only by interpreting the meaning of the phrase “his own country”... It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them... In no case may a person be arbitrarily deprived of the right to enter his or her own country⁴¹

It is clear in the context of Art.12, paragraph 4, of the ICCPR, that a state has no right to expel its own citizens arbitrarily, as citizens are protected from the arbitrary deprivation of the human right to enter their own country, it is also meant, and that arbitrary deportation or expulsion is strictly prohibited. In addition, Article 5 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination requires states parties to guarantee equality before the law for all, without distinction as to race, color or national or ethnic origin, particularly in the enjoyment of “the right to leave any country, including one's own, and to return to one's country.”⁴²

2.8 (c) Liberty of movement and freedom to choose residence

The right to freedom of movement includes a right to choose residence freely within the whole territory of a state for everyone who lawfully is in that state. According to ICCPR, Article 12, paragraph 1, persons may enjoy the right to liberty of movement and freely choose a place for themselves to reside.

⁴¹ UNCHR ‘General Comment 27: Freedom of movement (Art.12)’ (2 November 1999) UN Doc CCPR/C/21/Rev.1/Add.9 (Para 20)

⁴² International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 21 Dec 1965, Art. 5

The question whether an alien is “lawfully” within the territory of a State is a matter governed by domestic law, which may subject the entry of an alien to the territory of a State to restrictions, provided they are in compliance with the State’s international obligations. Once a person is lawfully within a state, any restrictions on his or her rights guaranteed by article 12, paragraphs 1 and 2, as well as any treatment different from that accorded to nationals; have to be justified under the rules provided for by article 12, paragraph 3.⁴³

The scope of legitimate restrictions under article 12, paragraph 3, may relate to specific areas where the movement and settlement of the population is generally controlled (e.g., military areas or nature conservation areas) or to certain individuals (e.g., asylum-seekers or accused persons who have not been detained but whose free movement is limited while their case is being considered). The acceptability of internal banishment as a form of restriction of a person’s freedom of movement is somewhat open under the ICCPR.⁴⁴

There is more additional information regarding the freedom of movement and its components in a General Comment No.27, 1999 adopted by the Human Rights Committee:

The right to move freely relates to the whole territory of a State, including all parts of federal States...The State party must ensure that the rights guaranteed in article 12 are protected not only from public but also from private interference. In the case of women, this obligation to protect is particularly pertinent. For example, it is incompatible with article 12, paragraph 1, that the right of a woman to move freely and to choose her residence is subject by law or practice to the decision of another person, including a relative. Subject to the provisions of article 12, paragraph 3, the right to reside in a place of one's choice within the territory includes protection against all forms of forced internal displacement. It also precludes preventing the entry or stay of persons in a defined part of the territory.⁴⁵

It is important to note here the fundamental standards of humanity of the Turku Declaration on Minimum Humanitarian Standards and its article 7 states:

⁴³ UNCHR ‘General Comment 27: Freedom of movement (Art.12)’ (2 November 1999) UN Doc CCPR/C/21/Rev.1/Add.9 (Para 4)

⁴⁴ Anne F. Bayefsky and Joan Fitzpatrick (eds), *Human Rights and Forced Displacement* (Martinus Nijhoff Publishers 2000) 67

⁴⁵ UNCHR ‘General Comment 27: Freedom of movement (Art.12)’ (2 November 1999) UN Doc CCPR/C/21/Rev.1/Add.9 (Paras 5-7)

The displacement of the population or parts thereof shall not be ordered unless their safety or imperative security reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the population may be transferred and received under satisfactory conditions of shelter, hygiene, health, safety, and nutrition. Persons or groups thus displaced shall be allowed to return to their homes as soon as the conditions which made their displacement imperative have ceased.⁴⁶

The right to choose residence and the freedom of movement is also described in the Pinheiro Principles, 2005. Principle 9.1 provides: Everyone has the right to freedom of movement and the right to choose his or her residence. No one shall be arbitrarily or unlawfully forced to remain within a certain territory, area or region. Similarly, no one shall be arbitrarily or unlawfully forced to leave a certain territory, area or region.

Principle 2.1: All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived.⁴⁷

The Pinheiro Principles on housing and property restitution for refugees and displaced persons are designed to assist all relevant categories of peoples, national and international, addressing the legal problematic issues of housing, land and property restitution in such places where displacement has occurred, which led the persons being arbitrarily or unlawfully deprived of their homes, lands, properties or places of residence. These principles apply equally to all refugees, internally displaced persons and others in similar situations who fled across the national borders and who were victims of arbitrarily deprivation of their properties, home, lands, and residence in spite of the nature or circumstances.

⁴⁶ Declaration of Turku. December 1990, Art.72

⁴⁷ The Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005) Principle 2 (1)

2.9 Limitations on freedom of movement. UN Guiding Principles on Internal Displacement 1998

The General Comment No. 27 refers to the issue of the legitimate restrictions of the right to freedom of movement and the right not to be denied entry into one's own country, though the problem of forced displacement is not mentioned separately in this General Comment.

Section 11 of this General Comment provides: Article 12, paragraph 3, provides for exceptional circumstances in which rights under paragraphs 1 and 2 may be restricted. This provision authorizes the State to restrict these rights only to protect national security, public order, public health or morals and the rights and freedoms of others. To be permissible, restrictions must be provided by law, must be necessary in a democratic society for the protection of these purposes and must be consistent with all other rights recognized in the Covenant. Section 12 refers that, the law itself has to establish the conditions under which the rights may be limited. State reports should therefore specify the legal norms upon which restrictions are founded. Restrictions which are not provided for in the law or are not in conformity with the requirements of article 12, paragraph 3 would violate the rights guaranteed by paragraphs 1 and 2.

Section 14 talks about the necessity of the principle of proportionality, those restrictive measures must be appropriate and sufficient to achieve their protective function. Section 15 declares:

The principle of proportionality has to be respected not only in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law. States should ensure that any proceedings relating to the exercise or restriction of these rights are expeditious and that reasons for the application of restrictive measures are provided. In the section 18 there is another very important issue which describes, that the application of the restrictions permissible under article 12, paragraph 3 needs to be consistent with the other rights guaranteed in the Covenant and with the fundamental principles of equality and non-discrimination. Thus, it would be a clear violation of the Covenant if the rights enshrined in article 12, paragraphs 1 and 2, were restricted by making distinctions of any kind, such as on the basis of race, color, sex, language, religion, political or other opinion, national or social

origin, property, birth or other status. In examining State reports, the Committee has on several occasions found that measures preventing women from moving freely or from leaving the country by requiring them to have the consent or the escort of a male person constitute a violation of article 12.⁴⁸

To note ICCPR provisions are very effective means to improve the state compliance to the international human rights standards, especially when it is legally binding under international law and once it is ratified by the states, they have duty to incorporate or interpreted the treaty into their domestic law. By these means states parties have the control on one another's obligations to fulfill the provisions of the ICCPR into practice, monitor the human rights situation in the member states better and also to criticize any incompatibilities with the law.

The provision on Freedom of Movement as described in the ICCPR Article 12 has a specific wide-reaching meaning with the possible above mentioned restrictions and is one of the strongest provisions on this human right in international jurisprudence.

Also there exists another very important document on internal displacement – Guiding Principles on Internal displacement, created by Francis Deng- Representative of the Secretary-General on Internally Displaced Persons, which includes very strong articles regarding the protection of IDPs and the necessity to prevent the displacement worldwide. To consider here, that even though this Guiding Principles are not legally binding, this document still has behind its principles many legal provisions which have a great impact and binding strength for various competent authorities, governments and their legal system.

Principle 5 refers to the protection of persons from the forced displacement:

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.⁴⁹

⁴⁸ UNCHR 'General Comment 27: Freedom of movement (Art.12)' (2 November 1999) UN Doc CCPR/C/21/Rev.1/Add.9 (Paragraphs 11, 12, 14, 18)

⁴⁹ UN High Commissioner for Refugees, *Guiding Principles on Internal Displacement*, 22 July 1998, E/CN.4/1998/53/Add.2, Section II, Principle 5

These Principles also refer to the restriction issues of freedom of movement similarly as it is defined in the ICCPR:

The limitation of the prohibition to those displacements that are arbitrary reflects the fact that most human rights and humanitarian law provisions provide for restrictions on the relevant rights or declare displacement to be permissible in certain situations.

Thus, Article 12(3) CCPR states that the right to liberty of movement and freedom to choose one's residence "shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security"... Similarly, norms of humanitarian law that address the prohibition of forced movement of persons allow for certain exceptions... With respect to occupied territories, Article 49 Geneva Convention IV states that forced movements of persons are allowed, on an exceptional basis, if the security of the population or imperative military reasons so demand.⁵⁰

To sum up this chapter, UN Guiding Principles are very important document in international law respected by both domestic and international authorities that emphasizes on the prevention of internal displacement and also describes the universal human right of freedom of movement and its possible legitimate restrictions.

