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REPORT

WAITING FOR RUSSIAN JUSTICE:
The ineffective Russian investigation
of crimes committed during the
August 2008 armed conflict between
Russia and Georgia



NORWEGIAN
HELSINKI COMMITTEE

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Preface

The Norwegian Helsinki Committee (NHC) is a non-governmental organization working to ensure that human rights are respected in practice. NHC monitors and reports about human rights violations, conducts human rights education projects and administers democracy support.

NHC has worked closely with many Georgian and international human rights groups in order to document crimes committed during and after the 2008 war, and monitor the domestic investigation of these crimes in Georgia and Russia. Three human rights groups have contributed information to this report, namely Article 42, Georgian Young Lawyers' Association (GYLA) and Stichting Russian Justice Initiative (SRJI). However, responsibility for the analyses and conclusions rests solely with the NHC.

Data for this report was mainly collected in June-August 2012. The report was written by Simon Papuashvili, and edited by Aage Borchgrevink and Gunnar M. Ekeløve-Slydal.

Background

The present brief report is the third in a series of papers prepared by the Norwegian Helsinki Committee (NHC) and devoted to accountability for the crimes committed during and after the armed conflict between Georgia and Russia in August 2008. The NHC has monitored the war since hostilities erupted, and conducted extensive on-site fact-finding surveys in September and October 2008, with the purpose of establishing a comprehensive documentation of grave human rights violations and violations of the norms of humanitarian law. In the years following the war, the NHC has advocated for accountability for the documented crimes, redress for victims and an end to the climate of impunity associated not only with the August war, but with most other armed conflicts in the Caucasus over the last 20 years.



Ethnic Georgian IDPs from South Ossetia, Gori Region October 2008.

Documenting war crimes in the fall of 2008

In September and October 2008 the NHC, together with several Georgian civil-society organizations, interviewed over 200 victims and witnesses in temporary camps for internally displaced persons (IDPs) and conflict-affected villages and collected photo material suggesting a pattern of wilful property destruction and persecution of the Georgian civilian population in areas controlled by the Russian Federation.

Since the NHC was unable to obtain permission to access the Russian controlled territories the work was mostly done in Georgian controlled areas. Exceptions were villages in the buffer zone temporarily established by Russian forces south of the administrative border between South Ossetia and the Gori and Kareli regions, and the South Ossetian village of Disevi located close to the administrative border, which NHC researchers were able to visit in September and October 2008.

The evidence collected clearly indicated that at least two categories of crimes potentially falling under the jurisdiction of the International Criminal Court (ICC) - war crimes and crimes against humanity - were committed during and in the aftermath of the August 2008 armed conflict.

Initial findings, witness/victim statements and photo materials, were handed over to the Office of the Prosecutor (OTP) of the ICC in November 2008 during the 7th session of the Assembly of States Parties (ASP) to the ICC. Most of the material was later presented in the joint NGO-report *August Ruins*¹ published by the Open Society Foundation, Georgia in May 2010, which included the findings of other Georgian human rights groups, notably Georgian Young Lawyers' Association (GYLA) and Article 42.

¹ http://www.osgf.ge/files/publications/2010/Etnikuri_cmenda_English_WEB_version.pdf



Georgian special police observing a Russian military column near the administrative border, Kareli Region, October 2008.

The first report: Unable or unwilling? Georgia's faulty investigation of crimes

In November-December of 2010, the NHC carried out research in order to evaluate if the investigation initiated by the Georgian Government in relation to the August 2008 events met the criteria laid out in the Rome Statute. In order to assess the nature of the on-going investigations by the Georgian government, the NHC decided to make a study based on a three-pronged approach.

In addition to 1) asking the Georgian government for information on the status of the investigations, 2) research teams were sent to some of the villages in the Gori and Kareli regions to ask witnesses and victims what investigative steps had been taken, and 3) through a telephone survey 244 applicants to the European Court of Human Rights (ECHR) in cases related to the 2008 war were contacted and asked about the investigative steps that had been taken in their cases.

