
Transitional Justice and Georgia's Conflicts: Breaking the Silence

Magdalena Frichova

ICTJ New York
5 Hanover Square, 24th Floor
New York, NY 10004
Tel + 1 917 637 3800
Fax + 1 917 637 3900

ICTJ Brussels
Blvd. Bischoffsheim 11, 8th floor
B-1000 Brussels, Belgium
Tel: +32 2 227 6140

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About the Author

Magdalena Frichova is a political and conflict analyst, currently working for International Center for Transitional Justice and International Crisis Group (Crisis Group) in Brussels. She has worked in the Caucasus over the past decade, most recently as the Tbilisi-based Caucasus project director for Crisis Group. Prior to that, she worked for the Organization for Security and Cooperation in Europe, the High Commissioner on National Minorities and International Alert.

About ICTJ

The International Center for Transitional Justice assists countries pursuing accountability for past mass atrocity or human rights abuse. ICTJ works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remain unresolved.

The use of geographical names in this report should not be interpreted as implying an ICTJ position on the political status of the mentioned locations.

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ACRONYMS

CIS	Commonwealth of Independent States
EU	European Union
GEL	Georgian Lari
HROAG	Human Rights Office Abkhazia, Georgia
HRW	Human Rights Watch
ICTJ	International Center for Transitional Justice
IDP	Internally Displaced Person
IIFMCG	International Independent Fact Finding Mission on the Conflict in Georgia
IMT	Institute of Multi-Track Diplomacy
JCC	Joint Control Commission
JPKF	Joint Peace Keeping Force
NATO	North Atlantic Treaty Organization
NGO	Nongovernmental Organization
OSCE	Organization for Security and Cooperation in Europe
SSR	Soviet Socialist Republic
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNOMIG	United Nations Observer Mission in Georgia

Executive Summary

This report examines the conflicts involving Georgia from a transitional justice perspective. It analyzes how the obstacles in the conflict resolution processes can be reduced by addressing legacies of past abuses by all sides. The underlying assumption of such an approach is that it is necessary to deal with traumatic legacies of the past in order to build a stable future; that special attention should be paid to the needs and rights of victims; and that this requires a comprehensive approach encompassing restorative as well as retributive justice with the overall aim of preventing recurrence of conflict and building a just and stable society.

Georgia's overlapping legacies of abuse are rooted in its repressive Soviet past, a turbulent democratic transition, and violent Georgian-Abkhaz, Georgian-Ossetian and Georgian-Russian conflicts. They need to be addressed because they are undermining the country's stability and stalling its attempts to democratize and risk contributing to the recurrence of violence in conflict areas. So far transitional justice approaches have not been explored strategically in Georgia's context, despite the fact that the societies in Georgia proper as well as its break-away territories have voiced strong demands for justice. By pursuing a transitional justice agenda, starting first with an informal process, conflict resolution efforts can be improved and the risk of abusive governance reduced. The international community, with the EU taking a prominent role, should reinforce demands for justice and support accountability mechanisms (judicial and nonjudicial) as long-term conflict resolution and democratization tools. This can be done by generating dialogue across conflict divides and within each society with a transitional justice focus; providing substantive thematic expertise for further work in areas of documentation and truth-seeking, prosecutions and reparations; and supporting local capacity to work on these issues and to strengthen institutions.

The country's transition from Soviet totalitarianism has been marred by ethnic repression, gross human rights violations, judicial arbitrariness and official impunity in its first independence years. The erratic and nationalistic discriminatory policies of the first president, Zviad Gamsakhurdia prompted wars in South Ossetia (1990-1992) and Abkhazia (1992-1993). They resulted in Tbilisi's loss of control over these territories. Since then, Abkhaz and Ossetians have lived in a parallel reality of their own, governed by de facto state institutions.

Gamsakhurdia's period was followed by chaotic lawlessness under his successor, Eduard Shevardnadze. During his early years paramilitary groups engaged in arbitrary violence and later his security agencies sought to curb the chaos with excessively repressive methods, including the use of torture, and arbitrary trials. Shevardnadze's half-hearted democratization and reform efforts were overwhelmed by systemic corruption and arbitrariness, and impunity in law enforcement. By the end of his rule in 2003, Georgia was a failing state with debilitated institutions and a dysfunctional economy.

A wave of popular protests in Georgia proper triggered by a rigged election prompted Shevardnadze to resign in November 2003, in what became known as the Rose Revolution. In January 2004, its main leader, Mikheil Saakashvili, was elected president with an overwhelming majority and a strong mandate to address past governance failures. Many reforms have been achieved; economic liberalization has been notable, and widespread systemic corruption has been largely curbed.

Yet his rule has been tumultuous. The heavily centralized presidential system with inadequate checks and balances has benefited from little reform. The independence of the judiciary and media is questionable. As disillusionment replaced post-revolutionary hopes, public trust in governmental institutions and in procedural fairness has plummeted. The government's failure to credibly and constructively address demands from the opposition and civil society for transparency and accountability led to large-scale public protests in November 2007 and a violent crackdown by authorities. Although Saakashvili pledged a new wave of reforms after the August 2008 war with Russia and South Ossetia, many of his promises have not been fulfilled. After launching large scale street protests on 9 April 2009, Georgian opposition groups now demand Saakashvili's resignation.

Conflicts in Abkhazia and South Ossetia in the 1990s and the August 2008 war had tragic consequences for civilians. Thousands were killed or injured, several hundred thousand civilians were displaced, and there was widespread destruction of private property and public and social infrastructure. All sides in these conflicts committed gross violations of humanitarian law, and human rights abuses also continued following ceasefires. Conflict resolution processes have lacked progress and energy. Parties to conflict have deferred a common search for justice as an issue for which the time was not ripe. They have used rights arguments to claim the moral high ground during negotiations and when lobbying for international political support. By selectively emphasizing infringements that one group has suffered, similar claims from other groups have been discounted. This has only intensified mutual distrust and worked against any long-term sustainable resolution and reconciliation.

The August 2008 war and its political fallout have also transformed the dynamic in and around the Georgian-Ossetian and Georgian-Abkhaz conflict resolution processes. It added a new layer of infringement and abuse to the region's history, and re-awakened memories of past conflict traumas, thereby further damaging inter-ethnic relations and prospects for political resolution. While reconciling peace and justice agendas is perennially difficult, accountability is needed. Even incremental progress toward acknowledging justice demands on all sides, and addressing them through transitional justice tools, could make peace less vulnerable to the pursuit of those demands by extra-legal or violent means.

Divergent national security interests and state-building or political status aspirations of the Georgian, Abkhaz and Ossetian sides further limit the possibilities of seeking justice. It's unrealistic to expect speedy progress toward reconciliation or comprehensive responses to justice claims. But supporting Georgian, Abkhaz and Ossetian societies in their efforts to address their legacies of abuse and to pursue truth-seeking, reparations and, where possible, prosecutions, could profoundly transform the environment of conflict resolution. Promoting institutional reform on each side could reinforce both peace and justice agendas.

Transitional justice has not been explored in Georgia's context in a comprehensive way. While many political constraints are certain to limit what is practically achievable, many civil society actors and some officials on all sides have expressed interest in discussing and pursuing transitional justice approaches.

The following areas should be explored to address the multiple legacies of past abuse on the Georgian, Abkhaz and South Ossetian sides:

- Raising awareness of transitional justice themes and approaches.
- Building civil society capacity on all sides of the conflict to promote a transitional justice agenda.
- Supporting a second track dialogue process focusing on transitional justice (time permitting), feeding potential recommendations from work by all sides to the EU International Independent Fact Finding Mission on the Conflict in Georgia (IIFFMCG).
- Encouraging authorities on all sides and the international community to focus on the transitional justice dimension of Georgia's transition, the Georgian-Ossetian and Georgian-Abkhaz conflicts, and the August 2008 conflict.
- Promoting documentation and truth-seeking in these contexts.
- Exploring issues of displaced persons, reparations and compensation, including for property loss on all sides, in the Georgian-Abkhaz context; learning from experience with these issues in Cyprus and the Balkans; and supporting local actors to explore policy options.
- Exploring reparations issues in the Georgian-Ossetian context.

1. Introduction

This paper examines the relevance of and need for transitional justice in Georgia proper and its break-away regions, against the background of the recent conflict, as well as developments in Georgia since independence. It takes into account the political, historical and inter-ethnic contexts of the country and the breakaway regions of Abkhazia and South Ossetia. It explains the multiple legacies of human rights abuse or infringement in all of the affected territories and identifies aspects that have not been sufficiently addressed in current efforts at conflict resolution, peacebuilding and democratization. The paper pays particular attention to the layers of abuse and the way in which victims' suffering has been compounded as a result of hostilities in August 2008. The paper also assesses the scope for International Center for Transitional Justice (ICTJ) to support activities that have the potential to add value locally or in terms of policy impact.

2. Post-Soviet Transition and Conflict: Multiple Legacies of Abuse

Georgia is a country with overlapping legacies of Soviet totalitarianism, violent conflict in Abkhazia and South Ossetia during its early independence years and failing statehood in the 1990s. Since the 2003 Rose Revolution, some political and economic reforms have been successful, but the government's penchant for a strong state has undermined genuine democratization and has resulted in further infringements and cases of official impunity. Tbilisi's coercive policies towards Abkhazia and South Ossetia over the past years curtailed attempts at confidence building. But Moscow's unambiguous support to the regions, causing security fears in Tbilisi, bears part of the blame for the negative dynamic in the conflict resolution processes prior to the 2008 Georgian-Ossetian-Russian conflict of August 2008. The recent war left tens of thousands of Georgians and Ossetians victimized and reminded again of traumas that arose from previous inter-ethnic conflicts.

The Soviet Past

Georgia's golden age occurred in the 12th century, after which the Caucasian kingdom was for a long time dominated by Mongolian, Ottoman and Persian rulers. Georgia was incorporated into the Russian empire at the end of the 18th century and hoped to gain security from its links with Russia. But the tsarist regime ended up annexing Georgia, abolishing its kingdom and its autocephalous Orthodox Church.

Abkhazia joined Russia in the beginning of the 19th century, but the Abkhaz revolted against Moscow's decision to abolish its autonomous status a few decades later. That rebellion was repressed harshly, causing tens of thousands of Abkhaz to flee to the Ottoman empire that previously ruled Abkhazia.

Following World War One and the Revolution of 1917, Georgia declared independence in 1918 and set up a Menshevik-democrat government. Georgian Bolsheviks struggled to overthrow the regime, and in 1921 the Russian Red Army invaded Georgia. From 1922 to 1936 Georgia was part of the Transcaucasian Soviet Federated Socialist Republic, together with Armenia and Azerbaijan. In 1936 it obtained the status of a separate Soviet republic, which it kept until 1991. Georgia became the titular nation, and autonomous arrangements were created for Abkhazia and South Ossetia under which Abkhaz and Ossetians say they were harshly repressed. Georgians, Abkhaz and Ossetians have deeply divergent interpretations of history. This constitutes one of the root causes of conflict.

Conflict in South Ossetia turned violent in 1918-1920. Uprisings in Ossetian populated areas were repressed by Tbilisi authorities who saw the Bolshevik-dominated National Council of Ossetians as a threat.

Ethnic tensions collided with issues of political status and governance. The resulting violence left several thousand dead and inter-ethnic sentiments deeply damaged. Ossetians consider these events genocide against the Ossetian nation whereas Georgians say Russia spurred Ossetian Bolsheviks to destabilize the newly independent Georgia.

The Abkhaz say Abkhazia never chose to become part of Georgia, but was forced to enter that political arrangement as the Soviet borders were defined. They argue their country was a Soviet republic (SSR) from 1921 to 1931, with its constitution ratified in 1925. They see this period as the main source of their statehood, although in 1921 they delegated some of the SSR's powers to Tbilisi. In 1931, Abkhazia formally became an autonomous republic in Georgia.