⁵⁰ Walter Kalin, 'Guiding Principles On Internal Displacement, Annotations', *Studies in Transnational Legal Policy*, (The American Society of International Law and The Brookings Institution Project on Internal Displacement 2000), No. 32 (14-15)

3 THE RIGHT TO FREEDOM OF MOVEMENT OF IDPS UNDER THE DOMESTIC LAW OF GEORGIA: ARE IDPS PROTECTED?

3.1 What is the law protecting the right to freedom of movement of internally displaced persons under the domestic law of Georgia?

“Law of Georgia on Internally Displaced Persons” is a key legal document that refers to the IDPs issues and rights, which is adopted in 1996 and last amended on June 9th 2006. In the preamble we read: “The law of Georgia on Internally Displaced Persons is based on the Constitution and internationally recognized principles of international law, determines the legal status of internally displaced person-IDP, grounds of IDP, as well as his rights and obligations.”⁵¹

Article 1 describes the term IDP as follows: -Internally displaced person –IDP is a citizen of Georgia or stateless person permanently residing in Georgia, who was forced to leave his place of permanent residency and seek asylum within the territory of Georgia due to the threat to his life, health and freedom or life, health and freedom of his family members as a result of aggression of a foreign state, internal conflict of mass violation of human rights or as a result of events determined by the paragraph 11 of article 2 of this law.

In Article 2 there are provided criteria of recognition as IDP and granting IDP status, in private, when a person is forced to flee his place of permanent residence, shall approach the Ministry of Refugees and Accommodation of Georgia or its territorial body for recognition as IDP and granting him IDP status.

At a national level, the Georgian Constitution guarantees the basic rights of IDPs: the right to life, freedom of movement, equal integration into the society, the right to freedom of association, freedom from discrimination. Article 14 guarantees all these basic rights of equality: “everyone is free by birth and is equal before law regardless of race, color, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence”.⁵²

⁵¹ Preamble of the Law of Georgia on Internally Displaced Persons, 9 June 2006

⁵² Constitution of Georgia 1995, Art. 14

Based on the Constitution, the government is obliged to provide the equal socio-economic development without any discrimination, as well as equal cultural and political life irrespective of their national, ethnic, religious or linguistic origin.

There is a separate norm regarding the freedom of movement in the Georgia's Constitution, which mentions the term "everyone" that can be interpreted as all persons living in the territory including IDPs. So, this is the following provision:

"Everyone legally within the territory of the country, have the right to liberty of movement and freedom to choose his/her residence".⁵³

The above mentioned constitutional guarantees are further described in details in other legal documents.

The legal document –"Law of Georgia on Internally Displaced Persons" describes the status of IDP as a person seeking IDP status who applied to the Ministry of Refugees and Accommodation of Georgia to request IDP status and to whom there is a well-founded ground to consider as IDP according to the article 1 of this law.⁵⁴ Paragraph (e) of the same article describes the permanent residence of IDPs – a place of residence from where he was forced to flee and where he is unable to return. Paragraph (f) refers to – IDPs temporary place of residence (place of IDPs registration) – a place of residence of IDP throughout his displacement or a place where he was temporarily accommodated. And in paragraph (g) we read about the special social assistance – amount of money specified by the Georgian legislation to be paid due to the social economic condition of the IDP family.

Article 3 deals with the rights and obligations of person seeking IDP status, according to the Georgian legislation, IDP shall have the right to reside at a temporary place of residence, enjoy free utilities at place of compact settlement, and receive other types of assistance.

The exercise of IDPs rights at their temporary residence is guaranteed by the ministry of Refugees and Accommodation and relevant local self-government bodies, who assist in temporary employment according to the profession, issue allowances and other assistance, guarantee a constitutional right of IDPs to education and free study in the public secondary

⁵³ Constitution of Georgia 1995, Art. 22 (1)

⁵⁴ Law of Georgia on Internally Displaced Persons 9 June 2006, Art. 1(d)

educational institutions, assist IDPs in returning to the place of permanent residence, guarantee place of temporary residence and emergency aid within the territory of Georgia.

In this document of Georgian legislation there are also mentioned obligations of IDPs under the article 5: -IDP is obliged to inform the Ministry of changing his temporary place of residence within the period of month, inform the government authorities in advance in case of leaving the territory of Georgia for more than two months. These are some of the main obligations addressed to IDPs in the Georgian law, which they must obey and fulfill to maintain the status of IDP in Georgia. According Article 5(2) persons with IDP status are entitled to the following benefits: a monthly allowance, temporary residence, free public primary and secondary education, healthcare coverage under existing government programs and assistance in finding temporary employment with their profession and qualifications.

Article 6 refers to the grounds of suspension, loss and deprivation of IDP status and the article 7 provides the state guarantees for rehabilitation of displaced persons at places of their permanent residence and also obliges the government to provide essential social and economic conditions necessary for the safety of IDPs. Also article 9 guarantees the IDP rights:

“1. The rights of IDPs are protected by the state.

1. Any illegal action of the authorities may be appealed to the higher authorities or to the court according to the legislation.
2. Any IDP if termination of his employment record is connected to his displacement shall retain employment record irrespective of his current employment status.”

Currently this is the only legal document dealing with the IDPs rights and duties in Georgia, though there exist few presidential decrees referring to the IDPs’ issues and those international law principles and standards based on the Guiding Principles on Internal Displacement which the Georgian government uses to govern the internal displacement matters in the country.

Another very important document in the national law of Georgia is Decree #47 of the Government of Georgia regarding the adoption of State Strategy on IDPs issued on February 2, 2007. According the document there are two major goals of the state mentioned in the

preamble to create conditions for dignified and safe return of IDPs and to promote decent living conditions for the displaced population and their involvement in society.⁵⁵

Chapter II declares the problems IDPs are facing: lack of material resources and lack of land other immovable property, unemployment, housing conditions, health and education, quality of social services, representation of IDP interests, syndrome of dependence on assistance and lack of initiative and difficulties related to the return and insecurity of returnee IDPs.

In the paragraph 1.7 we read: “favorable conditions encouraging the voluntary return of IDPs to their permanent places of residence do not exist. However, there are cases of spontaneous return on the part of some IDPs. They live under significant risk not only due to the general criminal situation and the frequent and severe human rights violations by the de-facto administration, but also because of their unclear future and the threat of renewal of the armed violence.”⁵⁶

In the third chapter of the State Strategy is described the goals and objectives of the government of Georgia based on the UN Guiding Principles on Internal Displacement in order to reach the peaceful resolution of the conflicts in Georgia, which will become the grounds for safe and dignified return of IDPs to their permanent residence. The State Strategy has two main goals: creation of conditions for the dignified and safe return of IDPs and integration of the displaced population in the society so that IDPs can enjoy legal, political, living and socio-economic conditions like other citizens of the country. In this chapter there is mentioned about the implementation of the Action Plan by the Georgian government “that will determine the mechanisms for ensuring safety, the restoration of houses and productive means, and return of the property, as well as support the mobility of socially integrated IDPs, eradication of discrimination, protection of cultural identity, the creation of adequate living conditions”.⁵⁷

Based on this document on July 30, 2008 the government of Georgia issued Decree #489 regarding the “Adoption of the Action Plan for the implementation of the State Strategy on IDPs”. The document was several times revised and the final version was adopted in Decree

⁵⁵ Decree #47 of the Government of Georgia issued on February 2, 2007 ‘On Approving of the State Strategy for Internally Displaced Persons’, Preamble

⁵⁶ Decree #47 of the Government of Georgia issued on February 2, 2007 ‘On Approving of the State Strategy for Internally Displaced Persons’, Chapter II, 1.7

⁵⁷ Decree #47 of the Government of Georgia issued on February 2, 2007 ‘On Approving of the State Strategy for Internally Displaced Persons’, Chapter IV, 3.1

#575 of the Government of Georgia on May 11, 2010 regarding the amendment to the Government Decree #403 of 28 May, 2009 about “Adoption of the Action Plan for the implementation of the State Strategy on IDPs during 2009-2012”. The introduction states:

“The main goal of the State Strategy is to promote IDPs’ socio-economic integration and improve their living conditions. To reach this goal, the Action Plan strives to provide long term solutions to the accommodation needs of the IDPs, the reduction of their dependency on the state and the integration of the vulnerable IDPs into the state social assistance programs based on clear and transparent criteria until their return becomes possible.”⁵⁸

The achievement of the Action Plan goals for the development of the durable housing solutions and improvement of living conditions of internally displaced persons will be implemented in three stages according to this document. The significant focus will be related to: “voluntary/informed decision making and free choice of IDPs, dialogue with IDPs and their participation in decision-making, gender equality, protection of the rights of the child and respect for other recognized human rights.”⁵⁹

“The stated aim of the Action Plan is to provide a long-term solution to the problems faced by both, new and “old IDPs” and to promote their socio-economic integration. To reach this goal, the Action Plan outlines a number of activities mainly centered on the provision of adequate and durable housing.”⁶⁰

According to the Action Plan, the state has the responsibility to guarantee the full participation of IDPs in the whole process of their social integration in the society and to find the ways for developing the durable housing solutions.