Since there initially was no response from the Georgian government to the requests of the NHC, our assessment was based on interviews of victims and witnesses. Research was done jointly with the Georgian partner organizations Georgia's young Lawyers' Association (GYLA), Article 42 and the Georgian Human Rights Center, and the report was published jointly by the NHC and the three Georgian partners.

The survey of the ECHR applicants and the on-site fact-finding visits indicated an absence of comprehensive and meaningful investigative efforts by the Georgian authorities. The information strongly suggested that Georgian authorities are partly unable and partly unwilling to conduct an effective investigation into international crimes allegedly committed during and after the August 2008 war.

The findings of the 2010 research were presented to the OTP in The Hague in May 2011 in the report *Unable or unwilling? Georgia's faulty investigation of crimes committed during and after the Russo-Georgian war of August 2008 (NHC Report No 2 2011, available at nhc.no)*.



Grave of a Georgian civilian who died in South Ossetian captivity, Kareli Region, October 2008.

The second report: The impunity syndrome in the Caucasus

The NHC conducted a follow up mission to Georgia in October 2011 to clarify if there had been changes in the status of the national investigative process, and to assess the expectations of the local civil society in relation to the outcome of the domestic proceedings as well as the possible impact of ICC investigation on the local socio-political environment in the light of 'interest of justice'.

The NHC-mission met with government officials (Ministry of Justice and the Office of the Chief Prosecutor), and the NHC again conducted a series of spot-checks in some of the villages which the authorities claimed were covered by the on-going investigation. The NHC also conducted interviews with victims/witnesses and representatives of local civil society groups.

The NHC participated at a meeting with the representatives of the Georgian Justice Ministry (MoJ) and Office of the Chief Prosecutor (OCP) together with the Coalition for the International Criminal Court (CICC) and the Georgian Young Lawyers' Association (GYLA) at the end of October. The meeting was followed by a written communication.

The NHC received a four page reply from the MoJ which outlined, in general terms, the investigative steps undertaken by the government in relation to the investigation of the August 2008 crimes. The MoJ underlined the lack of cooperation from the Russian side, pointing out that requests of the Georgian authorities were either dismissed on legally invalid grounds or remained without response.

In mid-October 2011 an NHC researcher visited a number of villages where, according to the government account, investigative measures had been undertaken. The aim was to verify if such investigative steps had in fact been carried out, when they were carried out, and by whom.

The verification was based on targeted, semi-structured interviews with local residents. Overall, the NHC researcher interviewed over 60 individuals in the villages and in IDP-settlements in the outskirts of Gori and at Tserovani. Of the individuals interviewed only seven could recall having been interviewed by what seemed to be representatives of the investigative authorities. The interviewees were unable to recall if the authorities were representatives of the office of the prosecutor, police or another department of the Ministry of Interior.

In all seven cases the contact was made in the period immediately following the August 2008 war (within three months). The interviews/interrogations were the only form of investigative activity that the interviewees could recall. No second contact had been established by the investigative authorities in any of the seven cases.

In its second report, *'The Impunity Syndrome in the Caucasus'* (NHC Report No 3, 2011, available at nhc.no), published after the follow up visit in October 2011, the NHC stressed that it is in the general interest of justice, as well as in the interests of the victims, and, potentially, in the interest of regional stability, that a real and effective investigation is launched and that the ICC has an important role to play. While the principle of complementarity must be respected, the **ICC OTP should at the very least require proof of progress in domestic investigations within a defined timespan.**



Destroyed Georgian military ambulances, Gori, September 2008.

Has there been an effective investigation by the Russian Federation?

In order to contribute to the clarification of the status of the investigative proceedings in the Russian Federation, and in response to queries from various stakeholders, the NHC decided to study the investigation opened by the Russian side.