Rule under Joseph Stalin was brutal in the entire Soviet state. Thousands of people in the Caucasus were executed in the early 1920s; more than 50,000 became victims of Stalin's purges in the late 1930s and early 1950s. The fact that he was a Georgian—as were his secret police chief Lavrenti Beria and his commissar for heavy industry Sergo Orjonikidze—failed to have a mitigating effect on how the Soviet regime treated Georgia. Mass arbitrary purges and harsh repression were justified as parts of the struggle against “enemies of the people” and necessary steps on the way to building a nation. In 1944, up to 120,000 Meskhetians were deported from the Georgian region of Samtskhe-Javakheti, bordering Armenia, to Central Asia. Stalin considered them to be an “unreliable anti-Soviet nation,” along with other ethnic groups (typically Muslim) such as Chechens, Ingush and Crimean Tartars.

To the Abkhaz, Georgian elites were pursuing a policy of forceful “Georgianisation” ever since Abkhazia became a part of Georgia. Ethnic Georgians, along with Russians and other ethnic groups, were encouraged by Tbilisi authorities to move to Abkhazia, changing the republic's demographic balance in disfavor of the ethnic Abkhaz. Abkhaz language schools were abolished, and the government restricted the use of the language in public administration in favor of Georgian. After Stalin's death, the repression was eased and quotas were established for ethnic Abkhaz, ‘the titular nationality’ of the autonomous republic, in governance posts. Georgians complained these were disproportionate to their minority status. Some Georgians also say the Stalin-time repression was something for which they could not take responsibility: they saw Stalin and Beria as Soviet, not Georgian, leaders.

Georgian nationalism remained alive and influential throughout the Soviet period. Georgians got preferential treatment over other ethnic groups in the republic. Khrushchev's de-Stalinization triggered mass protests in Georgia, and in 1956 hundreds of Georgian demonstrators were killed. The cult of Stalin remained powerful in Georgia for decades; it still lingers on in the Gori region, where he was from. In 1978, Georgian nationalism flared up again when the government attempted to demote Georgian as the official language in favor of Russian. Mass demonstrations in Georgia forced Moscow to reinstate the language's status later that year.

The heavily subsidized republic was said to have a somewhat privileged standing in the Soviet Union because of its attractive culture, climate, top-end seaside resorts and abundance of exotic crops such as tangerines, hazelnuts and tea. The Soviet culture of corruption thrived. A massive “off the book” economy developed, and ethnic Georgian elites used their influence to limit the access other ethnic groups had to resources. To tackle this, the Interior Minister Eduard Shevardnadze, who had a reputation of an effective leader, gained Moscow's support to become the Georgian Communist Party's First Secretary, which he held until he became Soviet Foreign Minister in 1985.

Georgia's nondescript leadership of late 1980s struggled with challenges of *perestroika* and rising pressures from reformist and nationalist groups within the republic, as well as in South Ossetia and Abkhazia. Georgian elites underestimated how national aspirations differed in Sukhumi and Tskhinvali, the two

regions' respective capitals, where national forums Aydgylara and Adomon Nykhas were created to defend political interests of Abkhaz and Ossetians. Struggles between different ethnic groups in these regions occasionally turned violent. On April 9, 1989, Soviet troops broke up a peaceful demonstration in Tbilisi, killing 20 people—mostly women and children—and wounding many more. This fueled nationalist fervor and shifted sentiment in favor of speedy independence. Strikes, demonstrations and other forms of protest ultimately forced the authorities to consent to an open multi-party democratic election in October 1990. The Round Table Coalition, led by prominent dissident Zviad Gamsakhurdia, scored an overwhelming victory. In March 1991 the new leader organized a referendum on independence that nearly 99 per cent of Georgians supported. On April 9, 1991, Georgia formally declared its independence from the Soviet Union.

The First Decade of Independence: Gamsakhurdia and Shevardnadze

Independence was quickly followed by instability. Gamsakhurdia's repressive nationalism led to the outbreak of war in South Ossetia and Tbilisi's loss of control over the territory. The president's erratic policies caused a violent military coup in December 1991; Gamsakhurdia was toppled in January 1992 amid a brief violent civil war just after his sweeping victory in the country's first independent election. Georgia sank into chaos and civil strife. This especially hit Gamsakhurdia's home province of Samegrelo in western Georgia, which his armed supporters took under control during his abortive attempt to regain power in autumn 1993.

Shevardnadze returned to Georgia from Moscow in 1992 to govern the country, initially in a triumvirate with leaders of the anti-Gamsakhurdia coup. A former Soviet foreign minister, he was well-known and liked in the West, and benefited from strong international backing in the name of regional stability. Before the country could settle on a course of stabilization, however, conflict in Abkhazia flared up in 1992, and that region effectively seceded. Both Abkhazia and South Ossetia unilaterally declared independence and worked to establish their statehood.

Shevardnadze gradually built power by forming alliances with two prominent leaders of paramilitary groups that had been active in toppling Gamsakhurdia and fueling the Abkhaz and Ossetian conflicts. By the mid-1990s, he stabilized Georgia, but not without using some heavy-handed policies and violating due process. During Shevardnadze's rule, many of Georgia's institutions were failing, elections were blatantly rigged, and laws were applied arbitrarily.

By the second half of 1990s, he became hostage to his own flawed governance principles. Systemic corruption had infiltrated every sphere of public life; employment opportunities in both the private sector and civil service had price tags or were subject to nepotism; courts were corrupt, and all aspects of the rule of law system were undermined. The regime had little ability or willingness to genuinely reform any government institutions from tax collection to customs to prosecutors' offices to the judiciary, with Georgian society buying into an informal system based on general and overwhelming corruption. Paradoxically, this allowed for relative freedom of expression and the media, and the society's political discourse was quite open and often critical of authorities.

Box 1: Human Rights Abuses in Post-Soviet Transition¹

Georgia's transition from a Soviet state to independence was marked by extreme nationalism. The radical nationalistic policies of Zviad Gamsakhurdia triggered violence and caused deep damage to relations between ethnic Georgians and their Abkhaz, Ossetian, Armenian, Azerbaijani and other compatriots belonging to national minorities. Gamsakhurdia's slogan 'Georgia for the Georgians' and the policies and attitudes that accompanied it led to the suppression of the rights of multi-ethnic 'guests on Georgia's territory', as he termed them. Following a chauvinistic campaign in which Abkhaz and Ossetians were negatively stereotyped and framed as Moscow's pawns and recent newcomers, Tbilisi passed a series of discriminatory laws in 1991: the Georgian language was established as the only official language; parties operating only 'regionally' were banned from federal elections—a move which deeply alienated especially Ossetians; the autonomous status of South Ossetia was revoked in response to Ossetian's secessionist aspirations.

The campaign against minorities was accompanied by widespread abuses: persons belonging to national minorities were ostracized, often laid off from work or bullied into selling property for token sums and leaving the country (especially in the case of Ossetians, a large proportion of whom lived in 'inner districts' of Georgia, not in South Ossetia per se). This has directly contributed to large scale inter-ethnic conflict.

Gamsakhurdia was ousted after a violent military coup in December 1991. Leaders of the victorious paramilitary formations invited Shevardnadze to return to Georgia to help them take charge of the country. They exploited the existing chaos with impunity, and the crime rate was reported to be extraordinarily high. Over the following decade, law enforcement agencies earned a distasteful reputation for using beatings, torture and other violent practices. Human rights violations committed by law enforcers were routine. In Shevardnadze's early years, the abusive paramilitary groups (most notably the Mekhedironi) were allowed to operate freely: some of their members' activities reportedly involved 'maintenance of law and order' (including reportedly by harassment of opposition sympathizers and independent journalists), others were purely criminal in nature.

Overall, during Shevardnadze's time in office, rights abuse and infringement patterns included especially violations of basic due process, including torture, selective justice, and official impunity. In the high-profile criminal case 'No. 7493810' and its protracted trial, nineteen men close to Gamsakhurdia were arrested on varied criminal charges and tried for abuse of power and other political crimes. Amid the post-Gamsakhurdia legacy of resentment and political chaos, the case was widely interpreted as the new leadership's attempt to punish and sideline political opponents.

After the Rose Revolution: Strong State vs Strong Rights

The 2003 Rose Revolution propelled a young, dynamic leadership under President Saakashvili into power. His platform of reform, democratization, fight against corruption and pro-Western foreign policy won him the presidency in 2004 with more than 90 percent support. The new administration sought to reform the failing state institutions, boost the depressed dysfunctional economy, and reintegrate the breakaway regions of Abkhazia and South Ossetia. The restoration of territorial integrity was seen as a precondition to building a strong functional state that could withstand external pressures and fully democratize.

Many reforms have been successful. Economic liberalization has been notable. Despite Russia's embar-

¹ For more, see "Conflict in Georgia: Human Rights Violations of the Government of Zviad Gamsakhurdia," Human Rights Watch, Dec. 27, 1991; "Torture and Gross Violations of Due Process in Georgia," Human Rights Watch, Aug. 1, 1994, or "Georgia 1999 Country Report on Human Rights Practices," U.S. Department of State website, Feb. 23, 2000.

goes, Georgia's economy grew by about 12 percent in 2007² (although this was predominantly a function of foreign direct investment and privatization of state-owned property). Widespread systemic corruption has been largely eradicated. Some institutional reforms have been made.

But the Saakashvili administration's policies have prioritized a strong state over strong adherence to rights. In post-revolution Georgia, the state-building focus has at times been at cross-purposes with the principles of rule of law and democracy. Building a strong state with a strong security sector, which Saakashvili viewed as the answer to external and internal challenges alike, has undermined accountability and transparency. The government has at times cut corners and genuine political liberalization faltered. Checks and balances have been stripped back, and the leadership has zealously centralized power. As a result, the branches of government are imbalanced, with a weak parliament dominated by Saakashvili's National Movement.

Judicial corruption has been addressed, but some measures have weakened the judiciary's independence and impartiality. For example, in 2004 temporary constitutional amendments gave Saakashvili the power to dismiss and appoint judges. Justice has been applied arbitrarily, and several high-profile cases of apparent official abuse have not been properly investigated. Human rights violations have been reported especially in the penitentiary system. Violations of property rights have been documented and have contributed to a sense of official impunity. Privatization cases have been handled with insufficient transparency. Freedoms of media and expression have been curtailed. Public broadcasting has been especially adversely affected. There has been a notable failure to secure a consensus for necessary but sometimes painful reforms.

The weak system of checks and balances, along with co-opting the media, means that few barriers have been in place to prevent authoritarian tendencies from returning to Georgia's government. Public trust in governmental institutions and procedural fairness has plummeted. Practices typical of a "particularistic" society—in which people are appointed to positions because of who they know or because of their kin networks—have undermined transparency and accountability. The ruling elite has become increasingly intolerant of critics; some questioning conflict resolution policies have been denounced as traitors.

The government's failure to address the demands from the opposition and civil society for transparency and accountability caused protests in November 2007, which resulted in a violent crackdown. Saakashvili's attempts to portray the protests as inspired by Russia and to discredit the opposition as being pro-Russian have deepened the rift in Georgian society.

In 2008, the January presidential and May parliamentary elections failed to reestablish trust in the country's political processes, in part because there were serious problems in how they were conducted. Members of the opposition were intimidated and harassed, mainly outside of the capital. The general public's confidence in the electoral process, and in fairness of complaints procedures and recourse to justice, remained low.

In the months following the August 2008 conflict, the opposition's criticisms of Saakashvili's democratization record and of the war with its disastrous consequences have intensified. Opposition parties, distrustful of the Saakashvili administration's capacity to carry out genuine reform, backed their demand for Saakashvili's resignation with a strategy of daily street protests launched on 9 April 2009. Many Georgian political actors now favor political dialogue, but trust is minimal and the opposition parties have even refused to consider a power-sharing arrangement. Their core demands have focused on the improvement of accountability mechanisms; the support to genuine freedom of the press and the judiciary; uprooting high-level corruption; reform of the electoral code; and curbing presidential powers in favor of the parliament.