⁵⁸ Decree of the Georgian Government #575 11 May (2010 Tbilisi), Regarding the amendment to the Government Decree #403 of 28 May, 2009 about ‘Adoption of the Action Plan for the Implementation of the State Strategy on IDPs during 2009-2012’

⁵⁹ Ibid., Para.1.5

⁶⁰ Amnesty International, ‘In The Waiting Room, Internally Displaced People In Georgia’, (May 2010 Amnesty International Publications) <http://www.amnesty.org/en/library/asset/EUR56/002/2010/en/7c07f880-b002-4f0c-87f2-fab9a6690a85/eur560022010en.pdf>

To conclude this section, it can be derived, that Georgian domestic law on Internal Displacement is in quite compliance with the main principles of international norms and standards, though it still needs the progress in the realization of the legislation.

3.2 Violation of freedom of movement of IDPs and forced displacement in Georgia after the Russia/Georgia war in August 2008

As a result of the hostilities in northern Georgian conflict area South Ossetia that escalated on 7/8 August 2008, some 133,000 persons became displaced within Georgia, which caused massive violations of human rights, including the deprivation of the right to freedom of movement. The most effective way for the restoration of the deprived right to movement is the return of internally displaced persons to their original residence.

Generally, international treaty law doesn't contain concrete norms regarding the right of IDPs to return to their homes of origin, though there exist few provisions, where this right could be implied as so. For example, Article 13 of the Universal Declaration of Human Rights recognizes the right of all persons to return to their home countries. Also according to Article 12 of the ICCPR (1966, adopted by the UN), everyone have the right to liberty of movement and freedom to choose his residence lawfully within the territory of a state.

Here to note, as the scholar Francis Mading Deng mentioned in his article "the Global Challenge of Internal Displacement": "There are people uprooted and forced to flee from their homes and areas of normal residence as a result of armed conflicts, communal violence, gross violations of human rights, and other man-made or natural disasters. Displacement deprives them from the necessities of life – shelter, food, medicine, and education or employment opportunities and is discriminated against where they reside. And worse, they are oftentimes trapped within the zone of the very conflict which they seek to flee, facing them to move again and again".⁶¹

⁶¹ Francis Mading Deng, 'The Global Challenge of International Displacement', Grand Inaugural Colloquium of the Institute for Global Legal Studies: "The United Nations and the Protection of Human Rights", Washington University in St. Louis, School of Law, (November 18 2000) (2)

The right to return of IDPs has been also recognized in the Guiding principles on Internal Displacement, which declares, that competent authorities have the primary duty and responsibility to establish conditions, and assist internally displaced persons to return voluntarily, in safety and with dignity to their homes or places of habitual residence.⁶²

“It should be noted, that on September 9, 2009, the United Nations Security Council directly recognized the right to return of persons displaced from Abkhazia and South Ossetia”.⁶³

In order to enjoy the right to return freely, it is necessary that the right to freedom of movement of a person is protected, but after the August war 2008 the right to freedom of movement was widely violated.

Large-scale displacement was caused in August 2008 by conflict between Georgia and the Russian Federation over the fate of the secessionist territory of South Ossetia. Most of the people displaced were later able to return homes in areas adjacent to the administrative border with South Ossetia, some 37,000 ethnic Georgians who fled South Ossetia have not been able to return by mid-2009.⁶⁴

Over the years, Georgian people have been displaced by several waves of conflicts. According the survey conducted by the leading international body “Internal Displacement Monitoring Centre”: fighting erupted in the early 1990s in the autonomous areas of South Ossetia and Abkhazia, displacing some 273,000 people within Georgia. Ceasefire agreements were signed by 1994, but hostilities continued sporadically before conflict broke out again in 2008 between Georgia and the Russian Federation over South Ossetia. Around 128,000 people were internally

⁶² UN High Commissioner for Refugees, ‘Guiding Principles on Internal Displacement’, 22 July 1998, E/CN.4/1998/53/Add.2, Principle 28.1

⁶³ A/Res/63/307, On the Status of Persons displaced from Abkhazia, Georgia and South Ossetia, Georgia/GA/10853, September 9, 2009. Public Defender of Georgia – “Report on the Human Rights Situation of Internally Displaced Persons and Conflict-affected Individuals in Georgia; Reporting period January-July 2010 (10) <http://www.ombudsman.ge/files/downloads/en/njyccudreysvwtqszj.pdf>

⁶⁴ IDMC (Internal Displacement Monitoring Centre) Report – ‘Georgia: IDPs in Georgia still Need Attention’, A Profile of the Internal Displacement Situation, 9 July 2009 <http://www.internaldisplacement.org/countries/georgia>

displaced, some for a second time. While the fighting quickly ended and negotiations have continued, all of the conflicts remain unresolved”.⁶⁵

The Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kalin, conducted several missions to Georgia to learn the IDPs situation and observe the improvement process. In one of his reports, there is discussed the issue of return and the restrictions of the IDPs freedom of movement: “Some of the returnees live in the Gali district on a temporary basis and keep some form of accommodation on the other side of the Inguri River in the Zugdidi area. Such an arrangement has been much more difficult to sustain, as freedom of movement across the Inguri River has been restricted since August 2008 after a bomb attack in Gali. While there is some indication that individual families have recently returned or are in the process of returning to the Gali district.”⁶⁶

In August 2008 conflict between Georgia and the Russian Federation hundreds of people were killed and at least 158,000 ethnic Georgians and Ossetians fled their homes in South Ossetia, Georgia proper and Abkhazia. 128, 000 of the people displaced were ethnic Georgians from South Ossetia, from areas in Georgia proper neighboring South Ossetia and from the Kodori Gorge in Abkhazia.⁶⁷

⁶⁵ Internal Displacement Monitoring Center (IDMC) and Norwegian Refugee Council(NRC), *Internal Displacement, Global Overview of Trends and Developments in 2010* (March 2011) http://www.nrc.no/arch_img/9551909.pdf

⁶⁶ United Nations Human Rights Council: ‘Report of the Representative of the Secretary General on the Human Rights of Internally Displaced Persons, Walter Kalin, Follow-up Mission to Georgia’ (23 December 2010) A/HRC/16/43/Add.3 (Para 19) <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-43-Add3.pdf>

⁶⁷ IDMC (Internal Displacement Monitoring Centre) Report – ‘Georgia: IDPs in Georgia still Need Attention’, A Profile of the Internal Displacement Situation, (9 July 2009) (16) <http://www.internaldisplacement.org/countries/georgia>

3.3 Breach of Substantive Rights

During this tragic war of August 2008 between Russia/Georgia the nation and international society witnessed massive violations and breaches of substantive human rights of the peaceful population, which also caused internal displacement. Numerous international human rights institutions and human rights representatives addressed this issue afterwards and conducted the research regarding the war violations in order to find out about the breaches of substantive rights occurred during the hostilities. One of the complaints voiced in the context of the August 2008 conflict was by the Council of Europe Commissioner for Human Rights, Thomas Hammerberg: “after having visited Vladikavkaz, Tskhinvali, Gori, Tbilisi and Moscow from 22 to 29 August, in order to assess the human rights situation in the areas affected by the conflict, concluded that the conflict has had a devastating effect on the human rights of the population. Following his visit, the Commissioner presented six principles for the urgent protection of human rights and humanitarian security, including the need to guarantee the right to return, to ensure adequate living conditions until IDPs can return, the need for demining, to immediately stop physical assault, torching of houses and looting”.⁶⁸

There is a complaint against Russia to the International Court of Justice (ICJ) alleging great breaches of ethnic cleansing of Georgians during the August 2008 war and during the 1990s, also including the violations of the International Convention on the Elimination of All Forms of Racial Discrimination. On 15 October 2008 the ICJ ordered provisional measures to be considered by both Georgia and Russia “to refrain from any act of racial discrimination against persons, groups of persons or institutions and to ensure without distinction as to national or ethnic origin the security of persons, the right of persons to freedom of movement and residence within the border of the State”.⁶⁹

⁶⁸ UN Doc ‘Promotion And Protection Of All Human Rights, Civil, Political, Economic, Social And Cultural Rights, Including The Right To Development, Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons’, Walter Kalin, On His Mission To Georgia A/HRC/10/13/Add.2 (1 to 4 October 2008) (Para 14) <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-43-Add3.pdf>