It is important to note that the material collected by NHC in September-October 2008 described in detail 16 alleged cases of killings of civilians (excluding deaths resulting from cross fire, bombing and shelling at the time of large scale military operations, and accidents with unexploded ordnance) in areas controlled by Russian military forces, many of which seemed to be instances of summary executions. Several interviewees pointed out that the paramilitary groups that allegedly committed the crimes were acting in collaboration with Russian military forces.

Even before the cease fire agreement was signed, public sources reported that the investigative authorities of the Russian Federation were active in documenting crimes that were being committed in South Ossetia. In public statements in the fall of 2008, Alexander Bastrykin, the head of the Investigation Committee under the Russian Prosecutor General's Office, declared that 200 investigators and 29 criminal experts had been assigned to document crimes committed during the hostilities.

According to Bastrykin, the Russian investigation covered two aspects: a) the Georgian attack on the Russian peacekeeping forces and b) attacks on civilians (mostly Russian citizens). A criminal case was opened in relation to Articles 105 (murder of two or more persons) and 357 (genocide)² of the Criminal Code of the Russian Federation. According to the Russian government account, which was allegedly based on the statements of over 5000 victims examined during the investigative process, the purpose of the Georgian attack was not only to drive Ossetians out of South Ossetia proper, but also to destroy them as an ethnic group.

As a first step to learn more about the investigation in Russia, the NHC asked for information from the Russian Government. The letter of request, containing the same set of questions that were asked to the Georgian government was sent to the Prosecutor General of the Russian Federation in May 2012. More specifically, the NHC asked the Prosecutor General the following questions:

² The Criminal Code of the Russian Federation defines genocide as: 'Actions aimed at the complete or partial extermination of a national, ethnic, racial or religious group as such by killing its members, inflicting grave injuries to their health, forcible prevention of childbirth, forcible transfer of children, forcible resettlement, or by any other method of creating living conditions meant for the physical destruction of the members of this group.'

- What specific steps have been taken in relation to crimes that potentially fall within the jurisdiction of the International Criminal Court (ICC crimes), and which were allegedly committed during and after the August 2008 armed conflict?
- In what geographic locations have Russian investigative authorities been carrying out investigative activities, and what were the obstacles in terms of collecting the evidence?
- Has there been any effort to cooperate with Georgian authorities on the matter of investigation of ICC crimes committed during and after the August 2008 armed conflict?
- Is the evidence collected by the Russian authorities sufficient to lead to prosecutions in a foreseeable future?
- Considering the potential difficulties in terms of both documenting crimes and the actual enforcement of prosecutions - does the Government of the Russian Federation intend to refer the case for investigation to the International Criminal Court?
- Are you currently investigating cases of alleged violations committed by Russian servicemen?

At the time of writing (September 2012), the NHC has not received a reply from the Prosecutor General of the Russian Federation.

The NHC has, however, analysed secondary sources that contain relevant information about the official position of the Russian Federation in relation to the investigation of the August 2008 events. Such information was found in three different sources:

- Communication between civil society organizations providing legal aid to the victims of August 2008 conflict, and relevant investigative authorities of the Russian Federation;
- Information provided by the Russian Federation to the Independent International Fact-Finding Mission on the Conflict in Georgia;
- Documentation related to the reporting procedures before the UN Human Rights Committee.

Our overview of these three sets of documents (provided below) reveals serious gaps in the Russian investigation. First, it seems that the decision to start an investigation was political rather than legal and may have been used to justify Russian military intervention into Georgia proper.

Second, the investigation seems to focus exclusively on the attacks on Russian peacekeepers and civilians by the Georgian side, thereby ignoring crimes allegedly committed by the Russian military forces and/or paramilitary groups that were acting with the Russian consent and support.

Third, Russia's unilateral recognition of South Ossetia has turned the region into a legal black hole. Georgia does not have access to the area, while Russia points to the de facto authorities of the unrecognized republic. There are some paradoxes to the Russian position: Because it defends, protects and garrisons South Ossetia, and provides the inhabitants with Russian passports, the region in some respects resembles a federal subject of Russia more than an independent nation.