2 Data and Statistics for Georgia, Quick Facts 2007, World Bank, <http://web.worldbank.org>.

Box 2: The November 2007 Crackdown³

When Saakashvili replaced Shevardnadze, he pledged to grant the former president immunity from prosecution. Lower ranking former officials, including the energy minister, transport minister, railway director and some others were put on trial. Members of Shevardnadze's family were also not immune: the veteran president's son-in-law was arrested on tax evasion charges but released after several months in prison for a fine of \$15 million. He denied this implied wrongdoing on his part. Similar 'purchases of immunity' followed on a significant scale. Contributions by former officials, parliamentarians or shady businessmen financed temporary extra-budgetary funds, which were used for the development of the military.

Saakashvili pledged to reform the law enforcement and judiciary systems. But despite some progress a culture of impunity and police brutality has not been replaced by accountability-driven rule of law. In some respects, old customs seem to have been applied to new political aims. It is ironic that many in Saakashvili's close entourage have a civil society and human rights background. Some of his closest allies had formerly documented and criticized torture practices used by the Shevardnadze administration.

The November 2007 crackdown on peaceful protesters constituted a significant setback in terms of human rights. Masked law enforcers carried out indiscriminate beatings. Tear gas and water cannons were used, and rubber bullets were fired directly at demonstrators. An independent TV station, Imedi TV, was violently closed. The disproportionate use of force resulted in at least one death and many injuries. Civil society actors have said that the demonstrations were later followed by strong governmental pressure against, and in some cases arrests of, protest rally participants. Allegations abound of surveillance practices outside the legal framework, unfair trials, non-standard detention and interrogation practices. There has been no comprehensive investigation by the prosecutor-general or the parliament of these events as yet. Society remains polarized.

Georgia's Conflicts

Georgia's conflicts are playing out on three different, but deeply inter-connected levels: the Georgian-Abkhaz and Georgian-Ossetian conflicts; the conflict between Georgia and Russia; and the geostrategic dispute between Russia and the West. Each side typically emphasizes a different aspect, depending on its primary political and security considerations. Each side has a different view on how to frame these conflicts and who constitutes a party. This has profoundly affected how these conflicts can be resolved, and it has also had an impact on the type of resolution each one pursues.

The following section describes the Georgian-Abkhaz, Georgian-Ossetian and Georgian-Russian conflicts, with a particular focus on past legacies of abuse.⁴

³ For more on context and violations, see "Georgia: Sliding Towards Authoritarianism?" International Crisis Group, Dec. 19, 2007, and "Crossing the Line," Human Rights Watch, Dec. 19, 2007.

⁴ Since this paper concentrates on transitional justice issues, with a specific focus on past legacies of abuse and their victims, it will not address geostrategic aspects of these conflicts and the Russia-West dynamic.

The Georgian-Abkhaz and Georgian-Ossetian Conflicts

Background

At the heart of the Georgian-Abkhaz and Georgian-Ossetian conflicts is the clash between the Abkhaz and Ossetians' claims for self-determination and Georgia's claim for territorial integrity. As the Soviet Union disintegrated, the Georgian-Ossetian conflict turned violent in December 1990, and fighting lasted in South Ossetia until June 1992. As a result, a thousand people died, a hundred more were missing, and tens of thousands on both sides were displaced internally and to Russia's North Ossetia. Large-scale violence in the Georgian-Abkhaz conflict erupted in August 1992 and lasted more than 13 months. This fighting left 8,000 dead, 18,000 injured and about 240,000 displaced from their homes. Both Abkhazia and South Ossetia suffered from massive destruction of infrastructure and homes. Inter-ethnic relations were severely damaged, and so was Georgia's emerging statehood, as Tbilisi ended up losing control over both regions.

In June 1992, Georgia and Russia signed the Principles of the Settlement of the Georgian-Ossetian Conflict, known as the Sochi Agreement. This formalized a ceasefire, to be safeguarded by Joint Peace Keeping Forces (JPKF). The Georgian, Ossetian and Russian sides each contributed a peacekeeping battalion under Russian command. The Sochi Agreement also established a Joint Control Commission (JCC) that would work with the JPKF to supervise the observance of the agreement and promote conflict settlement measures, including those that would further demilitarization, reconstruction and rehabilitation, dialogue, and the return of IDPs and refugees.

Two years later in May, the Moscow Agreement secured a ceasefire in the Georgian-Abkhaz conflict. The agreement also provided for a Commonwealth of Independent States peacekeeping force (manned in fact exclusively by Russian forces). The two sides have effectively been separated by the ceasefire line and have had little contact with each other (except for the Gali district to which some ethnic Georgians have returned; see below). In 1993, a UN Special Envoy established a UN Observation Mission (UNOMIG) to monitor the ceasefire and act as the CIS peacekeeping force. In 1997 the envoy's position was upgraded to that of Special Representative of the Secretary-General and assumed a more constant role facilitating negotiations. The UN-led negotiations later became known as the Geneva Process.

During the 1990s, the political and security situation in both conflicts settled into a relatively benign, or frozen, status. Neither the Georgian-Ossetian nor Georgian-Abkhaz peace processes made progress on the issue of political status. Several proposals for interim agreements or common state solutions stalled. According to observers, the respective parties did not perceive possibilities of political solutions that would meet their interests were on the table, and this influenced the degree of consistency and commitment they made to the peace processes.

In the Ossetian case, formal negotiations in the second half of the 1990s made some progress on issues of return, demilitarization and reconstruction. Informal channels, including vigorous trade and commerce in the large Ergneti market on the administrative border of South Ossetia, helped build confidence between the societies and improve inter-ethnic relations.⁵ However, the mutually exclusive political claims of both sides continued to undermine the prospects of resolution.

The conflict in Abkhazia seemed more intractable. Security had deteriorated in 1998 and 2001 when new fighting broke out in Gali and in the mountainous gorge of Kodori respectively. Gali Georgians fled for the second time, although many have again returned since. The Geneva Process had periodically brought the sides together. Yet they have not reached a settlement on any substantive issues: security and permanent nonresumption of hostilities; refugees and IDPs; and economic and social problems. The primary

⁵ The market was commonly viewed as the biggest trading hub between Russia and the South Caucasus, Turkey and Iran at the time. It caused Georgia's income to bleed as well, because effective Georgian customs controls were lacking due to conflict.

negotiation mechanism between the Georgian and Abkhaz sides, the Coordinating Council, suspended between 2001 and May 2006, resumed briefly in 2006, as discussed below.

After the Rose Revolution: Frozen Peace Processes

The frozen conflict dynamic changed dramatically after Mikheil Saakashvili came to power in 2003. He viewed the restoration of territorial integrity as a precondition of re-building Georgia's statehood. Staunchly pro-Western foreign policy choices were meant to support this process and Georgia's democratization. They also irritated Moscow. Russia's support to, and in some cases meddling in, Abkhazia and South Ossetia increased in response. As tensions mounted, the Georgian leadership opted for conflict resolution policies dominated by the threat of the use of force and isolation, which served to further alienate Abkhaz and Ossetian constituencies.

In South Ossetia, a 2004 anti-smuggling operation by Saakashvili's government closed down the Ergneti market. Combined with other hasty and forceful measures designed to undermine the South Ossetian leadership, this operation led to a deterioration of security. Hostilities resumed in July and August 2004: dozens were killed, and a full-scale war was narrowly avoided when both sides declared a ceasefire in August. Even though the ceasefire held until the summer of 2008, the situation remained volatile, marred by nightly exchanges of fire, kidnappings, reciprocal detentions and occasional killings.

The Georgian strategy and the August 2004 escalation also destroyed bridges that had been built across the conflict divide during the late 1990s. South Ossetians feared that Tbilisi wanted to physically obliterate them and pointed to the closure of Ergneti and the resumption of hostilities as a direct proof of this. South Ossetian leaders increasingly turned to Russia. Moscow—flush with oil and gas profits and irritated by Tbilisi's NATO pursuits—stepped up its engagement in South Ossetia and Abkhazia. The inter-state and intra-state layers of the Georgian-Ossetian, Georgian-Abkhaz and Georgian-Russian conflicts became ever more enmeshed.

Since 2004, Russia has increased its budgetary and military support to both regions, and Russian security and military personnel were 'seconded' to the de facto authorities in Tskhinvali and, to a lesser degree, Sukhumi. Tbilisi has come to view the negotiations and peacekeeping arrangements in both conflict areas as unjust. It had long been frustrated with Moscow's actions in Abkhazia and South Ossetia, and asserts that Moscow could not be an honest broker in either peace process.

Since 2005 and 2006, Tbilisi actively sought to change the status quo, especially in the Georgian-Ossetian peace process because it was deemed easier to solve. Substantive dialogue in the JCC faltered. So did the minimal cooperation, such as coordinating some aspects of local security issues that existed before. Tbilisi tried to internationalize the conflict, especially by securing a greater role for the EU in the process. But before this could happen, the JCC process itself became frozen, with both sides unable to produce as much as a joint press statement.

Increasing Divisions and Deteriorating Security

Along with promoting changes in negotiating and peacekeeping arrangements, the Georgian government initiated changes in the situation on the ground in and around the conflict zones. In parallel to November 2006 de facto presidential elections in Tskhinvali, Tbilisi supported the 'alternative' de facto election of Dmitri Sanakoev, a former Ossetian separatist, to become an alternative to the South Ossetian leader, Eduard Kokoity. Sanakoev however only operated in Georgian-controlled areas of the conflict zone and had no influence among the South Ossetian constituency. The Tbilisi government gave Sanakoev significant financial and political backing, and incorporated his structure into the central government in May 2007. Tbilisi wanted to have in Sanakoev a negotiating partner with whom status negotiations on South Ossetia's future within Georgia would be possible.

Tbilisi's strategy backfired.⁶ Because South Ossetians widely considered Sanakoev to be a traitor, he failed to convince them that he could credibly represent their interests. What became known as the 'Sanakoev project' was a political priority of the Georgian government, and it allocated more than 30 million GEL (14 million euros or 19 million U.S. dollars) to developing those areas that it controlled in the conflict zone since 2007. Ethnic Georgians and the handful of Ossetians who lived there finally saw their villages rehabilitated. But this one-sided focus and the attempt to portray Sanakoev as a representative of the Ossetian community in fact deepened the ethnic divide.

The security situation in South Ossetia had been deteriorating since Sanakoev's emergence, as incidents increased in frequency and intensity. The physical separation of both societies also reached unprecedented levels. Communities of Georgians and South Ossetians here had largely depended on the same infrastructure networks (roads, electricity, gas) since Soviet times. However, this changed gradually after the hostilities of 2004. Separate bypass roads were upgraded, the Georgian one was even paved. Electricity networks were separated out; the Georgian villages were linked to Georgia proper and Ossetian villages to the Russian network. In late 2006, the Russian company Gazprom announced it would construct a pipeline across the Caucasus Mountains that would link North and South Ossetia. In the summer of 2008, observers said that this pipeline had already reached villages in the northwestern parts of South Ossetia.

The political rift between Tbilisi and a Moscow-backed Tskhinvali grew. The JCC negotiations have not been functional since August 2006. Several rounds of informal talks in 2006 and 2007 failed to produce much. The substantive discussions of the past on security return or demilitarization were replaced by a focus on process itself. Moscow and the South Ossetians have ignored Georgia's security concerns and insisted on not changing the existing JCC and JPKF mechanisms. Tbilisi insisted that the format be changed and the EU and Sanakoev also take part in discussions. But it also remained oblivious to the security fears on the part of Ossetians.