⁶⁹ Georgia v. Russian Federation (15 October 2008) Case on Application of the International Convention on the Elimination of All Forms of Racial Discrimination, (Para 149 A, (1) and (3) <http://www.icj-cij.org/docket/files/140/14801.pdf>

There is the 2008 OSCE/HRAM report, which indicates the presence of widespread and systematic nature of the attacks on numerous villages in South Ossetia and that they were bombarded. Based on the visit paid to the occupied territories on 7-10 November 2008, the Mission witnessed the factual damage caused to Georgian villages as a result of air strikes: “The evidence indicates indiscriminate and disproportionate bombing resulted in the deaths of numerous civilians and in some instances the deliberate targeting of civilians. In the context of the conflict, these cases provide prima facie evidence of war crimes and potentially even crimes against humanity. The pattern suggests a deliberate plan, through the commission of various criminal acts against the civilian population, to drive out all civilians of Georgian nationality from the region of South Ossetia”.⁷⁰

Another evidence providing the facts of the war is from the OSCE report on the conflict in 2008: “Following the cease-fire, virtually all of the ethnic Ossetians who fled to the Russian Federation have returned. The majority of those whose homes were destroyed during the conflict are living with relatives. The ethnic Georgians who fled have been prevented by the Russian and South Ossetian forces from returning. The Government of Georgia has been caring for these displaced persons in collective centers, with assistance from international humanitarian agencies. The Government has undertaken a crash program of housing construction to accommodate them”.⁷¹

3.4 (a) Violation of the Right to Life

In August 2008 war a lot of human rights violations took place in South Ossetia. The biggest damage was caused by the deprivation of the right to life: “Along with looting and the torching

⁷⁰ Report of the Georgian Non-Governmental Organizations on Violation of Fundamental Human Rights & International Humanitarian Law, August War, 2008. ‘August Ruins’, (Tbilisi 2009) (41)

⁷¹ OSCE ‘Human Rights in the War-Affected Areas Following the Conflict in Georgia’, (27 November, Warsaw 2008) (33)

of houses and the persecution the population, beating, insulting, intimidating, and threatening people were a common occurrence in August-September 2008. Moreover, there were numerous cases of the deprivation of life.”⁷² Right to freedom of life is enshrined in numerous international human rights documents which are binding on the parties to the conflict, including ICCPR Article 6 and ECHR article 2.1. Also in additions to note here, in the conflict situations the Geneva Conventions also apply.

One of the witnesses of the killings in the breakaway region, resident of Eredvi Spiridon Kristesiashvili recalls the tragic fact of Seiran Ozgebishvili killing happened on 8 August in the center of village Eredvi: “Approximately at 10 a.m. I saw 2 jets flying over the village, following which one jet, belonging to the Russian military forces, stormed the civilian population of village Eredvi. Bombs dropped in 500 meters from us, resulting in destruction of houses and killing of villagers: Seiran Ozgebishvili, Tsiala tarielashvili and others.”⁷³

Regarding the death toll resulting from the warfare, the Commissioner Thomas Hammerberg “concluded that a very large number of people had been victimized. More than half of the population in South Ossetia fled the overwhelming majority of them after the Georgian artillery and tank attack on Tskhinvali and the assaults on Georgian villages by South Ossetia militia and criminal gangs. Lawlessness spread in the ‘buffer zone’ controlled by Russia between Tskhinvali and Karaleti and forced many to leave even from there. When several houses and apartment buildings in Gori were hit by Russia rockets, a further wave of displacement took place.”⁷⁴

Within South Ossetia, many villages close to Tskhinvali that were predominantly inhabited by ethnic Georgians were nearly completely destroyed. These villages were pillaged and then set

⁷² Report of the Georgian Non-Governmental Organizations on Violation of Fundamental Human Rights & International Humanitarian Law, August War, 2008. ‘August Ruins’, (Tbilisi 2009) (40)

⁷³ Ibid., (44)

⁷⁴ Council of Europe: Commissioner for Human Rights, *Human rights in areas affected by the South Ossetia conflict. Special mission to Georgia and Russia, by Thomas Hammarberg, Council of Europe Commissioner for Human Rights (Vladikavkaz, Tskhinvali, Gori, Tbilisi and Moscow, 22-29 August 2008)*, (8 September 2008, Strasbourg) (Para 2)

afire following the withdrawal of Georgian forces; these actions appear to have been condoned by the *de facto* authorities. Only a small number of inhabitants now live in these villages, facing dire conditions. In some areas within South Ossetia, including parts of the town of Tskhinvali, the homes of many civilians were destroyed or damaged as a result of bombardment, leaving the residents in difficult circumstances. In the Akhgori area, this recently came under the control of the *de facto* South Ossetian authorities, the population lives in fear following an influx of military personnel.⁷⁵

On the basis of the report of OSCE Mission 2008: “According to individuals interviewed, a disturbing pattern of killings of unarmed civilians continued in a large number of villages after the bombardment ended. Witnesses reported that the perpetrators were often Ossetians – some of whom were described as soldiers and others as civilians – who followed the Russian forces into the villages that were under Georgian administration prior to the August conflict. In Charebi village, for example, two separate witnesses reported that a group of “Ossetians” murdered two village residents in their house.”⁷⁶

The unlawful deprivation of the right to life during the war caused the severe damage to the population in the conflict areas, which was recognized as one of the biggest violation of the fundamental rights and the international humanitarian law, particularly, the IV Geneva Convention (1949, Article 32.)⁷⁷ by the international human rights organizations and international society also referred as the ethnic cleansing.

Report of the International Fact-Finding mission on the conflict in Georgia states: “Ethnic cleansing was really carried out in regard to ethnic Georgians on the territory of South Ossetia during August 2008 conflict and after it.”⁷⁸

⁷⁵ OSCE (Office for Democratic Institutions and Human Rights), ‘*Human Rights in the War-Affected Areas Following the Conflict in Georgia*’, (27 November, Warsaw 2008) (7)

⁷⁶ Ibid.,(35)

⁷⁷ Fourth Geneva Convention 1949, Article 32. “Art. 32: The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishments, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.”

⁷⁸ Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, (September 2009)
http://www.ceiig.ch/pdf/IIFFMCG_Volume_I.pdf

Also it is important to mention the Norwegian Helsinki Committee statement (October 24, 2008). The importance of this statement is the fact, that NHC researchers personally visited South Ossetia and witnessed many unlawful actions:

“Yet, this material strongly suggests a pattern of systematic attacks against the civilian population that continues today. The acts are seemingly aimed at changing the ethnic composition of the population in South Ossetia. During the first phase of the armed conflict (which continued for about five days from 7 August until 12 August), both parties seem to have committed war crimes in the form of indiscriminate bombings and disproportional use of force against mixed or civilian targets. In the second phase of the conflict the civilian population was specifically targeted in those areas effectively controlled by the Russian armed forces.

These actions have led to ethnic cleansing.”⁷⁹

Another similar allegations of ethnic cleansing is addressed in the report of the ‘Independent International Fact-Finding Mission on the Conflict in Georgia’-

“With regard to allegations of ethnic cleansing committed by South Ossetian forces or irregular armed groups, however, the Mission found patterns of forced displacements of ethnic Georgians who had remained in their homes after the onset of hostilities. In addition, there was evidence of systematic looting and destruction of ethnic Georgian villages in South Ossetia. Consequently, several elements suggest the conclusion that ethnic cleansing was indeed practiced against ethnic Georgians in South Ossetia both during and after the August 2008 conflict.”⁸⁰

⁷⁹ Report of the Georgian Non-Governmental Organizations on Violation of Fundamental Human Rights & International Humanitarian Law, August War, 2008. ‘August Ruins’, (Tbilisi 2009) (111)

⁸⁰ Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, (September 2009) (27) http://www.ceiig.ch/pdf/IIFFMCG_Volume_I.pdf

3.5 (b) Torture, inhuman and degrading treatment

Among the human rights violations during the August 2008 war between Russia/Georgia was torture, inhuman and degrading treatment which is protected in many international law documents, including European Convention of Human Rights (ECHR) Article 3,⁸¹ ICCPR Article 7,⁸² UDHR Article 5,⁸³ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (10 December, 1984) and other instruments. The parties of the conflict also have the obligations to prevent the acts of torture and inhuman treatment according the law and international human rights standards. In reality, during the war these rights were heavily violated by the armed forces. As OSCE report states: ‘A few incidents of ill-treatment were reported to the HRAM (A Human Rights Assessment Mission). According to one individual, a man was beaten to death by “Ossetians” in the village of Tirdznisi. A woman from the village of Karaleti reported to the HRAM that “Ossetians” were preventing people from extinguishing fires under threat of being killed.’⁸⁴