Russian helicopter and servicemen in an occupied Georgian village in the so-called "Buffer-zone", September 2008.

Communication between NGOs and Russian investigative authorities

Several Russian and Georgian non-governmental organizations (NGOs), including some NHC partners, have provided legal assistance to the victims of the August 2008 conflict. In conjunction with this legal assistance, some NGOs have inquired about the progress of the investigation in the criminal cases opened by the Russian Federation.

In a letter dated 9 January 2009, the Union Article 42 of the Constitution (Article 42), a Tbilisi based NGO that represents victims before the European Court of Human Rights, requested the Prosecutor General of the Russian Federation to provide answers to the following three questions:

- 1) Have Russian authorities formally opened an investigation in relation to the August 2008 events;
- 2) What kind of investigative measures have been undertaken, and
- 3) Has someone been charged or convicted in relation to the abovementioned crimes?

In response, Article 42 was informed that an investigation into the criminal case No 201/374108-08 was being conducted by the Investigation Committee in relation to allegations of genocide and mass killings of residents of South Ossetia with Russian citizenship, as well as Russian peacekeepers.

The same letter stated that conducting a preliminary investigation into crimes committed outside the territory of the Russian Federation did not fall under the competence of the Investigation Committee, except for cases that were directly envisaged by relevant Russian legislation and international agreements of the Russian Federation.

Georgian Young Lawyers' Association (GYLA), another Georgian non-profit organization that cooperates closely with the Russia-based NGOs Memorial and Russian Justice Initiative, has been requesting the launching of an investigation into the crimes committed against the more than 400 victims it represents before the European Court of Human Rights.

On October 18, 2011, GYLA received letters from the Investigation Committee of the Russian Federation stating that the Investigation Committee's preliminary investigation into criminal case No. 201/374108-08, regarding crimes committed in August 2008 during the Russian-Georgian armed conflict, was ongoing.

With respect to some of the individuals GYLA represents (all victims of the Russian-Georgian armed conflict of August 2008), the Investigative Committee claimed that, as

part of that investigation, it was investigating the facts cited in the applications made by GYLA in these cases in 2009.

On February 2012, GYLA sent a letter to the Investigation Committee pointing out that according to the 2009 letters of the Investigation Committee, the investigation of criminal case No 201/374108-08 relates to the alleged genocide and mass killings of Russian residents of South Ossetia and Russian peacekeepers, while with regard to the complaints made by GYLA's clients – ethnic Georgians – the organization had been informed that such investigations fell outside the territorial competence of the Office of the Russian Prosecutor.

The Investigation Committee's 2011 letters contradict this statement of lack of territorial competence as they state that crimes committed against GYLA's clients are being investigated by the Office of the Russian Prosecutor as part of criminal case No 201/374108-08.

GYLA asked the Investigation Committee to clarify why it had overruled the decision to refuse to investigate the complaints made by ethnic Georgians and instead had incorporated their complaints within the investigation of criminal case No 201/374108-08, which appeared to be an investigation unrelated to the complaints made by GYLA's clients.

This question was not answered in the response letter from the Investigation Committee dated 16 March 2012, in which the Russian prosecutor explained that the Investigation Committee repeatedly had requested the competent Georgian authorities for assistance, such as information about the relevant investigative actions and documents that could testify to the accuracy of the information contained in the complaints of the Georgian citizens. However, the Main Prosecutor's Office of Georgia (within the Ministry of Justice) had apparently refused to provide assistance regarding case No 201/374134-08.

In numerous letters between the NGOs/victims and the Russian Investigation Committee, the latter has consistently underlined that the lack of cooperation from the Georgian Government hampers the acquisition of information needed to make progress in the investigation. As an alternative, the Investigation Committee has proposed that victims residing in Georgia could travel to the Russian Federation in order to appear before the Committee. According to the articles 42-44 of the Russian Code on Criminal Procedure, such an appearance could result in formal recognition of victim status, which could give rise to civil claims related to the criminal case.