In Abkhazia, contacts between the parties briefly increased as the formal negotiations resumed in May 2006, and the parties agreed to discuss security, IDP/refugee return and economic issues. But in July/August 2006, a Georgian military operation took place in the Kodori Gorge in Abkhaz territory that was controlled by Georgian militias. Although the Georgian government said this was a police operation designed to curb the local paramilitary leader, *de facto* officials in Abkhazia viewed it as a great security threat. Tbilisi's law enforcers and the Abkhaz-government-in-exile, ethnic Georgian authorities of Abkhazia's pre-war autonomous structures, were stationed there.

The Abkhaz stopped the negotiations and insisted that Tbilisi withdraw all its troops and the in-exile authorities before talks could resume. Tbilisi dubbed the Kodori Gorge Upper Abkhazia and engaged in widespread propaganda about Kodori being the last stop before prospective Georgian return to Sukhumi. The isolated Kodori, with only several hundred local inhabitants, became a target for development; according to sources in the diplomatic community and the Georgian army, it was also supplied with stockpiles of military equipment.

The Georgian-Abkhaz conflict remained stalled. Societies grew further apart, and even the formerly active civil society links dwindled. Security in Upper Kodori was precarious, with occasional shooting incidents; in March 2007 unidentified helicopter gunships—which most believed to have been Russian—carried out a large air attack on targets in the area. Several similar incidents in Abkhazia and in and around South

6 The establishment of parallel authorities in the Georgian-controlled parts of South Ossetia and in Abkhazia's Kodori Gorge was at the time seen as 'an insurance policy' against any possible parallels between Georgia's conflict regions and Kosovo, as plans of what was seen as Western-orchestrated recognition of its independence crystallized.

Ossetia generally were attributed to Russia. By the spring of 2008, as the NATO Bucharest summit promised prospective membership to Georgia and Ukraine and many Western countries recognized Kosovo's independence, Moscow took overt steps to significantly increase its military presence in Abkhazia.

The Gali District

Adjacent to the Georgian-Abkhaz ceasefire line, Gali is a district almost exclusively inhabited by ethnic Georgians who live under Abkhaz control. It is also the only district of Abkhazia where Georgians have returned since the conflict, some permanently, some on an on-off basis. Those 45,000 to 60,000 people have divided loyalties. The Abkhaz question their sense of political belonging, while Georgians often consider them to be traitors. During the war in the early 1990s, Gali's inhabitants for the most part opted out of fighting. This may have facilitated their return, although Sukhumi also has political and economic interests in seeing them come back; without Georgians, Gali would be empty, and its significant agricultural and economic potential would be wasted. From Sukhumi's perspective, Gali is also an important security buffer.

Politically, Gali has had a precarious place in the conflict resolution process. Officials in Sukhumi say that encouraging Georgians to come back to Gali is the first phase of a unilateral IDP return process. Tbilisi disagrees, contending that the spontaneous return of the past few years has taken place outside the necessary framework of security, dignity and respect for human rights.

Both sides are at fault with respect to ensuring dignified and secure conditions for Gali's residents. Sukhumi has not ensured adequate rule of law in the district where security remains precarious. Tbilisi has been ambivalent about supporting partial return since its nature is perceived as prejudicing full-scale return.

Both sides disagree about the political status of people returning to Gali. Abkhazia requires them to become citizens of the 'partially recognized' country and to give up their Georgian passports. Although the de facto government has specified a process for Gali residents to get internal passports, there seems to be limited political will to carry this out, and few have actually received Abkhaz passports. In fact, Gali returnees have a strong additional incentive to obtaining Abkhaz documents; such documentation helps them get Russian citizenship and passports, which greatly increase economic opportunities. The Georgian side says this all is being done under pressure, and it of course does not recognize any process of revoking Georgian citizenship in return for what Tbilisi sees as the illegal status in Abkhazia.

Security in Gali has improved in comparison to the late 1990s and early 2000s. After Saakashvili came to power, he cracked down on partisan groups that operated in the area from the Georgian side. Yet, the criminal climate in the district remains disturbing, and local observers maintain it typically involves criminal networks that cooperate across the ceasefire line. There are widespread human rights infringements; local chiefs impose informal levies on Gali's lucrative crops of tangerines and hazelnuts.⁷ Young ethnic Georgian men allegedly are forcefully drafted into the Abkhaz army; Sukhumi officials deny these charges.

The language of instruction in Gali schools has been a perennial issue. The Abkhaz de facto authorities do not allow Georgian to be used, but in the district's southern part—an area traditionally more difficult for the Abkhaz to control—local schools use Georgian, with on and off support from the Georgian ministry of education.

Gali residents' property and civil rights generally are inadequately protected. The people here say they are harassed by the Georgian side as well. Local inhabitants say Georgian security services have intimidated

⁷ Interlocutors in Gali say Russian servicemen who moved to the area to replace the CIS peacekeeping force after the August 2008 have quickly tapped into system and demand a share of the profits from local crops as well.

and threatened to prevent them from collaborating with the Abkhaz or participating in Abkhazia's public life. The UN human rights office and a local human rights NGO follow cases of abuse, but locals are typically reluctant to discuss rights and justice issues for fear of repercussions.

The Georgian-Russian Conflict and the August 2008 War

Tense Relations

Bilateral ties between the two countries have been strained since Georgia's 1991 independence. Support to Abkhaz and Ossetians by an array of actors in the chaotic Russia of the early 1990s—from North Caucasian volunteers to independent-minded members of military in the Southern "okrug", or district—helped Tbilisi lose both wars. Although Russia assumed a peacekeeping role, its involvement in Abkhazia and South Ossetia undermined its impartiality and deeply distressed officials in Tbilisi. So did Russia's overt pursuit of economic, military and strategic interests in both of Georgia's breakaway territories.

Relations deteriorated rapidly after Saakashvili came to power. The new president pressed to change the status quo in the conflict resolution processes and sought speedy integration into NATO and the EU. The period between 2004 and 2008 was marked by security and diplomatic incidents between Russia and Georgia. Moscow tried to pressure Georgia by imposing a trade embargo and closing land, air and postal links. Antagonistic rhetoric accompanied repeated disruptions of diplomatic relations. Bitter personal relations between presidents Saakashvili and Putin made things worse. The unilateral deployment of additional Russian troops, disguised as peacekeepers, and military equipment in Abkhazia in April and May 2008 caused unparalleled security concerns in Tbilisi.

The campaign against ethnic Georgians who live in Russia is particularly noteworthy from a transitional justice perspective. According to current estimates, there are between 500,000 to one million Georgians in Russia. In the second half of 2006 Russian authorities detained thousands of them and expelled 2,300 ethnic Georgians.⁸ They were denied basic rights, and many were held in dire conditions. Russian officials argued that this was a campaign against illegal migration and organized crime. But the disproportionately high number of ethnic Georgians in a context of deep political hostility, backed up by many official statements, suggests Georgians were specifically targeted.

The August 2008 War

The Georgian-Ossetian-Russian war broke out in August 2008 amid political hostility, volatile security, militarization and a physical separation of conflicted communities. Russia's response to Georgia's misguided military offensive against Tskhinvali has clearly been disproportionate and gone far beyond the boundaries of South Ossetia that Moscow claims it wanted to protect. The Russian military invaded deep into Georgia, destroying military and civilian targets. Georgia lost control of territories it had previously controlled in and around the zones of conflict (Kodori Gorge in Abkhazia, and the Didi Liakhvi, Patara Liakhvi and Prone gorges in South Ossetia, as well as the Akhagori district). More than 20,000 Georgians from these areas remain displaced.

The conflict has been devastating for Georgia proper and South Ossetia alike. At the peak of the fighting, some 192,000 people from both sides were displaced and hundreds were killed (casualty totals are disputed).⁹ Destruction of infrastructure in and around South Ossetia, as well as in Georgia proper was extensive. Besides the conflict's short-term effects on trade, consumer and investor confidence dropped, and Georgia's economic difficulties were severely compounded by the global economic downturn.

8 "Singled Out," Human Rights Watch, Sept. 30, 2007.

9 "Revised Figures Push Number of Georgia Displaced up To 192,000," UNHCR website, Sept. 12, 2008.

Russia unilaterally recognized Abkhaz and South Ossetian independence in August 2008, garnering severe criticism from Tbilisi and the West.¹⁰ Tbilisi speedily passed a law on occupied territories, imposing restrictions on any engagement with the breakaway regions and specifically prohibiting any property and business transactions. Any international activity in the two areas is subject to scrutiny by Tbilisi officials before authorization. Diplomatic relations between Moscow and Tbilisi were severed again.

A ceasefire arrangement, the so called-six point plan, brokered by French President Nicholas Sarkozy has been carried out ambiguously. Although Russian troops withdrew from areas adjacent to conflict regions, there are many more of them now in Abkhazia and South Ossetia than prior to the conflict (estimates say around 7000). In August 2008, Tbilisi declared the ceasefire regimes from the 1990s null and void and reiterated the six-point plan as the only existing agreement it considers in force for Abkhazia and South Ossetia. Security remains volatile and international actors cannot get into South Ossetia to monitor the situation there. The OSCE Mission to Georgia is currently being phased out, although 20 of its military monitors had their mandate extended until June 2009. The UNOMIG's mandate for Abkhazia was rolled over until June 2009 when it is subject to renegotiation.

A Geneva multiparty negotiation process has brought together representatives of Abkhazia, South Ossetia, Georgia, Russia, the United States, European Union, the OSCE and the UN. The process got off to a slow start because it was bogged down in procedural matters. It has however started to address two sets of substantive issues: security and displaced persons. Negotiations on the establishment of mechanisms for cooperation and exchange of information on the local level have secured some progress; such mechanisms are essential to maintaining local security.

Several second and third track processes are gradually starting to bring together Georgian, Ossetian and Abkhaz civil society activists on neutral territories to restart the negotiations. There have also been a couple of informal meetings of former Georgian and Russian diplomats, politicians and civil society activists.

The August War's Impact Locally

The war has had profoundly negative impact on inter-ethnic relations and prospects for conflict resolution. Relations between Abkhaz and Ossetians on the one hand, and Georgians on the other hand, are beyond short-term repair. Old and new fears and grievances overshadow potential opportunities for reconciliation. Russia's recognition of the territories added political complexity.

Constituencies in both of the breakaway areas believe their fears of Tbilisi's aggression have been vindicated. Residents of South Ossetia consider they narrowly escaped full destruction. Abkhaz interlocutors describe their psychological capacity to relate to Georgians as having regressed to a frame of mind of the early 1990s when experience of the 1992/3 civil war was raw. However, since Russia has increased its presence in the regions, people there now say they feel more secure than they have felt since the Soviet Union collapsed.

Georgian society is deeply traumatized by the Russian aggression and acts of violence committed against ethnic Georgian civilians, mainly by militias and irregular forces including from the North Caucasus in areas that fell under Moscow's control. Georgian villages in areas now controlled by Ossetians have been practically razed and there are few short-to-medium-term prospects, if at all, for Georgians to return there.

¹⁰ Nicaragua is the only other UN member to recognize their independence.

People on both sides readily believe stories of atrocities even though many are undocumented and possibly did not occur.¹¹ Propaganda on both sides has shaped public perceptions and contributed to the damage done to inter-ethnic relations. The Russian media has inflated numbers of Ossetian casualties, which has a deep negative impact on Ossetian perceptions about the war.

While Georgian society has been deeply split since the November 2007 political crisis, it is unified in resenting Moscow's abuse and violence. The opposition and civil society have renewed a push for accountability, transparency and genuine democratic reforms at home as well as for investigations of policies that led to such devastating conflicts. Opposition leaders who criticize Saakashvili do not trust his intentions or capacity to carry out genuine reform. He is facing significant domestic challenges as illustrated by opposition demonstrations launched on 9 April 2009.