Several displaced persons reported specific incidents to the HRAM. A villager from Ksuisi, for example, was threatened and then cut on the face with a knife after he refused to leave the village. Another had his ear cut with a knife and his jaw broken by a blow from a gun. Three villagers who returned to Ksuisi after having fled the village were beaten. A woman from Tamarasheni described being beaten by seven “Ossetian” women while soldiers stood by and

⁸¹ European Convention on Human Rights (ECHR), 4 November 1950, Article 3: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

⁸² International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, Article 7: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

⁸³ Universal Declaration of Human Rights (UDHR), 10 December 1948, Article 5: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

⁸⁴ OSCE (Office for Democratic Institutions and Human Rights), ‘*Human Rights in the War-Affected Areas Following the Conflict in Georgia*’, (27 November, Warsaw 2008) (24)

did not interfere. A villager from Disevi was hiding in the bushes when armed men set his house on fire. As he ran out to try to extinguish the flames, he was shot and wounded.⁸⁵

Interviews with many displaced persons and others affected by the conflict make clear that many remain deeply affected and traumatized by their experiences during the conflict. Many were caught in conflict zones where they witnessed deaths, ill-treatment, and experienced human rights violations. Many lost their homes and possessions.⁸⁶

3.6 Strict Border Control

In August 2008, the international community witnessed an unprecedented attack on the foundations of the international legal order. After many months of provocations and threats from the Russian Federation, Russian Federation military forces crossed the Georgian-Russian border and used military force against Georgia on Georgian territory. This use of force was illegal and unjustified under contemporary international law. It constituted an egregious breach of Georgia's political sovereignty and territorial integrity contrary to Article 2 (4) of the UN Charter and customary international law. It violated also the key principle of non-interventions in international law and relations, and its magnitude and scale made it an act of aggression.⁸⁷

Besides crossing the Georgian border unlawfully, the Russian authorities continue to control Georgian IDPs staying in the breakaway areas even today especially when they try to cross the national border to travel to Georgia. There exist many pressures on ethnic Georgians residing in the conflict territories with the connection to the strict border control. Especially one of the severe forms is the involuntary passportization to acquire Abkhaz citizenship: "According to many local and international accounts, ethnic Georgians in Gali have been pressurized to acquire Abkhaz "citizenship" for which they are required to renounce the Georgian one. Most

⁸⁵ Ibid., (36)

⁸⁶ Ibid., (7)

⁸⁷ Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, (September 2009), Vol III, (232) http://www.ceiig.ch/pdf/IIFFMCG_VolumeIII_HD.pdf

returning IDPs have reportedly not complied, among other reasons so that they continue to be eligible to receive pensions and other benefits from the Georgian government”.⁸⁸

In addition, ethnic Georgian and Abkhaz IDPs residing in Georgia have problems while crossing the administrative borders to visit families in the breakaway areas.

Regarding the acquiring Russian nationality by persons living in Tskhinvali region/South Ossetia and Abkhazia to deny them the free access to the Georgian border, the report of the Independent International Fact-Finding Mission to the Conflict in Georgia states: “the process of illegal passportization of the remaining population of these two regions of Georgia, designed and implemented as a significant component of Russia’s creeping annexation of Tskhinvali Region/South Ossetia and Abkhazia, Georgia. It represented a deliberate and well-constructed policy aimed at directly changing the legal status of the local population to establish a pretext for the right to protect its citizens abroad with the actual aim of interfering in the internal affairs of Georgia, including in the scenario of military intervention of the Russian Federation on the territory of Georgia.”⁸⁹

According the State Strategy Decree of the Georgian Government, also a great attention is given to the criminal situation in the breakaway regions, where the returned displaced population is residing: “For this purpose the government seeks opportunities for internalization of the peacekeeping forces and the deployment of international law-enforcement forces in the problematic regions (Gali).”⁹⁰

⁸⁸ IDMC (Internal Displacement Monitoring Centre) Report – ‘Georgia: IDPs in Georgia still Need Attention’, A Profile of the Internal Displacement Situation, (9 July 2009) <http://www.internaldisplacement.org/countries/georgia>

⁸⁹ Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, (September 2009), Vol III, (180) http://www.cejig.ch/pdf/IIFFMCG_VolumeIII_HD.pdf

⁹⁰ Decree #47 of the Government of Georgia issued on February 2, 2007 ‘On Approving of the State Strategy for Internally Displaced Persons’ (8)

3.7 Restriction of the Freedom of Movement from Georgia to the breakaway regions of South Ossetia and Abkhazia

Freedom of movement of IDPs in the conflict areas have been restricted numerous times by the occupant forces and caused even more problems for the returnees in South Ossetia and Abkhazia. Based on the survey conducted by the Internal Displacement Monitoring Center (IDMC), there exists pressure on ethnic Georgian returnees in Gali, Abkhazia:

“For years, there have been reports of pressure against the 45,000 ethnic Georgian IDPs who returned to Gali. In April 2009, the OSCE High Commissioner of National Minorities urged the de facto authorities to put an end to the pressure being exercised on the Georgian population in Gali through the limitation of their education rights, compulsory taking of Abkhazian passports, forced conscription into the Abkhaz military forces and restrictions on their freedom of movement (OSCE, 14 April 2009).⁹¹

The violation of freedom of movement is in more details explained in the report conducted by OSCE, which states: “Among the most disruptive aspects of the conflict were the constraints it imposed on freedom of movement. Many people were forced to flee from their homes and many have not been able to return. Others felt pressured to return before they considered conditions safe or facilities adequate in their original places of residence. Moreover, the closure of the administrative boundary of the former Autonomous District of South Ossetia is now more strictly enforced than previously by Russian and Ossetian forces impeding the movement of citizens and causing great hardships and disruptions.”⁹²

⁹¹IDMC (Internal Displacement Monitoring Centre) Report – ‘Georgia: IDPs in Georgia still Need Attention’, A Profile of the Internal Displacement Situation, (9 July 2009) (43)
<http://www.internaldisplacement.org/countries/georgia>

⁹² OSCE (Office for Democratic Institutions and Human Rights), ‘*Human Rights in the War-Affected Areas Following the Conflict in Georgia*’, (27 November, Warsaw 2008)

3.8 The dangers IDPs facing on the conflict territories

There are always dangers facing IDPs from the occupant forces that control the South Ossetia and Abkhazia territories even after the war in August 2008 as it was aimed to the ethnic cleansing of the population: torture and inhuman treatment, forced passportization, discrimination on the ethnic basis, strict control on the free movement of Georgian IDPs.

The war ended with hundreds of civilian deaths, thousands of injured and the displacement of almost 192,000 people. Thirty-thousand ethnic Ossetians found temporary refuge in North Ossetia, part of the Russian Federation. The arrival of Russian and South Ossetian forces in ethnic Georgian villages in South Ossetia and on the Georgian side of the administrative boundary reportedly resulted in threats to the ethnic Georgian population and instructions to leave their homes.⁹³

According many sources, international NGOs and human rights experts called the violations of the August war – the ethnic cleansing. Statement made by the Norwegian Helsinki Committee is very important: “Ethnic cleansing continues in South Ossetia conflict zone”, it is a very significant fact, as NHC researchers personally visited South Ossetia and witnessed many unlawful actions: “Yet, this material strongly suggests a pattern of systematic attacks against the civilian population that continues today. The acts are seemingly aimed at changing the ethnic composition of the population in South Ossetia. During the first phase of the armed conflict (which continued for about five days from August 7 until 12 August), both parties seem to have committed war crimes in the form of indiscriminate bombings and disproportional use of force against mixed or civilian targets. In the second phase of the conflict the civilian population was specifically targeted in those areas effectively controlled by the Russian armed forces. These actions have lead to ethnic cleansing. The practice of large-scale looting was accompanied by killings, rape, taking of hostages, deprivation of liberty,

⁹³ Amnesty International, ‘In The Waiting Room, Internally Displaced People In Georgia’, (May 2010 Amnesty International Publications) (10) <http://www.amnesty.org/en/library/asset/EUR56/002/2010/en/7c07f880-b002-4f0c-87f2-fab9a6690a85/eur560022010en.pdf>

beatings, and threats. In several villages the burning of houses and destruction of public and private civilian property had a systematic character.”⁹⁴

4 CHALLENGES GEORGIAN IDPS ARE FACING NOWADAYS

4.1 Difficulties which Georgian IDPs are facing in breakaway regions

There are still difficulties that IDPs from the conflict territories are facing today from the occupant forces: ethnic discrimination, strict control on their freedom of movement to Georgia, property and permanent residence problem, illegal passportization. The Georgian government and the international missions on human rights have conducted several programs to improve the IDPs’ situation since August 2008.