In the same letters, the Investigation Committee explained that based on article 131 of the Russian Code on Criminal Procedure, all expenses related to the appearance before the Committee will be fully compensated by the Russian Government, and that

it guarantees that information acquired during the questioning will exclusively be used for the investigative purposes. As far as we know, no Georgian victim has accepted this invitation.



Ethnic Georgian woman describes how she was forced to leave her house by armed men. Zugdidi Region September 2008.

Information provided by the Russian Federation to the Independent International Fact-Finding Mission on the Conflict in Georgia

One of the issues addressed by the Independent International Fact-Finding Mission on the Conflict in Georgia (the so called Tagliavini Commission), was the investigation of alleged crimes committed during the August 2008 conflict, as well as in the preceding period starting from 1990. The Tagliavini Commission asked both governments: ‘What investigations and prosecutions have been launched since 1990 by your judicial authorities against members of your forces, members of local forces and against civilians in relation to crimes committed in relation to the conflict?’

In its reply the Russian authorities distinguish between:

- Investigation in relation to the acts committed against peacekeepers;
- Investigation in relation to the death of servicemen from Russian Federation Armed Forces who took part in military operations, and
- Investigation related to other alleged crimes.

The answer reads that ‘in relation to the death of 10 and injuries sustained by 36 servicemen of the peacekeeping contingent from the Russian Federation Armed Forces, caused by Georgia’s unlawful use of military force in the South Ossetian Republic on 8 August 2008, the military crimes investigation unit in the North Caucasus military district reporting to the Inquiry Committee appointed by the Russian Federation Prosecutor General’s Office, opened criminal case No. 14/00/0051-08 based on the attributes of a crime contemplated in paragraphs ‘a,b,e’ Section 2, Article 105 of the Russian Federation Penal Code (murder of two or more persons in their line of duty using socially dangerous means)’.

The deaths of the servicemen from the Russian Armed Forces, soldiers who took part in military operations, is handled by the military investigations unit in the North Caucasus military district, which reports to the Office of the Prosecutor General of the Russian Federation in criminal case No. 14/00/0052-08 based on the paragraphs a, b and e of Section 2, Article 105 of the Russian Federation Penal Code.

In the same reply Russian authorities explain that: “no instances have been identified where the Russian side would resort to unlawful methods of conduct of war in the course of the Georgian South-Ossetian conflict” and that “during the hostilities, no crimes were perpetrated against civilians by any military personnel, other troops, military units or authorities of the Russian Federation {...} Control and monitoring materials as well

as data requested by military prosecutors did not substantiate the allegations claiming that Russian servicemen carried out extrajudicial executions of Georgian nationals, that their property had been pillaged, that ethnic Georgians had been forcefully placed into detention camps, that they had been denied the right to return to their homes, that Russian military personnel had failed to adequately protect ethnic Georgians, nor the air/rocket strikes and artillery fire had been directed against social infrastructure facilities in the territory of South Ossetia and Georgia.”

The letter further explains that the relevant investigative actions with respect to members of South Ossetian paramilitary units, as well as civilians who committed crimes related to the military conflict, are being fully undertaken by South Ossetian law enforcement.



ICRC trucks parked beneath the Stalin statue in central Gori, September 2008.

August 2008 events in the reporting procedure before the UN Human Rights Committee

Documents from Russia's reports to the UN Human Rights Committee reveal that the Russian Government refuses to accept responsibility for the crimes committed during and in the aftermath of the August 2008 conflict, pointing out that it is South Ossetian authorities who are in charge and who should be investigating.

In its sixth state report, the Russian Government argued before the Committee that no crimes were committed by the Russian military forces or other military groups against the civilian population on the territory of South Ossetia. Notwithstanding the position of Russia that it does not take responsibility for possible crimes by armed groups, the Committee expressed its concerns about allegations of large-scale, indiscriminate abuses and killings of civilians in South Ossetia during the military operations by Russian forces in August 2008.