South Ossetian interlocutors say they realize they have limited choices: they have to make political deals with Russia on whom they rely existentially. Faced with large-scale destruction and a lack of the most basic economic viability as trade routes are closed, Ossetians value Moscow's recognition as a mechanism to formalize their separation from the Georgian state.

Ossetians find themselves fully dependent on Russia in practical terms. The first post-war winter provided tangible proof of this: with links to Georgia proper sealed, humanitarian, construction and energy supplies have to come from the north. But this is not without constraints: in the winter months, the road link to Vladikavkaz (North Ossetia) is not always open and Tskhinvali residents can find themselves in full isolation. South Ossetia's leadership has moreover earned a bad reputation for not handling any kind of aid accountably and transparently. Tskhinvali interlocutors say the humanitarian situation was difficult over the past winter, many houses have not been reconstructed and fresh produce has not always reached the town's markets.

Abkhazia's relationship to Russia is complex: the Abkhaz are deeply indebted to Moscow for security guarantees, yet some fear political and economic pressures. Their fear is that their national project and political identity will dissipate. Their focus is on building a state and its institutions, and on securing meaningful links to the world beyond Russia. Interest in the Georgian side is minimal though many realize that Russian recognition does not mean that the conflict is resolved.

Many on the Georgian side think that Abkhaz fears of Russian dominance will prompt officials in Sukhumi to seek arrangements with Tbilisi. This is most unlikely. But if Abkhazia is to avoid being swallowed up by Russia, and if there is to be a peace process that ultimately can reconcile it with Tbilisi, the international community would need to focus on the future of the breakaway regions. So far, European policymakers have only discussed a two-pronged policy based on engagement combined with non-recognition of Abkhaz or South Ossetian independence.

¹¹ While many crimes have undoubtedly occurred, the narratives of enemy atrocities on both sides mirror each other. Researchers point out that when they attempt to document some accounts, they find out that some are second- or third-hand.

Box 3: Conflicts and Human Rights Violations in Conflict Zones¹²

Georgia's conflicts have, in total, resulted in several thousand deaths and more than a half million of displaced persons and refugees, at least fifty per cent of whom have not been able to return to their homes. Intensive sea, air and land combat in Abkhazia in 1992-1993 was conducted in violation of the laws of war by all sides and crimes against civilian populations were reported. 1990-1992 urban warfare and violence between Georgians and Ossetians in the zone of conflict, including shelling by both sides of villages, blockades and hostage taking have resulted in a legacy of non-respect for laws of war and human rights. Severe damage to inter-ethnic relations dates back to this violence and its lead-up when abuses were suffered by ethnic Abkhaz and Ossetians, which in turn can be traced back to the Soviet history.

Abuses were widespread and war crimes reported during the summer 2008 conflict. Human Rights Watch and others have documented many civilian casualties, injuries and large-scale destruction of civilian property. Documentation pointed out indiscriminate and disproportionate use of force by Tbilisi against Ossetians and by Moscow against Georgians; and Tskhinvali's systematic campaign of destruction of ethnic Georgian villages. Both Georgian and Russian forces used cluster bombs. Cases of looting, pillaging, physical abuse, threats and even killings and rape of civilians in Georgian villages by Ossetian militias have been documented. As occupying power in areas under its temporary control, Russia failed to comply with its obligations under international humanitarian law to ensure public order and safety. Long after Russia's withdrawal, the security situation has remained unstable and precarious in Georgian-controlled areas adjacent to South Ossetia and returnees in areas close to the line of contact have described reciprocal detentions and kidnappings by both sides and other security threats.

12 For more, see "Russia/Georgia: All Parties in August/South Ossetia Conflict Violated Laws of War," HRW, Jan. 23, 2009; "Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia," HRW, Jan. 23, 2009; "Georgia/Abkhazia: Violations of the Laws of War and Russia's Role in the Conflict," HRW March 1, 1995.

3. Transitional Justice in Georgia: An Unexplored Approach

The Search for Peace, Justice and Accountability

In the South Caucasus transitional justice is a largely unknown concept, and opportunities for comprehensively utilizing transitional justice methods have not been pursued in a strategic way. The concept of transitional justice, however, is highly relevant to addressing Georgia's complex legacies of infringement and abuse. Civil society groups and activists have frequently talked about the need to deal with the past and to address the legacy of past abuses in the region.¹³ Some politicians have also expressed a cautious willingness to engage with some aspects of transitional justice agendas (although this has often been the case when these aspects could expediently further their political interests). Isolated efforts by civil society organizations to tackle past injustices have mainly focused on history and historiography.¹⁴

As conflicts in the South Caucasus have festered over the years, the search for justice has been continually deferred as an issue whose time was not ripe. The nature of justice in conflict situations is complex and contested, and parties have used demands for justice to pursue mutually exclusive political interests. Addressing them has been one of the most challenging issues in formal conflict resolution and on the second and third track of peacebuilding.¹⁵ Arguments focusing on past abuses and infringements have been used to try and claim the moral high ground in negotiations or while lobbying for international political support. In attempts to selectively emphasize infringements that one group claims to have suffered, similar claims from other groups are disregarded. But unlawful actions by one side do not excuse those committed by others: all sides are responsible for carrying out abuses during the wars in the 1990s and in the zones of conflict.

Little has been achieved in reconciling peace and justice agendas in the unresolved conflicts. In the Georgian-Ossetian and Georgian-Abkhaz conflicts, the very difficulty of keeping the protracted negotiation

13 Important dialogue initiatives have been underway especially in the Georgian-Abkhaz context, primarily facilitated by the University of California Irvine, Conciliation Resources, International Alert and the Heinrich Boell Foundation. Results of their work have often highlighted the need to address the justice dimension and each side's perspectives on justice.

14 Typically, historians have played a leading role in the nation- and state-building processes that followed the Soviet Union's collapse. Many leaders of first post-Soviet years were historians by training. History books in particular tend to be shaped by political propaganda, and they often project strong enemy images. Some attempts to foster a dialogue of historians from different conflict sides have been supported by several international organizations (IA, CR, and the OSCE among others).

15 The multi-track approach to peacebuilding, developed mainly by the Institute of Multi-Track Diplomacy (IMTD), describes various layers of peace processes. Expanding on Monteville's original distinction between official and unofficial action, it states that first track corresponds to the official peace process when officials and representatives of inter-governmental organizations and third governments are involved. In track 1.5, officials can be engaged in peace process in their informal capacity. Track 2 refers to processes involving peace-making professionals, NGOs and opinion leaders. Other tracks describe layers of peace-making ranging from business and commerce to media and information.

processes alive has contributed to an apparent lack of political will on the part of the international community to push sides to negotiate justice, at least in some areas of the process. The bottom line dichotomy of territorial integrity versus self-determination has tended to overshadow any openings for discussing rights and justice in a constructive way.

The August 2008 war and its political fallout have transformed the dynamic in and around the protracted conflict. Besides adding a new layer of abuse and infringement to the region's history, the war has reawakened conflict-related traumas and memories of the 1990s and further removed prospects for political resolution. Opportunities to address past justice claims seem even more remote now that chances of a political breakthrough have diminished.

But addressing past abuses is as badly needed as ever. The international community cannot ignore grave crimes that all sides carried out last August in the Georgian-Ossetian and Georgian-Russian wars. The recent conflict highlights the limitations of past conflict resolution strategies that merely utilized justice arguments as political levers. The failure to address past abuses has contributed to risks of recurring violence and has helped entrench positional stereotypes. A sustainable and peaceful settlement is likely to come only if justice issues are addressed at least to some degree. Tackling justice demands could make peace less vulnerable to their possible pursuit by extra-legal or violent means.

The divergent national security interests and mutually exclusive political status aspirations of the Georgian, Abkhaz and Ossetian sides constrains any efforts to introduce a justice dimension in either peace process. It would be unrealistic to expect speedy progress towards reconciliation or an exhaustive attempt to address justice claims. But the exploration, acknowledgement and addressing of even a fraction of the compounded legacies of abuse by one or all sides to Georgia's conflicts could begin to transform the environment for the conflicts' ultimate resolution and bring justice to individual victims. A comprehensive transitional justice process could help unpack some of the key themes in the resolution process, and open opportunities to negotiate a sustainable settlement to these protracted conflicts.

Accountability is badly needed in conflict resolution and democratization processes in Georgia, in particular given the violent legacies of November 2007 and the August 2008 war.

Holding perpetrators of abuses to account can do the following:

- deter further abuse
- remove those who have the capacity to commit more atrocities
- reduce risks of retribution and retaliatory crimes
- help document and acknowledge what has happened and how
- institutionalize human rights norms and endorse their moral and legal force
- remove individuals responsible for crimes from power

Even if only some of these objectives were met (and even if only partially), it would at least begin the process of restoring justice. The strong public demand for accountability in Georgia underscores society's need to come to terms with its own recent past.

If accountability is not pursued, the risk that abuses and infringements may recur—in the conflict resolution or democratization arenas alike—is high. Decades of official impunity have bred an environment of societal mistrust of government structures and public institutions, and cynicism toward the professed Western value- and rights-based discourses. The cumulative impact of ignored legacies of abuse has had a devastating impact on Georgian society. The failure to promote open, independent scrutiny of contentious governance, judicial or military issues has helped create an environment where absolving oneself of responsibility is not difficult for those in and close to power, especially given the clampdown on

the broadcast media and the limited space for public debate. In terms of Georgia's internal dynamic, a transitional justice process could help further democratic transition and help prepare Georgia's splintered, polarized society for a better managed transfer of power in the future.

In practical terms, using transitional justice here would be fraught with challenges. Transitional justice approaches would have to be introduced slowly, with carefully managed expectations in terms of acceptance and impact. The capacity of political actors and communities to maintain the procedural integrity required for a transitional justice process is limited. It would also be necessary to take into account the specific cultural context of the region and ways in which local cultures deal with issues of justice, vengeance and agency for pursuing them. Questions about whether the region's societies and elites are more inclined to emphasize justice or reconciliation, how they interpret norms related to both, and how they understand the political consequences and policy implications of their choices need to be further explored and reflected in any possible future programming.

Although the August 2008 crisis has reemphasized the urgency of addressing the protracted conflict situations in innovative ways, it has also created new and reinstated old obstacles in terms of political stakes and security concerns. Possibilities for engagement need to be viewed from a comprehensive transitional justice perspective and with cautiously measured expectations. A holistic approach should target the overall conflict resolution climate. Introducing transitional justice into the discourse, initially in second-track dialogue formats, could be beneficial.

The following section specifically explores the relevance and applicability of the key transitional justice mechanisms to Georgia's conflicts and democratic transition.

Transitional Justice Mechanisms

Truth-seeking and Documentation

The importance of truth-seeking for democratic transition as well as for sustainable peace is indisputable.¹⁶ Truth-seeking and truth-telling mechanisms range from official truth commissions to civil society mechanisms, often referred to as unofficial truth projects. By seeking to shed light on, document and acknowledge past human rights abuses, these mechanisms can significantly contribute to long-term stability, peace and democratization. In the context of multiple legacies of past abuse, truth-seeking would benefit individuals and society alike, and promote inter-ethnic cohabitation. The Caucasus is composed of societies that have little experience with independent, impartial public scrutiny or truth-seeking. However, over the past several years many actors on the Georgian, Abkhaz and South Ossetian sides have expressed a desire to come to terms with past abuses. This is the case even though each side's focus on abuses conducted by the other has profoundly permeated the typical inter-ethnic discourse.

There is a sense among many in every of the societies that are party to Georgia's conflict that exposing and accounting for past abuses would be a beneficial step toward renewing their own commitment to human, civil and political rights and to the overall democratization course. However, national security considerations pose limits on this, and many feel that opening up would weaken their political standing.