Among them it is important to note the Representative of the Secretary-General on human rights of internally displaced persons, Walter Kalin. He conducted an official mission to Georgia from 1 to 4 October 2008, at the invitation of the Georgian Government: “His main objective was to engage in dialogue with the Government with a view to improving the protection and ensuring the full enjoyment of the human rights of internally displaced persons in Georgia. Accordingly, his assessment identifies key obstacles and conditions necessary to enable internally displaced persons (IDPs) in Georgia to find durable solutions. The representative deeply regrets the current policies of the parties to the conflict on access to the

⁹⁴ Report of the Georgian Non-Governmental Organizations on Violation of Fundamental Human Rights & International Humanitarian Law, August War, 2008. ‘August Ruins’, (Tbilisi 2009) (111)
http://www.osgf.ge/files/publications/2010/Etnikuri_cmenda_English_WEB_version.pdf

Tskhinvali region/South Ossetia, which prevented him from conducting the planned visit to this area.”⁹⁵

According to Mr. Francis Dang - “Many internally displaced persons live in situations of internal tensions or disturbances, or disasters. The terms “internal tensions and disturbances” refer to situations which fall short of armed conflict, but involve the use of force and other repressive measures by government agents to maintain or restore public order. Examples of tensions and disturbances include riots, such as demonstrations without a concerted plan from the outset, isolated sporadic acts of violence, as opposed to military operations carried out by armed forces or armed groups; and violent ethnic conflicts not amounting to hostilities. A situation of serious internal tension characteristically involves specific types of human rights violations such as large-scale arrests and other large-scale measures restricting personal freedom, administrative detention and assigned residence, large numbers of political prisoners, and the probable existence of ill-treatment or inhuman conditions of detention.”⁹⁶

On the example of Georgia’s internal displacement - “the main obstacles to more IDP returns to Abkhazia, Georgia remain political. The authorities in control in Abkhazia are still very reluctant to allow any returns to Abkhazia beyond the Gali District. Even if after so many years of displacement, many IDPs have integrated locally in the places to where they were displaced, conditions should be created to ensure that those who still wish to exercise their right to return can do so. As a minimum, all parties to the conflict should recognize the right of all IDPs to return in accordance with, inter alia, Security Council resolutions on the situation in Georgia.”⁹⁷

⁹⁵ UN Doc ‘Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development- Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons’, Walter Kalin, Addendum Mission to Georgia (13 February 2009) A/HRC/10/13/Add.2 (2) http://reliefweb.int/sites/reliefweb.int/files/reliefweb_pdf/node-301602.pdf

⁹⁶ Mr. Francis M. Deng, ‘Further Promotion And Encouragement Of Human Rights And Fundamental Freedoms, Including The Question Of The Programme And Methods Of Work Of The Commission: Human Rights, Mass Exoduses And Displaced Persons, Internally Displaced Persons’, *Report Of The Representative Of The Secretary General* (5 December 1995), E/Cn.4/1996/52/Add.2, Submitted Pursuant To Commission On Human Rights Resolution 1995/57

⁹⁷ UNHRC (United Nations Human Rights Council): ‘Report of the Representative of the Secretary General on the Human Rights of Internally Displaced Persons, Walter Kalin, Follow-up Mission to Georgia’ (23 December

The Security Council resolution states: “reiterates and reaffirms as fundamentally important the right of return for all the refugees and the internally displaced persons to Abkhazia, Georgia, reaffirms the importance of such people’s return to their homes and property and that individual property rights have not been affected by the fact that owners had to flee during the conflict and that the residency rights and the identity of those owners will be respected, and calls on both sides to implement the UNHCR’s Strategic Directions for their return in the first instance to the Gali region.”⁹⁸

The importance of the voluntary return of IDPs without the deprivation of their right to freedom of movement is also declared in the Security Council resolution 1866 (2009): “Underlines the need to refrain from the use of force or from any act of ethnic discrimination against persons, groups of persons or institutions, and to ensure, without distinction, the security of persons, the right of persons to freedom of movement and the protection of the property of refugees and displaced persons.”⁹⁹

To note here the interesting case of the European Court of Human Rights in 1995 *Loizidou v. Turkey* regarding the Turkish occupation of Northern Cyprus, in which the IDP applicant had been denied access to her property and had, consequently, lost all control over it. In their submission this constituted a continued and unjustified interference with her right to the peaceful enjoyment of property in breach of Article 1 of Protocol No. 1 of the European Convention of Human Rights (P1-1) as well as a continuing violation of the right to respect for

2010) A/HRC/16/43/Add.3 (Para26) <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-43-Add3.pdf>

⁹⁸UN Security Council, *Security Council Resolution 1808 (2008) [on settlement of the Georgian-Abkhaz conflict and extension of the mandate of the UN Observer Mission in Georgia (UNOMIG)]*, 15 April 2008, S/RES/1808 (2008) (Para 9) available at: <http://www.unhcr.org/refworld/docid/4808a6582.html>

⁹⁹UN Security Council, *Security Council Resolution 1866 (2009) [on extension of the mandate of the UN Observer Mission in Georgia (UNOMIG)]*, 13 February 2009, S/RES/1866 (2009) (Para 3) available at: <http://www.unhcr.org/refworld/docid/499d23b12.html>

her home under Article 8 of the European Convention of Human Rights (4 November 1950), (art.8).¹⁰⁰

The European court of Human Rights accused Turkey in this case as an occupant state of Northern Cyprus which interfered with the right of an internally displaced applicant Mrs. Loizidou from Northern Cyprus to access her own property in the occupied region: “The Commission found that the applicant has been and continues to be denied access to the northern part of Cyprus as a result of the presence of Turkish forces in Cyprus which exercise an overall control in the border area.”¹⁰¹ This case example proves that the states have the obligation and responsibility under their jurisdiction to ensure all necessary circumstances for the voluntary return of IDPs in their homes of residence.

Decree #47 of the Georgian Government, adopted on February 2, 2007, regarding the implementation of the “State Strategy on IDPs” also examines the difficulties of the conditions IDPs are facing in the breakaway areas: “The living conditions and economic situation of many IDPs are disadvantageous. The unemployment rate among IDPs is high. For many, their existence depends upon state allowances and international humanitarian assistance. Difficult social conditions are accompanied by poor health status and limited access to quality social services – education and healthcare (especially in Abkhazia and Tskhinvali region)”.¹⁰²

According this Strategy the Government of Georgia is responsible for the safe and dignified return of the IDPs and works to create the necessary conditions to improve the situation of internally displaced. There is also described the problem of lack of material resources, lack of land and housing:

“Poverty and lack of material resources are problems widely spread among IDPs, as well as the general population; however, among these two groups, the structure and nature of these

¹⁰⁰ *Loizidou v. Turkey* (28 November 1996) 40/1993/435/514 Council of Europe: European Court of Human Rights (Para 31) <http://www.unhcr.org/refworld/country,,ECHR,,CYP,,43de104d4.0.html> [accessed 14 June 2011]

¹⁰¹ *Ibid.* (Para 56)

¹⁰² Decree #47 of the Government of Georgia issued on February 2, 2007 ‘On Approving of the State Strategy for Internally Displaced Persons’ (Chapter 1) [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/CC4E01DED8D97366C12575A60031A7B5/\\$file/State+Strategy+for+IDP+-+ENG.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/CC4E01DED8D97366C12575A60031A7B5/$file/State+Strategy+for+IDP+-+ENG.pdf)

problems are different. The majority of IDPs are uprooted from their habitual environment and usual means of production, most notably their land. In general, the lack of real estate - their own house or land - or other means of production represents one of the most characteristic features of the lives of IDPs, and the hindering factor for their achieving self-reliance.”¹⁰³

In order to solve these problems in the breakaway regions, government aims to provide assistance for the durable solutions for IDPs to return by the practical implementation of different accommodation and social programs of the Action Plan.