The Committee recalled that the territory of South Ossetia was under the de facto control of an organized military operation of the State party (Russia), which therefore bears responsibility for the actions of such armed groups. The Committee further noted with concern that by the date of deliberation (November 2009), the Russian authorities had not carried out any independent and exhaustive appraisal of serious violations of human rights by members of Russian forces and armed groups in South Ossetia, and that victims had received no reparations.

In this regard the Committee recommended that: "the State party should conduct a thorough and independent investigation into all allegations of involvement of members of Russian forces and other armed groups under their control in violations of human rights in South Ossetia. The State party should ensure that victims of serious violations of human rights and international humanitarian law are provided with an effective remedy, including the right to compensation and reparations."

In its comments to the concluding observations issued by the Committee (CCPR/C/RUS/CO/6) after consideration of the country's sixth periodic report, the Russian Federation once again refused to admit responsibility for the actions of any armed groups other than the Russian military. The Russian Government argues that "the criminal prosecution of persons for possible criminal acts committed during the August conflict falls under the jurisdiction of the Republic of South Ossetia."

According to this reasoning the "state bodies of the Republic of South Ossetia independently exercise full State control over the republic's territory and independently

deal with such tasks as ensuring public security, controlling the borders and the observance of human rights, including those of displaced people. The actions of the South Ossetian authorities and of persons located in the republic's territory are fully under the jurisdiction of the Republic of South Ossetia."

In the same reply the government claims "that the Russian Federation has never exercised effective control (nor has it exercised "de facto control", a concept unknown under international law) over the territory of South Ossetia. The legal basis for the introduction in August 2008 of Russian troops into South Ossetia and later into Georgia itself was the right to self-defence established in particular under article 51 of the Charter of the United Nations. The Russian Federation's exercise of the right to self-defense was justified by the large-scale attack by Georgia on its armed forces' peacekeeping contingents legally stationed in South Ossetia with the consent of Georgia."

In support of its argument, the Russian Government made a reference to the report of the International Fact-Finding Mission on the Conflict in Georgia which noted that a large number of violations of international humanitarian law and of human rights law took place and "were due to the action of irregular armed groups on the South Ossetian side that would not or could not be adequately controlled by regular Russian forces."

Analogy from Chechnya wars

The lack of effective investigation of crimes committed during the armed conflict in Chechnya serves as an alarming analogy to the Russo-Georgian conflict. In the majority of the more than 200 judgments delivered by ECHR in relation to grave human rights violations in Chechnya during the so-called second war (which broke out in 1999), the Court found serious shortcomings in domestic investigative proceedings, which often became the basis for finding the violations of various provisions of the European Convention.

Detailing massacres, systematic disappearances, torture and a near-total absence of legal remedies for the citizens, the so called Chechen cases constitute by far the darkest and most atrocious chapter in the history of the Court. Even though the Russian Federation only became a member of the Council of Europe in 1996, it has been convicted of right to life violations more times than all the other member states combined since 1959.

The administrative practice of non-compliance with the requirement to effectively investigate abuses committed by Russian servicemen and members of the police, both in times of relative peace and during deadly armed clashes, contribute to a persistent climate of impunity for crimes committed during the so-called counter-terrorist operation and its aftermath, in Chechnya and eventually in the neighboring republics of the North Caucasus.

The applicants in the cases of *Isayeva v Russia* (57947/00), *Yusupova v Russia* (57948/00) and *Bazayeva v Russia* (57949/00) claimed that they were the victims of the indiscriminate aerial bombing of a convoy of civilians in their cars attempting to leave Grozny on 29 October 1999. As a result of the bombing, two children of the first applicant were killed and the first and second applicants were injured. The third applicant's car and possessions were destroyed. The applicants alleged violations of Articles 2, 3 and 13 of the European Convention of Human Rights and of Article 1 of Protocol No. 1 (the right to peaceful enjoyment of possessions).