There is currently little possibility for a formal truth commission in either the context of Georgia's own democratic transition, or conflict resolution. Other mechanisms including unofficial truth projects could however be beneficial in both of these contexts. Political will and constraints are such that this would

¹⁶ Truth-seeking in this context refers mainly to the process of documenting and acknowledging violations through non-judicial means such as truth commissions or unofficial truth-telling mechanisms that emerge from the civil society as unofficial truth projects.

initially have to be limited to informal civil society engagement, public hearings or public inquiries, alternative truth-telling forums and documentation (even in parallel on either side of the conflict divide).

Internal Georgian Issues

Many interlocutors interviewed in Georgia called for justice and emphasized the need for truth and accountability in their society. At least among some civil society leaders, there is a feeling that complex issues have been swept under the carpet. Both regime changes since independence—President Gamsakhurdia's ouster in 1992 and President Shevardnadze's fall from power in 2003—have taken place outside the constitutional framework, and their stints in power were marked by many infringements and abuses.

Few of the abuses against ethnic minorities that took place in Gamsakhurdia's time or Shevardnadze's arbitrariness and favoring of criminal networks have been publicly debated; nor have the abuses that accompanied the current democratization. However, property rights violations and some cases of official abuse and impunity have been widely documented by the public defender's office. International and local NGOs, such as Transparency International, International Crisis Group and the Georgian Young Lawyer's Association, have also criticized the lack of transparency in some aspects of governance and the insufficiently independent judiciary.

The Georgian public generally views the handful of governmental attempts at truth-seeking, such as the Parliamentary Commission to Investigate the August 2008 War, as mere window-dressing attempts to cover up the government's mistakes. A group of independent experts with limited resources organized isolated alternative public hearings on democratization, military and other issues in the autumn of 2008. They have been discontinued, however, because of a lack of funding. There appears to be interest and space to support activities that open up public debate in Georgia.

Georgia's current leadership seems insufficiently ready to engage in genuine truth-seeking through presidential or parliamentary oversight commissions charged with specific subjects. Until such readiness exists at the governmental level, informal processes like civil society public hearings could bolster pluralism and confidence in democracy as a culture. Civil society groups and opposition politicians call for the exploration of contentious past issues, although some argue this demand is selective. Such hearings could have a retrospective as well as a prospective character; their findings would warn against future mistakes in the areas of governance most impacted by the lack of accountability.

Support for the public defender's office and local rights/legal advice NGOs that collect evidence for individual cases of infringement or abuse (from basic rights to property to arbitrary application of justice) would be equally useful.

Conflicts in the 1990s and Inter-Ethnic Relations

There have only been isolated attempts at truth-seeking and documentation of cases of abuse in the context of the Georgian-Abkhaz conflict, mostly by local NGOs.

Documenting and collecting evidence have served political purposes mainly. They have often been used as ideological tools to prove the guilt of the other or to build the enemy image. At the official level, documentation attempts have been relatively sparse. In the 1990s, the pro-Tbilisi group of Abkhaz authorities in exile amassed documentation of crimes and human rights violations with the hope of filing cases against the Abkhaz with international tribunals. The Abkhaz and Ossetians also produced their "black books." Questions remain about the accuracy of such documentation that both sides have used as political instruments.

Property issues in Abkhazia are another significant area previously explored by Sukhumi and Tbilisi. On the Abkhaz side, a de facto governmental commission was set up shortly after the war with the aim of

documenting damage to Abkhaz de facto state property. It quantified this damage at \$14 billion (U.S.), although the estimate is now higher. This figure does not reflect any private property damage and losses. On the Georgian side, the Ministry for Refugees and Accommodation launched a large project in 2006 that uses satellite imaging to create a comprehensive map of Georgian-owned private assets in Abkhazia. Tbilisi has been collecting this information in an attempt to file a detailed case in the European Court of Human Rights, claiming Georgian property has been seized by citizens of another country (mostly Abkhaz with Russian passports).

The politics of memory has also served propaganda purposes, such as in the case of publications that show photos of victims of violence perpetrated by the other side. As disturbing as these publications may be, their politicization may at times overshadow their declared focus on the victims.

Interlocutors on both sides have expressed a deep interest in documentation and truth-seeking work, albeit again in an unofficial/second-track format. The absence of a settlement (and lack of impetus to reach one) rule out any possibility of a formal truth-commission mechanism in the near future. In comparison South Africa's truth and reconciliation mechanisms succeeded once a settlement was reached. But given the nature of the intractable conflicts in the Caucasus, a political settlement is difficult to imagine without processes that begin to address the need for reconciliation first.

While some interlocutors doubt that the Georgian and Abkhaz societies would welcome a victim-oriented public truth-seeking format in any event, many there have expressed the desire for expert work to collect evidence with a view to giving events in the 1990s an authoritative independent assessment. In this context, the report of the EU International Independent Fact Finding Mission on the Conflict in Georgia (IIFFMCG), due to be released in July 2009, may give an important indication. In the politicized context of these layered conflicts, all parties have been unable to consider efforts to examine past infringements as impartial.

The 2008 August War

The August war resulted in hundreds of civilian deaths and several tens of thousands of IDPs. The Georgian, Russian and South Ossetian forces alike bear responsibility for harming civilian populations. Tbilisi engaged in disproportionate, indiscriminate shelling of Ossetian settlements at the outset of the war. Russia used disproportionate violence and later was unable or unwilling to enforce law and order in areas around South Ossetia that at the time came to be called "buffer zones" and that it took under control before September 2008; Human Rights Watch has documented cases in which militias have committed rape, arson and abductions.¹⁷ All sides have accused each other of atrocities that, substantiated or not, increased the risk of retaliatory attacks and further entrenched hostile discourses.

Credible, impartial investigations of violations and, if appropriate, prosecutions, could advance long-term reconciliation. On the level of international mechanisms, they would also help build confidence that the West would respond fairly. The IIFFMCG has been established to explore the context and ways in which the conflict started. This is important, especially because there may well be a bigger role for the EU to play in peacekeeping and conflict resolution. But there is also a need for transitional justice with participation of local communities, to establish a common narrative of what happened. It could further peaceful co-existence of groups that culturally put a lot of value on retribution.

Human Rights Watch and Amnesty International carried out impressive work documenting problems during the immediate crisis. A handful of other civil society organizations (Russia's Demos on the Ossetian side and several local organizations on the Georgian side) have also gathered evidence. According

¹⁷ See "Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia," HRW, Jan. 23, 2009

to Georgia's Ministry for Reintegration and the public defender's office, however, these efforts remain scattered and incomplete.

Significant value could be added by utilizing ICTJ's thematic expertise in truth-seeking and documentation in conjunction with groups already working in this area. Teaching the methodology and supporting civil society actors on the Georgian and Ossetian sides would help them establish an accurate historical record. Research projects involving people from both sides of the conflict could have a peacebuilding dimension as well, by attempting to verify allegations of atrocities that have been impossible to substantiate so far but that have significantly shaped each side's discourses.

Prosecutions

There is a lively peace and justice debate over the benefit of prosecutions versus "soft" justice mechanisms, amnesties and peace deals. Proponents of the latter argue that prosecuting leaders responsible for crimes can destabilize fragile transitions.

Prosecution has rarely been used as an instrument for dealing with legacies of past abuses in the Caucasus. Violations of human rights and humanitarian law committed in the context of the conflicts remain uninvestigated, unprosecuted and unpunished. Choosing a course of action that bypasses judicial accountability is typically done in the name of stability, or kinship ties and loyalties.

During transitions from the Soviet regime to the rule of Gamsakhurdia, Shevardnadze and Saakashvili, prosecutions were not employed as a genuine justice tool, or as a way to break with the previous regime's logic by linking prosecutions to other transitional justice mechanisms. Gamsakhurdia's entourage may have been put on trial, but that case had clear political connotations and was riddled with due process violations and torture. The legacy of Gamsakhurdia's policies of nationalistic pressure against minorities and ethnically motivated property rights infringements (especially against Ossetians and Azeris) has not been addressed.¹⁸

Shevardnadze's maneuvering between interest/clan and criminal groups to stabilize the country in early 1990s left little space for the pursuit of justice. His hands were tied by obligations to partners in corruption and networks of criminal kingpins. When Saakashvili came to power, he created temporary extra-budgetary funds in which some economic criminals contributed in exchange for immunity from prosecution. The funds closed several years ago after severe criticism for lack of transparency. Criminal prosecutions under Saakashvili are increasingly perceived as tools of political expediency. Rights workers say the administration applies justice arbitrarily and uses trumped-up charges at times to exert political control.

Generally, silence has surrounded the crimes and abuses committed during the 1990s Georgian-Abkhaz and Georgian-Ossetian wars. The relative isolation of these societies has contributed to this. But, given the small size of societies affected by active fighting and their closely knit family and kinship structures, many say that everybody knows who did what during the wars. People who have committed crimes or atrocities are completely banned from going to 'the other side' of the conflict divide. An effective 'justice/national security' screening system is in place in Abkhazia for instance; ethnic Georgians who want to enter Abkhazia are subject to screenings by the Abkhaz security services that grant access on a case-by-case basis. They tend to turn down applications of anyone even remotely related to people who have played controversial roles during the war, arguing that their security could not be guaranteed.

18 Many Ossetians believe that Saakashvili endorsed his predecessor's policies: soon after his inauguration, Saakashvili renamed one of Tbilisi's main riverfronts after Zviad Gamsakhurdia.

Since the peace processes are derailed and there is little scope for cooperation between sides, chances are slim that crimes and abuses committed during the conflict would be addressed through prosecutions. Nonetheless, prosecutions for conflict-related crimes could significantly change how both sides perceive their conflict resolution goals, even if the prosecutions were pursued in a unilateral fashion in the future. Such a shift in policy on either side is unlikely now. But here, too, a policy orientation focused on creating a constructive context for resolution and, especially on the Georgian side, changing perceptions of the Abkhaz and Ossetian sides, as some opposition leaders have pledged to do, would be beneficial.¹⁹

There is a need to prosecute crimes committed during the August 2008 war that may amount to atrocity crimes. These would be best addressed by international justice mechanisms. The Georgian and Russian sides have already filed cases with the International Criminal Court, the International Court of Justice and European Court of Human Rights. Pursuing accountability where necessary, including at high levels, may be very difficult politically, but it would serve as a clear deterrent against such crimes in future. It would also act as a caution against reckless flirtation with military options to settle conflicts. And it would powerfully change perceptions in the conflict resolution processes—vis-à-vis each of the sides but also the international community whose credibility as an even-handed actor has been undermined in the Caucasus.

It is also timely to consider possible prosecutions related to democratic transition within Georgia. At least two high-profile murder cases (Amiran Robakidze and Sandro Girgvliani), which allegedly involved high level interior ministry officials, have not been investigated adequately. No systematic investigations or prosecutions have addressed abuses of power in the violent November 2007 crackdown. Reports of officials violating property rights and committing extortion continue to occur. It is unlikely that the current leadership will address these issues, but most opposition players talk of the need to deal with them once a power transfer occurs at a future point.

There is a great risk that when a transfer of power occurs, it will be turbulent unless carefully handled. It is imperative to emphasize the transitional justice dimension so officials and politicians can prepare future strategies on how to deal with rights infringement legacies of past and current periods without undermining a nascent justice system by witch hunts or tacitly co-opting past culprits. If an immunity or amnesty approach is adopted, other transitional justice mechanisms will be even more important to address victims' demands for justice.

Realistically, prosecutions are not a starting point for transitional justice in Georgia. However, introducing this consideration into the policy debate would be useful. For Georgia, as for the whole Caucasus, prosecutions of widespread official abuse or war-related crimes represent a tool that could prove that justice and accountability actually exist beyond political interests and that it can be pursued.