4.2 DIFFICULTIES AND CHALLENGES INSIDE THE COUNTRY

There also remain challenges for IDPs living inside Georgia since they fled their original homes, including the property and housing conditions, but the main obstacle as described in the report by the Representative of the Secretary-General Walter Kalin on the human rights of IDPs is as follows:

“The main problem encountered by IDPs in Georgia continues to be the absence of political solutions to regional conflicts as observed in the Representative’s previous report and which remains a key concern, as evidenced by the new displacement of some 133,000 persons within Georgia of whom an estimated 37,600 will not be able to return in the foreseeable future.”¹⁰⁴

The chaotic and incoherent (urgent) accommodation of persons displaced due to internal conflicts and the absence to date of a state policy on housing, which would have significantly facilitated the proper resettlement of IDPs, has made housing conditions one of the most difficult and hard to solve problems facing IDPs. Even now, almost the half (45%) of IDPs are

¹⁰³ Decree #47 of the Government of Georgia issued on February 2, 2007 (Tbilisi) ‘On Approving of the State Strategy for Internally Displaced Persons’ (Chapter 2) [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/CC4E01DED8D97366C12575A60031A7B5/\\$file/State+Strategy+for+IDP+-+ENG.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/CC4E01DED8D97366C12575A60031A7B5/$file/State+Strategy+for+IDP+-+ENG.pdf)

¹⁰⁴ UN Doc ‘Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development- Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons’, Walter Kalin, Addendum Mission to Georgia (13 February 2009) A/HRC/10/13/Add.2 (Para 58) http://reliefweb.int/sites/reliefweb.int/files/reliefweb_pdf/node-301602.pdf

accommodated in collective centers. These buildings have lost their primary function, which in many cases has resulted in their depreciation. Most of these buildings are unsuitable for living.”¹⁰⁵

Also the current housing conditions for IDPs in Georgia need a lot of attention as described in the report of the Ombudsmen of Georgia: “During the monitoring of the mentioned living space, it became evident, that minimum living standards had not been met (the roofing is damaged and leaking, doors and windows have not been installed). The rehabilitation work at the given building was commenced during the transferring process of the IDPs to the new accommodation, which is inconsistent with the principles set out in the State Strategy (dialogue with the IDPs and their participation in the decision-making process, 1.5). The above is also in violation of the Law of Georgia on Internally Displaced Persons, as it shows a clear deterioration of living conditions resulting from the re-allocation of IDPs to alternative accommodation.”¹⁰⁶

The most urgent human rights concern is the grave situation facing tens of thousands of persons displaced by the conflict who have not yet been able to return to their former places of residence, as well as the dire conditions facing persons who remained in or have returned to homes and villages that were destroyed or heavily damaged during the conflict and its aftermath.¹⁰⁷

Therefore, one of the main obstacles in the search for durable solutions for IDPs in Georgia remains the absence of political solutions to the conflicts. Once again, the Representative calls

¹⁰⁵ Decree #47 of the Government of Georgia issued on February 2, 2007 (Tbilisi) ‘On Approving of the State Strategy for Internally Displaced Persons’ Chapter 2 (1.3) [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/CC4E01DED8D97366C12575A60031A7B5/\\$file/State+Strategy+for+IDP+-+ENG.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/CC4E01DED8D97366C12575A60031A7B5/$file/State+Strategy+for+IDP+-+ENG.pdf)

¹⁰⁶ Public Defender of Georgia, ‘On the Status of Persons displaced from Abkhazia, Georgia and South Ossetia, Georgia/GA/10853’, *Report on the Human Rights Situation of Internally Displaced Persons and Conflict-affected Individuals in Georgia A/Res/63/307* (9 September 2009) (Reporting period January-July 2010) (14)
<http://www.ombudsman.ge/files/downloads/en/njyycudreysvwktszj.pdf>

¹⁰⁷ OSCE (Office for Democratic Institutions and Human Rights), ‘*Human Rights in the War-Affected Areas Following the Conflict in Georgia*’, (27 November, Warsaw 2008) (6)

upon all parties to take all necessary measures to ensure that all IDPs can exercise their right to make a free and informed decision as to whether to return voluntarily to their homes in safety and dignity, to locally integrate or to resettle elsewhere in the country. Moreover, necessary measures should be taken to secure their right to have their property restored to them or receive compensation where restitution is not possible.”¹⁰⁸

According to principle 29, paragraph 2, of the Guiding Principles on Internal Displacement, all IDPs have the right to have their property returned to them or to receive compensation where restitution is not possible, regardless of whether they choose to return, integrate locally or settle in another part of the country. This right has been explicitly recognized for IDPs from Abkhazia by the Security Council and the General Assembly. In practice, it has proven extremely difficult for persons displaced from Abkhazia, Georgia to exercise this right.¹⁰⁹

5 Conclusion

5.1 Integration of Internally Displaced Persons and resettlement opportunities in a non-discriminatory manner - Action Plan of the Government of Georgia 2008

The biggest challenge remains to integrate the approximately 220, 000 internally displaced persons who have been living in protracted displacement for more than a decade. According to the Representative the adoption of the Action Plan in late July 2008 – decree No.47 of the Government of Georgia “On Approving of the State Strategy for Internally Displaced Persons –

¹⁰⁸ UNHRC (United Nations Human Rights Council): ‘Report of the Representative of the Secretary General on the Human Rights of Internally Displaced Persons, Walter Kalin, Follow-up Mission to Georgia’ (23 December 2010) A/HRC/16/43/Add.3 (Para 37) <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-43-Add3.pdf>

¹⁰⁹ Ibid., (Para 27)

Persecuted” foresees measures aimed at integrating IDPs into mainstream society. The Representative was informed regarding a first draft of the new action plan, and that in accordance with decree No.4 of 12 January 2009, relevant governmental bodies were entrusted to take all necessary measures to finalize the drafting process considering local reintegration and return to be mutually exclusive. The Representative remains concerned about the continues lack of integration of the “old” IDPs as amendments to account for the newly displaced population is given absolute priority by the Government.¹¹⁰

In the same report also there is mentioned the key concern of the unimpeded humanitarian access to the Tshkinvali region/South Ossetia and Abkhazia: “The Representative re-emphasizes his concerns about the law on the Occupied Territories which includes several provisions which may raise concerns as to their compliance with the international human rights obligations of Georgia. He urges the Government of Georgia to take all possible measures, without discrimination, to ensure protection of all human rights for the internally displaced population from or living inside all conflict-affected areas.”¹¹¹

One of the main components to find durable solutions for the internally displaced is their resettlement and reintegration in the society on a non-discriminatory manner. This fundamental principle of law is enshrined in the Guiding Principles on Internal Displacement, principle 28 states:

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities

¹¹⁰ UN Doc ‘Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development- Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons’, Walter Kalin, Addendum Mission to Georgia (13 February 2009) A/HRC/10/13/Add. (3) http://reliefweb.int/sites/reliefweb.int/files/reliefweb_pdf/node-301602.pdf

¹¹¹ Ibid. (3)

shall endeavor to facilitate the reintegration of returned or resettled internally displaced persons.

2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.¹¹²

Another very important legal document dealing the IDPs' property restitution rights and housing issues is "Pinheiro Principles", adopted by the United Nations on June 28, 2005.

"The Pinheiro Principles" are designed to provide practical guidance to States, UN agencies and the broader international community on how best to address the complex legal and technical issues surrounding housing, land and property restitution. For the first time, the Principles provide a consolidated and universal approach to dealing effectively with outstanding housing and property restitution claims. They augment the international normative framework in the area of housing and property restitution rights, and are grounded firmly within existing international human rights and humanitarian law. Principle 2 states: "All refugees and displaced persons have the right to have restored to them any housing, land or property of which they were arbitrarily or unlawfully deprived."¹¹³

According to this document the main responsibility concerning IDPs housing and property issues is the government's primary duty to take all necessary measures to solve their housing problems, to provide adequate living conditions and ensure IDPs rights to property restitution.

Shortly before the eruption of the conflict, in July 2008, the Government had adopted the Action Plan to implement decree No. 47 of the Government of Georgia "On approving of the State Strategy for Internally Displaced Persons - Persecuted" (the Action Plan), a welcome step by the Government which is in accordance with previous recommendations of the Representative and facilitated and supported by numerous international agencies and partners.

¹¹² UN High Commissioner for Refugees, *Guiding Principles on Internal Displacement*, (22 July 1998) E/CN.4/1998/53/Add.2 (Principle 28) <http://www.unhcr.org/refworld/docid/3c3da07f7.html>

¹¹³ The Pinheiro Principles, *United Nations Principles On Housing And Property Restitution For Refugees And Displaced Persons* (2005) (9) <http://www.unhcr.org.ua/img/uploads/docs/PinheiroPrinciples.pdf>

The Action Plan includes measures for (a) the creation of conditions for the dignified and safe return of IDPs, including the creation of conditions for return and provision of assistance to presumed returnees; and (b) support for decent living conditions for the displaced population and for their participation in society, including improvement of the living and socio-economic conditions of IDPs.¹¹⁴

This is a significant document to address the existing problematic issues of the internally displaced in Georgia by undertaking the necessary measures to improve the socio-economic conditions of IDPs by their integration or resettlement opportunities in the community.