After having examined the parties' submissions, the ECHR concluded that the investigation fell short of meeting the conditions of effective investigation since it did not take sufficient steps to identify other victims and possible witnesses of the attack. While some attempts were made to locate the first and second applicants, it does not appear that such attempts were made in respect of the third applicant. No testimonies were collected from them, and no victim status was awarded to them in accordance with domestic legislation.

In the Isayeva case the ECHR further noted that the applicant should have been able to avail herself of an effective and practical remedy capable of leading to the identification and punishment of those responsible and to an award of compensation, for the purposes of Article 13. However, since the criminal investigation into the circumstances of the attack was ineffective in that it lacked sufficient objectivity and thoroughness, and as the effectiveness of any other remedy that may have existed, including the civil remedies suggested by the Government, consequently was undermined, the ECHR found that the State had not met its obligations under Article 13 of the Convention.

The Court came to similar conclusions in the cases of *Khashiev and Akayeva v Russia* (Applications nos. 57942/00 and 57945/00), and again found that the State had failed in its obligation to provide an effective remedy under Article 13 of the Convention. In the case of *Alkhadziyeva v Russia* (Application no. 68007/01), the Court noted again that in circumstances where the criminal investigation into a person's disappearance and death was ineffective and the effectiveness of any other remedy that may have existed, including the civil remedies suggested by the Government, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention.

The abovementioned cases are a very small portion of the cases in which the Russian investigative authorities proved unwilling to carry out an effective investigation capable of leading to the identification and punishment of those responsible. Article 13 violations are the refrain of the Chechen cases, and evidence of the climate of impunity.

Even more troubling is the incomplete implementation of the decisions: Russia pays compensations to the victims, but does not conduct effective investigations, even in the cases where suspects are mentioned by name in the Court's decisions. The Isayeva case mentions the commanding officers responsible for ordering the attack that led to the deaths of civilians by name, yet Russia has not investigated. There seems to be a complete lack of will to ensure accountability.

For this reason, an application for the initiation of infringement proceedings against Russia in line with Article 46 of the Convention was lodged with the Council of Ministers by the Russian NGO Memorial and the UK-based European Human Rights and Advocacy Center (EHRAC) in August 2012. If the application is approved, the Isayeva case may be referred back to the Court again.

Another alarming trend in the Chechen cases is the use of statutes of limitations to justify the failure to investigate the grave crimes committed. According to Article 78 of the Russian Criminal Code, a 15 year limitation period applies to "especially grave crimes", which the same Code defines as crimes whose commission carries a penalty in the form of deprivations of liberty for terms exceeding 10 years, or a more severe punishment.

A 10 year limitation period applies to “grave crimes” defined as crimes whose commission carries a penalty in the form of deprivations of liberty less than 10 years. The only exception from this rule (statutory limitations) is crimes committed against the peace and security of humankind including the planning, preparing, unleashing or waging of an aggressive war, use of prohibited means and methods of warfare, genocide and ecocide.

Increasingly, Russian authorities are applying statutory limitations to close the criminal cases related to the allegations of grave crimes. In May 2010, the Investigative Committee of Ingushetia informed the applicants in *Hadishov and Tsechoyev v Russia* that the criminal investigation in their case had been terminated because the statute of limitations had run out. In March 2011 the applicants in the case of *Akhmadov and Others v Russia* were informed that the criminal investigation in their case had been terminated for the same reason.

Considering the political attitude of the Russian Government towards the Russo-Georgia conflict, and the results that have been achieved so far in the investigation of the alleged crimes, it seems likely that the August 2008 crimes will be handled in a similar manner to the crimes committed during the Chechen wars.



Ethnic Georgian IDPs, Gori September 2008.