Reparations

Reparations as recognition and partial repair of harm suffered by victims could also be a powerful conflict transformation tool in the context of the Caucasus. Much work remains to be done in this area, and many official and civil society interlocutors have expressed their interest in exploring related themes. Many interlocutors have also pinpointed the potential tension between addressing harm and respecting victims'

19 An interesting example of how prosecutions could potentially play a positive role in improving the resolution process was Saakashvili's brief clampdown in 2004-2005 on partisan-criminal groups operating on the Zugdidi side of the Georgian-Abkhaz ceasefire line and in Gali. The Forest Brothers and the White Legion partisan groups were disbanded for a brief period soon after Saakashvili came to power, and some of their members went to jail. This improved the area's security situation and partially served as deterrence against further violent activity. It also sent the Abkhaz side a strong positive signal that the president meant business (although his administration ended up disappointed by how little this was publicly appreciated in Abkhazia). This approach did not last very long, as conflict resolution priority policies have steered away from building confidence. A credible, transparent process was necessary to match the good intentions in order for people to perceive the outcomes as meaningful and reliable.

rights and dignity. Challenges would be numerous, as with any reparations program, ranging from a clear definition of objectives and terms of engagement to practical fairness or inclusion of particularly vulnerable categories of victims.

One particular challenge in terms of defining objectives is the fact that, at this stage, reparations approaches would feed into a stalled peace process in the Georgian-Abkhaz case, and into a legacy of mass violence, war crimes and displacement of the August 2008 war layered over the 1990s Georgian-Ossetian context. The current political climate would most likely allow only for preparatory and background work focused on exploring avenues of practical engagement, studying experiences from other conflicts, and preparing policy strategies.

Last summer's developments have changed the conflict dynamic and impacted different parties' interests in ways that could, despite deeper divisions, result in new openings on topical issues, especially in the Georgian-Abkhaz context. Considering reparations in the broadest sense could transform the logic of the conflict resolution engagement and even create momentum on key themes in the Georgian-Abkhaz conflict resolution process. Linkages to other justice mechanisms would be crucial, to safeguard victims' dignity.

Symbolic Reparations

In terms of symbolic reparations, any steps taken by any side toward acknowledging, even incrementally, past abuses could be beneficial to changing the overall conflict resolution dynamic. An acknowledgement of abuse or wrongdoing can be regarded as an important symbolic gesture and the context in which such a step is taken and when it might occur is important. To have a positive effect, any acknowledgement should be well prepared so it elicits a response that feeds into a cycle of positive or benign engagement rather than a destructive one.

Prior to the August 2008 conflict, Abkhaz and Ossetian constituencies would have welcomed a unilateral apology from Tbilisi for injustices in the period prior to and during the conflicts of the 1990s, as well as an acknowledgement that a coercive conflict resolution policy pursued by Georgia over the past 15 years has pushed the two breakaway entities closer to Russia.²⁰ Some Ossetians and Abkhaz say this is now an irrelevant debate and relations after the August 2008 war are beyond repair. Georgian authorities seem reluctant to even entertain this notion. A civil society group in Tbilisi that advocated offering such an apology with its 2006 "Sorry" campaign was bitterly criticized by Saakashvili; he famously remarked that an apology is in fact owed to Georgia.²¹ But the atrocities and violations that Abkhaz forces and their allies committed when they took control of Sukhumi in September 1993 and pushed Georgian forces out of Abkhazia also need to be addressed.

The legacy of forced displacement—or "ethnic cleansing" as Tbilisi claims—of ethnic Georgians from Abkhazia in the 1990s and subsequent seizures of their property must also be addressed. It would be an important step toward creating a new dynamic, although different parties regard the urgency to deal with this issue differently. The IDPs' right to return to their homes and reclaim their property needs to be upheld. By the same token, it is important to recognize that this right is voluntary. Georgian officials have often used the discussion about return as a political tool, a fact that has limited the range of policy options. In the constrained political context of Abkhazia, framed by fears for the survival of the Abkhaz nation and a deep interest to maintain a demographic balance not dominated by Georgians, even discussion of IDP issues is difficult. Some among civil society, however, admit that this legacy should be tackled,

20 According to Ossetian interlocutors, an apology alone would have had a significant impact in countering the Ossetian interpretation of Georgian policies in the 1990s as fascist.

21 Georgian officials often argue that their predecessors did not condone the invasion of Abkhazia by ethnic Georgian armed formations; the government had little control over paramilitary groups. This does not diminish Georgia's responsibility as a state to control all resources of coercive power (especially since Georgia wants to bring its separatist areas back under its control).

and it would be beneficial to move beyond the politicized framing of the issue and explore options on how best to address the dilemma between rights and security.

Tbilisi should work to acknowledge abuses committed against South Ossetians in the course of its coercive conflict resolution policies over the past years. The 2004 campaign and the indiscriminate shelling of Tskhinvali on the wake of the August war merit special attention in terms of symbolic reparations. On the Georgian side, it is especially unlikely on the part of the current leadership; some opposition figures have said they would explore these issues.

Ossetian and Russian sides should address and acknowledge mass abuses against ethnic Georgians of South Ossetia in August 2008 as a matter of priority. They should work with Tbilisi for speedy voluntary return. Given that the Ossetians believe they were the targets of an indiscriminate Georgian campaign of destruction in the first place, however, they are unlikely to be open to tackling past issues in the foreseeable future. Russian political considerations further complicate the issue.

In general, it is unrealistic to expect significant progress in terms of symbolic reparations, as necessary as they are, in short- to medium-term time frames.

In terms of the Soviet past, the single most important legacy where reparations in all senses are badly needed is that of the Meskhetian Turks. Georgia made a commitment to repatriate survivors of Meskhetians deported in 1944 and their descendants during a 12-year period when it joined the Council of Europe in 1999. But the Georgian government has been slow to address the issue. A law on repatriation of Meskhetians was finally adopted in 2007, but its implementation has been limited due to vagueness in the law's wording, as well as the 2008 war. Some individual repatriations have occurred. Several international organizations are deeply involved with the issue, including the European Centre for Minority Issues and the International Foundation for the Support of Repatriation.

Restitution in the Georgian-Ossetian Case

A law on property restitution to victims of the Georgian-Ossetian conflict was passed in January 2006 after strong pressure from the international community. The law foresees restitution of property to victims of the conflict via a multiparty mechanism. The adoption of the law was received with much hope that Georgia was about to launch a credible process that would take into genuine consideration the interests of the Ossetian constituency. The potential impact of the law's implementation on the peace process was widely judged as likely to be unprecedented. Unfortunately, the government's policies at the time were often coercive and departed from confidence building and peace and justice approaches. The focus on Sanakoev's alternative administration was accompanied by the shelving of this law.²²

Following the August 2008 war, it is unlikely that the law will be revived, given the mass violations and losses the ethnic Georgian population suffered in South Ossetia and the zones adjacent to it. However, several Georgian officials have said that restitution and compensation issues will ultimately need to be explored further. Doing this requires all sides to do a lot of preparatory work.

22 Several Georgian officials said the government feared that the law's implementation would lead to a situation in which Ossetian refugees currently residing in the Russian Federation would simply pocket compensation payments and not return.

Return and Property Issues in the Georgian-Abkhaz Case

Addressing issues of displacement, return and property rights has been one of the most difficult tasks of the Georgian-Abkhaz peace process. Both sides have entrenched positions, which have often been linked to other intractable issues, and any practical movement has been very difficult to achieve. Even addressing practicalities related to return to Gali is often blocked by political considerations (mutually exclusive status arrangements; political and civil rights of returnees; UNHCR verification of return).

As with many issues in the peace process, the parties have been caught in a zero sum game in terms of IDP return negotiations. The Abkhaz say they have unilaterally launched the process of return to Gali, as the first phase of a wider return process. Tbilisi does not recognize the return process as having officially started, and says security and dignity of returnees is not guaranteed. Even areas of potential practical progress tend to get trapped by the overall politics of Abkhazia's final status.

The August war and Russia's recognition of Abkhazia has changed the situation in several ways. Many among Georgia's IDPs and the general public now say they understand with increased clarity (and despite Saakashvili's pledges to soon reintegrate Georgia) that the breakaway territories are lost at least in the medium-term, if not beyond. A similar understanding is shared by key international actors who can use their leverage to further push for at least incremental progress on specific issues in the resolution process. The alternative is Abkhazia's absorption into Russia, a prospect not welcomed by Tbilisi, its partners in the West, or indeed many in Abkhazia itself.

The August conflict has also changed the dynamic in the IDP community. Many 'old' IDPs who still live in appalling conditions are interested in securing at least some financial gains from their assets in Abkhazia, especially now that the prospect of return is even more distant. Also, real estate prices in Abkhazia have skyrocketed since September 2008 and might well increase more as the 2014 Winter Olympics across the border in Sochi draw closer. Several IDP interlocutors have described informal deals between Georgians who own property in Abkhazia and Abkhaz counterparts who have seized this property,²³ and have offered to privately compensate the original owners in return for their withdrawal of claims on the property. Such informal deals are said to be numerous and reflect the need to reach some form of a settlement of the issue. In the complex legal context of Abkhazia's partially recognized jurisdiction, and given the fact that any property transfers there are now being addressed by the Georgian law on occupied territories, the legal validity of such transactions is dubious. Moreover, they are strongly discouraged by the Georgian side. IDP interlocutors have said Georgia's security services investigate such deals with interest; IDPs fear they may be branded traitors, a not uncommon occurrence.

Interestingly, some in Abkhazia say there is a need to address these issues practically and get beyond the political stumbling blocks of the traditional zero sum game. The Abkhaz side, wary of reversal of the demographic balance in case of huge numbers of ethnic Georgians returning, is not ready to compromise on its political position concerning IDP return. But there may be willingness, voiced by civil society and a high level official alike, to explore future strategies. Many in Abkhazia have emphasized their interest in compensation schemes, an approach unlikely to be politically acceptable to Tbilisi. Actors on both sides have said it would be beneficial to explore these issues, and to look at experiences of how similar issues have been dealt with elsewhere. This could initially be done on the level of track 2 or in discussions between expert working groups from the respective parties. The latter option would, however, be limited by Tbilisi's overall approach to conflict resolution. Politicians in Abkhazia are likely to be less inclined to compromise in the lead-up to the planned de facto presidential elections in Abkhazia in December 2009. Possibilities of cooperation with the UNOMIG and UNHCHR should also be considered.

23 In many cases they have done this for shelter because their own homes were destroyed in the conflict or for financial gain.

Memorials

Memorials deserve a mention, although in the context of Georgia's conflicts they have had little to do with justice, reconciliation or peace. As is perhaps inevitable in a situation of ongoing conflict, each side has built memorials to its own victims, heroes and interpretations of history. Memorials so far have been geared to promoting nationalism and endorsing each side's political agendas.

In terms of internal Georgian transition, the situation is complex. While the Saakashvili administration has opened a museum of Soviet occupation in Tbilisi, a mere 100 km north of the capital, a big museum and memorial marks Joseph Stalin in his hometown of Gori, adjacent to South Ossetia. Questions of localized, national and political identities are still in flux.

Building Institutions

In Georgia Proper

It is a central objective of transitional justice to prevent the recurrence of human rights violations. Providing effective and accountable security to communities through the promotion of the rule of law and reform of abusive or irresponsible security systems is at the heart of such efforts. Promoting the legitimacy of the security sector and decisions made in relation to security is fundamental. It is equally important to strengthen the integrity of governmental institutions. Institution-building is also a prerequisite for improving a state's governance capacity and that of its polity to carry out credible and procedurally complex transitional justice processes.

This generally coincides with much of the broad good governance and democratization agenda that the EU, United States and OSCE have pursued in Georgia. Since the Rose Revolution, the West has pledged significant financial aid as well as practical expertise to reform Georgia's institutions in all three branches of government. Efforts have focused in particular on reform in the rule of law sphere, including the security sector, the judiciary and the penitentiary system. Some capacity building has been done with the Georgian parliament.