Some of the priority areas in the Georgia Action Plan include: to promote peaceful resolution of internal conflicts; Contribute to the conflicts settlement in Abkhazia, Georgia and Tskinali Region/South Ossetia, based on respect of the sovereignty and territorial integrity of Georgia within its internationally recognized borders; Enhanced efforts at confidence building; Consideration of further economic assistance in light of the progress in the conflict settlement process; The need for a constructive cooperation between interested international actors in the region, including the EU and OSCE Member States, on additional efforts contributing to peaceful settlement mechanisms in Tskinali Region/S. Ossetia and Abkhazia; Include the issue of territorial integrity of Georgia and settlement of Georgia's internal conflicts in EU-Russia political dialogue meetings.¹¹⁵

There are obstacles faced to voluntary return of IDPs while the resettlement process in the conflict regions:

Return to Abkhazia – other than to the Gali district – has been ruled out for now by de facto authorities. While 45,000 ethnic Georgians are estimated to have spontaneously returned to the Gali district, there are obstacles to further returns, including a very poor economic situation, destroyed infrastructure and inadequate basic services, as well as continuing criminality, poor law enforcement, a bar on the return of former fighters, and the unwillingness to live under

¹¹⁴ UN Doc 'Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development- Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons', Walter Kalin, Addendum Mission to Georgia (13 February 2009) A/HRC/10/13/Add.2 (Para 19)

¹¹⁵ EU/Georgia Action Plan, (Priority Area 6)
http://ec.europa.eu/environment/enlarg/pdf/enp_action_plan_georgia.pdf

Abkhaz de facto rule. According to the UN Special Representative on the human rights of IDPs, “the scarcity of resources to rehabilitate or reconstruct houses in the Gali district is said to be among the main concerns of IDPs with regard to return.”¹¹⁶

Concerns regarding the housing, land and property restitution is serious and remains challenging: “According to principle 29, paragraph 2, of the Guiding Principles on Internal Displacement, all IDPs have the right to have their property returned to them or to receive compensation where restitution is not possible, regardless of whether they choose to return, integrate locally or settle in another part of the country. This right has been explicitly recognized for IDPs from Abkhazia by the Security Council and the General Assembly. In practice, it has proven extremely difficult for persons displaced from Abkhazia, Georgia to exercise this right.”¹¹⁷

In order to reach the goal of integration and successful resettlement of internally displaced population, the government aims to improve the living and economic conditions of IDPs by declaring the various resettlement programs on the legislative level in the State Strategy document. According to which: “it is necessary to create, or to eradicate the hindering factors, for IDPs to enjoy legal, political, living and socio-economic conditions like other citizens of Georgia. It should be pointed out that from the legal viewpoint, IDPs have all the rights as other citizens of Georgia; despite this, however, they are not fully integrated in the society: a) In accordance with the Constitution of Georgia, IDPs, like other population of the country, have the right to choose any place in Georgia for their residence.”¹¹⁸

¹¹⁶ IDMC (Internal Displacement Monitoring Centre) Report – ‘*Georgia: IDPs in Georgia still Need Attention*’, A Profile of the Internal Displacement Situation, (9 July 2009) (45) <http://www.internal-displacement.org/countries/georgia>

¹¹⁷ UNHRC (United Nations Human Rights Council): ‘Report of the Representative of the Secretary General on the Human Rights of Internally Displaced Persons, Walter Kalin, Follow-up Mission to Georgia’ (23 December 2010) A/HRC/16/43/Add.3 (Para 27) <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-43-Add3.pdf>

¹¹⁸ Decree #47 of the Government of Georgia issued on February 2, 2007 (Tbilisi), ‘On Approving of the State Strategy for Internally Displaced Persons’ (6) (para.2.2.1.)

Providing opportunities for the displaced population to return to their homes represents the main priority and the most important issue for the state. Return of IDPs implies both the currently ongoing spontaneous process as well as their organized return upon the final resolution of the conflict or (in the transitional stage) on the basis of separate negotiation.¹¹⁹

In accordance with all the above, in the case of displaced people in Georgia, local integration is not only an alternative durable solution, but an opportunity for a strategy to allow people to live normal lives until conditions materialize to support sustainable return to their areas of origin. This includes realizing and protecting their rights during displacement as well as building their self-reliance and self-sufficiency. For people in protracted displacement, who suffered the attendant marginalization and social stigma, as well as being disempowered and dependant on meager government assistance for years, more measures than the provision of housing are needed to guarantee their empowerment and to ensure their integration.¹²⁰

5.2 CONCLUSION

Displacement is a symptom of a serious crisis in nation-building which has international ramifications. Displaced people are a microcosm, a sample of the wider community devastated by the indiscriminate violence and destruction characteristic of most internal conflicts, often compounded by racial, ethnic and religious animosities that provide political entrepreneurs with tools of manipulation.¹²¹

The problem of internal displacement is a sensitive one, because it is linked to the willingness of refugee-receiving states to contain refugee flows within the countries of origin. While asserting humanitarian motives, these states may focus on in-country protection simply to

¹¹⁹ Ibid.(8)

¹²⁰ Amnesty International, *'In The Waiting Room, Internally Displaced People In Georgia'*, (May 2010 Amnesty International Publications) (41) (Para 4.6)
<http://www.amnesty.org/en/library/asset/EUR56/002/2010/en/7c07f880-b002-4f0c-87f2-fab9a6690a85/eur560022010en.pdf>

¹²¹ Wendy Devies, *Rights Have No Borders: Internal Displacement Worldwide* (Norwegian Refugee Council, Global IDP Survey 1998) (10)

preclude their asylum obligations from being activated. By preventing the border-crossing of the populations necessary to activate the obligations contained in the 1951 Convention, states avoid these obligations.¹²²

In accordance with the legal topic described above, it can be concluded, that this thesis highlights the concept of internal displacement and the violations associated with the freedom of movement of IDPs in the breakaway areas of South Ossetia and Abkhazia, which caused the war in August 2008 between Russia and Georgia.

Besides the significant measures taken by the Georgian government to ensure the human rights of IDPs and provide the alternative durable solutions for the internally displaced, various challenges still remain to this day. As mentioned in the beginning of the paper, since the government has the responsibility to respect and guarantee the rights of persons residing within its territory or under its jurisdiction, the international protection and assistance from other relevant international Human Rights organizations is still necessary in resolving this problem.

To note here, the conception of the state responsibility was explained in the case of “*Ilascu and Others v. Moldova and Russia*” of the European Court of Human Rights:

“The Court must examine on the one hand all the objective facts capable of limiting the effective exercise of a State’s authority over its territory, and on the other the State’s own conduct. The undertakings given by a Contracting State under Article 1 of the Convention include, in addition to the duty to refrain from interfering with enjoyment of the rights and freedoms guaranteed, positive obligations to take appropriate steps to ensure respect for those rights and freedoms within its territory. Those obligations remain even where the exercise of the State’s authority is limited in part of its territory, so that it has a duty to take all the appropriate measures which it is still within its power to take.”¹²³

The internal displacement still remains the major concern of the Georgian government. “As a result, the increase in the concern for internally displaced persons can be explained by two

¹²² Catherine Phuong, *The International Protection of Internally Displaced Persons* (Cambridge University Press 2004) (4)

¹²³ *Ilascu and Others v. Moldova and Russia*, (2004) 48787/99, Council of Europe: European Court of Human Rights (ECHR 8 July 2004) (Para 313) <http://www.unhcr.org/refworld/docid/414d9df64.html> [accessed 17 June 2011]

reasons of a very different nature, one being humanitarian and the other more political and self-serving, namely to prevent internally displaced persons from becoming refugees. One may conclude that obstacles to population movements are now more political than geographical.”¹²⁴ Solving the problems of displacement in the Caucasus requires political settlement of the disputes that caused them. The governments concerned will have to make difficult political decisions for peace to break out.¹²⁵

In analyzing the legal provisions of human rights law which apply to internally displaced persons, one seeks to demonstrate that states have duties towards these populations, negative obligations (not to displace them, not to inflict human treatment upon them, etc.), as well as positive obligations (to provide sufficient food for them or health services for instance, but also to prevent others displacing them). Reaffirming human rights protection for internally displaced persons thus amounts to reminding the state of the fact that internally displaced persons should still benefit from the same protection as anyone else in the country. Not only should the state treat the internally displaced like the rest of the civilian population but it should also provide extra protection for these vulnerable populations.¹²⁶

Therefore, “nor is the crisis always contained within national borders, for internal displacement is often the first step in the massive outflow of refugees and may trigger the political and economic destabilization of an entire region. Developing an effective system of international protection and assistance for internally displaced people is therefore as much a humanitarian and human rights concern as it is imperative for regional and ultimately international peace and security.”¹²⁷

¹²⁴ Catherine Phuong, *The International Protection of Internally Displaced Persons* (Cambridge University Press 2004) (4)

¹²⁵ Roberta Cohen and Francis M. Deng, *The Forsaken People: Case Studies of the Internally Displaced*, (Brookings Institution Press, Washington, D.C. 1998) (31)

¹²⁶ Catherine Phuong, *The International Protection of Internally Displaced Persons* (Cambridge University Press 2004) (44)

¹²⁷ Wendy Davies, *Rights Have No Borders: Internal Displacement Worldwide* (Norwegian Refugee Council, Global IDP Survey 1998) (10)

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