ICC's preliminary examination of the Georgia war

A preliminary examination of “the situation in Georgia” was announced by the ICC on 14 August 2008. In December 2011, the Office of the Prosecutor of the ICC (OTP) made public its report on preliminary examination activities. The report details that the Office has received a stunning 3830 communications on the Georgia situation. It is not clear what the nature of these communications are, but one can assume that it is a mixture of reports from governmental sources, civil-society organizations representing victims’ interests and possibly information sent to the Court by the victims themselves. While clarifying that the case falls within the ICC’s jurisdiction under the territoriality principle (as Georgia has ratified the Rome Statute), the OTP also asserts that there is a reasonable basis to believe that two categories of crimes – war crimes and crimes against humanity – have been committed. In the years following the war, the OTP has maintained contacts with the competent national authorities “with a view to assessing whether they are actually willing and able to bring the perpetrators to justice.”

A report by the Russian Embassy to the ICC to the OTP explained that “factors create an obstacle to genuine advancements in the national investigation of the criminal case, preventing the possibility to properly bring to justice alleged perpetrators of crimes with the jurisdiction of the Russian Federation.” Further, “the Georgian side has refused to provide assistance in relation to the criminal case”, and “senior officials of foreign states including those of Georgia enjoy immunity from the criminal jurisdiction of the Russian Federation”.

Conclusions and recommendations

Three obvious similarities between the behavior of Russian and Georgian authorities in handling the investigation related to the August 2008 events are apparent. First of all, investigations are highly politicized and there is a clear lack of will to restore justice by punishing perpetrators or compensating the victims.

Second, the investigative processes in both countries lack transparency. Lawyers representing victims as well as civil society organizations working on the issue, are unable to obtain detailed information that could explain at what stage the investigative proceedings are in a given moment. Neither the NHC nor any other organization with whom NHC cooperates have been able to obtain meaningful information on the status of the investigation from the Georgian or Russian Government or, for that matter, from the ICC. Lack of information creates problems in assessing the effectiveness of the investigative steps that both Russian and Georgian Governments are claiming to take.

Third, the authorities of the two countries go hand in hand in denying their own wrongdoings and focusing on the wrongdoings of the other. While the Georgian investigation seems to have at least formally included the charges against the wrongdoings of the Georgian military, Russian authorities deny any wrongdoing by the Russian military forces and any responsibility for local paramilitary groups, who according to the official Russian position did not act under Russian control.

Four years after the conflict not a single person, neither in Russia nor in Georgia, has been convicted of the crimes committed in the context of the August 2008 war. Based on the findings of our research into the status of the investigations, NHC believes that the chances that somebody will be convicted in the future are small. Russia's recognition of the Republic of South Ossetia, which is regarded Georgian territory by the international community, has created a legal black hole. Georgia has no access or control, while Russia claims that jurisdiction rests with the local authorities.

Unfortunately, the ICC, which is viewed by the local civil society as the only remaining hope for breaking the deadlock and achieving justice, does not engage itself heavily in the situation. Both governments continue to supply the Office of the Prosecutor of the ICC with information that is meant to convince the OTP that domestic investigations are ongoing and will lead to results. In reality this seems to be done with the intention of creating formal barriers for the ICC to start an investigation into the situation.

Without a more proactive approach, the ICC risk being seen as irrelevant in the Caucasus. This would constitute a dangerous signal in a volatile region, where armed

conflicts could flare up again. The extent to which the complementarity framework can be stretched is in the hands of the ICC itself. It has two alternatives: to content itself by lengthy reports received from the two governments for years to come until the next large scale incident erupts, or to make a decisive move by devoting sufficient time and resources to processing the information that could result into opening of an investigation.

The ICC should at the very least demand concrete results from the competent national authorities within a clearly defined timeframe, and the OTP should start preparing for the possible opening of an investigation into international crimes committed during the August war.



Bloodstains from a site where two ethnic Georgian civilians were shot and killed, the Buffer zone, Gori Region September 2008.



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