The judiciary, however, remains one of the least trusted institutions in the country; the public questions its impartiality and transparency. Delays in the adoption of a new penal code have slowed the reform of the criminal justice system. Many Georgians believe that laws are applied in an arbitrary fashion. Similarly, the parliament, dominated by the ruling party, has acted as a rubber stamp institution to the strong executive. The president's post-August 2008 plans to institute a new wave of reform have remained incomplete (although incremental progress is underway especially in the areas of the judiciary, with a partial introduction of jury trials and appointments of lifetime judges).

The 2008 war has exposed severe limitations in terms of how accountable Georgia's institutions are concerning security-related decisions, crisis response and inter-agency cooperation. According to diplomats and Georgian observers, only a handful of high-ranking officials were involved in making decisions just before and during the 2008 war. Formal decision-making mechanisms were disregarded. Georgia's diplomatic, national security and defense structures were blamed for failing to provide timely responses in a report prepared by an ad hoc parliamentary commission investigating the origins of the war. The Georgian army's retreat was, according to international observers, chaotic and unprepared. Command and control structures apparently had difficulties within days of Russia's response. The role of reserve troops was "inadequate and incompetent," according to the commission's report.

National security is not publicly discussed in Georgia. Management failures in the defense sector have been insufficiently addressed. Instead, soldiers who did not return to their barracks by an arbitrarily set deadline are now on trial. Human rights workers say that many of the soldiers were cut off by fighting or simply lost as Georgian defense forces, unable to retreat in an organized fashion, ran from the front line.

All of Georgia's branches of government need more institutional reform, especially for strengthening justice-sensitive capacities in the security sector and for building improved, responsible crisis management. Independent scrutiny and investigation of past problems, and prosecution in cases of proven official abuse, would confirm genuine commitment to international standards, including human rights and humanitarian law. However, given the current Georgian leadership's track record, chances that genuinely independent investigations can take place are slim (although they would be an important step to restoring the government's credibility). They would need to be pursued in close cooperation with the EU, the United States and other countries bilaterally that are active players in furthering the agenda of institutional reform.

In Abkhazia and South Ossetia

In both conflict regions, the picture is also complex and there are many problems with current governance capacities, questions of political status and politics of the conflicts aside.

Prior to the 2008 conflict, Tbilisi generally considered any Western-funded projects in support of building institutions or governance capacity in the breakaway areas as a direct threat to its national interests. Tbilisi views these institutions in Abkhazia and South Ossetia as illegal, and any support they get is considered to be direct or implicit support to separatist agendas. As the number and rank of Russian personnel in de facto institutions in the republics grew after 2004, especially in South Ossetia, Tbilisi came to view these structures as criminal. Yet, primarily in Abkhazia, capacities of local institutions have evolved considerably and local bodies have often demonstrated strong independence from Russia, such as in the 2004 de facto presidential election.

International organizations have been cautious about getting involved in politicized issues of institutional reform in the breakaway areas. Some activities have been funded in support of school teachers, the Abkhaz university and self-governance bodies in Abkhazia. International actors have launched low key cooperation with Abkhazia's law enforcement structures, mainly oriented toward training. International NGOs have funded occasional programs for human rights training and even committed cautious support to the development of capacities of local de facto authorities in Abkhazia, but much work remains to be done. Further work on the development of local institutional capacities is needed whatever the final political settlement.

Reconciliation

Even before August 2008, reconciliation was a remote prospect in both the Georgian-Abkhaz and Georgian-Ossetian contexts.²⁴ As Georgia's fears of Russia increased and Saakashvili's policy toward the conflict regions became increasingly coercive, the Abkhaz and Ossetian sides grew less ready to consider confidence and peacebuilding initiatives. Conflict policies on all sides have run contrary to reconciliation.

Justice and rights discourses have figured in conflict resolution as a way of furthering political agendas of each side. Only isolated civil society voices within each constituency have occasionally raised some of these issues and pointed to past and current abuses or infringements, most notably committed in Gali. Some international and Georgian NGOs have explored issues of addressing past injustices. However, as discussed earlier, the Saakashvili leadership strongly disapproved of this, and they received limited support among the Georgian constituency. Reconciliation has not been of primary interest to the Abkhaz and Ossetians.

24 Reconciliation is understood in this context as the multi-faceted and long-term process of rebuilding civic trust among citizens and between citizens and the state after a period of conflict. It is also relevant within states and between communities across conflict divides. The term does not encompass the notion of forgiveness or forgetting.

Worth mentioning in this context is the issue of the Abkhaz archive that ethnic Georgian forces burned down during the 1992-1993 conflict. This was an irreplaceable loss: the archive was home to many unique records of Abkhaz and Circassian oral histories, and to documents and other materials that the Abkhaz considered crucial parts of their history. Writing that history is what they fear Tbilisi has not wanted to allow them to do. The Abkhaz think this destruction is symbolic, and this perception has gained even more resonance since Georgia stopped all nongovernmental Georgian and international efforts from contributing to the archive's restoration.

The role of official propaganda has been notable. Saakashvili's focus on Russia's destructive role in the Georgian-Abkhaz and Georgia-Ossetian conflict is not without merit, but it mainly focuses of the Georgian-Russian layer of issues. It precludes any assumption of responsibility for past abuses on the Georgian part. Similarly, the Abkhaz and Ossetian sides, preoccupied with their own national projects and existential fears, have been unable to address broader rights issues, most prominently those of return.

Reconciliation efforts in the short- to medium-term are challenging to all sides. All of them proclaim a desire for improved relations, but strategies for reconciliation have not been comprehensively developed by any of the parties to Georgia's conflict. Their lack of readiness to compromise on political positions has at times seemed almost antithetical to reconciliation: for this to take place, it is crucial to change relations and attitudes in order to change political behavior. Pursuing a reconciliation agenda ultimately would be instrumental for reframing longer-term political relations and finding a sustainable, mutually acceptable settlement. Introducing this dimension into conflict transformation and peacebuilding efforts on the civil society level is timely: it may challenge current stereotypes and further consideration of the development of strategic approaches to overall conflict transformation.

The pursuits of justice and reconciliation are two distinct components of the processes seeking to bring sustainable peace to conflict-ridden societies. Finding a balance between the two is the best way to anchor any resolution. Placing greater emphasis on one or the other is context-specific, but it is likely to have political implications, including for policy choices favored by each party to the conflict. A process of research, with involvement of local actors, would be beneficial in addressing these issues.

4. Opportunities to Engage on Transitional Justice

Areas for Possible Exploration from a Transitional Justice Perspective

Research on opportunities to pursue transitional justice approaches in Georgia and the conflict regions suggests that the following areas provide possible entry points and should be examined in greater detail.

Return and Restitution/Compensation in the Georgian-Abkhaz Context

The post-August multi-party negotiations in Geneva focus on two sets of issues: security/stability and IDP return issues. The Abkhaz side has traditionally been reluctant to discuss return and IDP property issues. But there now seems to be an increased, if fragile, understanding shared by some among the Abkhaz authorities and civil society that these issues need to be tackled. Some in Abkhazia have especially highlighted the need to open up the issue and differentiate between its aspects: how many IDPs are still interested in return (to a new political reality in Abkhazia); what have been practices and experiences elsewhere in dealing with property rights abuses, compensations, etc. (such as in Cyprus, Bosnia and Kosovo); how can such claims be addressed simultaneously by different groups, given that many Abkhaz/Armenians/Russians of Abkhazia have lost property during the course of the war and especially when the Georgians held Sukhumi, how can these claims be addressed simultaneously.

A process involving the two transitional justice mechanisms of truth-seeking (documentation) and reparations in the broadest sense (compensation, acknowledgment of abuses on both sides) could help address the claims of victims on both sides, as well as support the political process in one of the areas the current negotiations are trying to address.

Documentation: Georgian-Ossetian Zone of Conflict

Human rights abuses have been committed by the Georgian, Ossetian and Russian sides in the zone of the Georgian-Ossetian conflict during the August war and its aftermath. War crimes are reported to have been committed by Ossetian and Russian sides. Georgia's actions, such as indiscriminate and disproportionate artillery attacks, may amount to war crimes if intent is proven.

There have been some international and local nongovernmental efforts to document what has happened, especially during the days of the war (Human Rights Watch, Amnesty International and local NGOs such as the Young Lawyers Association). The Georgian State Ministry on Reintegration, Georgia's public defender and many local NGOs have, however, stressed that documentation efforts have not been broad enough and that the need for methodologically well-prepared documentation continues.

In addition to the truth-seeking benefits, a documentation process could serve as a basis for (nongovernmental) efforts to bridge the gap in the narratives developed on either side of the conflict divide.

Interlocutors on both sides have also expressed the desire to engage in truth-seeking to counter the widespread myths about the recent conflict. Given the degree of damage to inter-ethnic relations, this in its own right could be a beneficial step toward dealing with the legacies of abuse as well as toward future confidence building.

Restitution and Inter-ethnic Relations in the Georgian-Ossetian Context

After many years of pondering and international pressure, the Parliament of Georgia passed a law on restitution of property to the victims of the Georgian-Ossetian conflict in December 2006. The law was to address especially property grievances of ethnic Ossetians who lived in Georgia proper before and during the time of the Georgia-Ossetian conflict in 1991-1992 and were forced into selling their homes for token prices as part of an anti-Ossetian campaign.

The law has been shelved. While the August war has dramatically changed the political context for its application and added yet another layer of mass abuses against both Georgians and Ossetians, interlocutors in Tbilisi acknowledged a need to rethink the strategy for the law's application. To do so would be a very significant confidence-building measure, especially in the current situation.

The international Community: The United Nations and the European Union

The UN Human Rights Office in Abkhazia, Georgia (HROAG) has a double mandate from the United Nations Observer Mission to Georgia (UNOMIG) and the UN High Commissioner for Human Rights (UNHCHR). The UNHCHR has defined transitional justice as one of HROAG's top priority areas. The EU International Independent Fact Finding Mission on Conflict in Georgia (IIFFMCG) has been established to look into the origins and the context of the war in August. Headed by the Swiss diplomat Heidi Tagliavini, the IIFFMCG is investigating circumstances of the conflict. It has invited some international organizations to share any relevant information.

A meeting involving Georgian, Abkhaz and Ossetian civil society actors to discuss a transitional justice process in the Georgian-Abkhaz-Ossetian context could bring together a group that could develop a field research-based analysis of the context leading up to the war (possibly also an analysis based on documentation work with victims of the conflict). This could provide useful input for IIFFMCG's considerations and be a basis for engagement with the UN HROAG. If time frames are too short (as the IIFFMCG is due to report in July) the time of publication of the IIFFMCG's report could be used to generate debate on what transitional justice means in the respective communities

Internal Georgian Transition

There is a great public demand for increased transparency and accountability from the part of the Georgian government, but the space for open public discourse has shrunk. Civil society groups have expressed a deep desire to examine some of the legacies and open a public debate. A group of independent experts has held several unofficial public hearings, but needs financial and methodological support. Work with local civil society organizations in pursuing the accountability and public debate agenda could be the first step to addressing past legacies of abuse. Opening the debate on conflict resolution policies, including coercive policies against ethnic Georgians in the Gali and Akhgori regions, would also be beneficial.

Assisting Georgian society in opening up public debate on legacies of the post-independence experience, including past abuse in inter-ethnic, human rights and property rights areas, would facilitate further peaceful transition.

Next Steps

It is too early to consider application of a comprehensive transitional justice strategy. Many aspects of Georgia's political and conflict situations, as well as the likely intransigence on the part of Russia, are powerful constraints.

However, while justice and accountability and victims' claims and interests are essential elements of social and political reconstruction, they should not be solely dependent on a formal process agreeable to all sides with their divergent interests. They can and should be the subject of public debate and unofficial processes even at a stage where the formal mechanisms to give them effect are not yet feasible. Such debates can create space for processes that begin to address reconciliation and build confidence between societies divided by conflict. Concrete transitional justice methods like documentation or mapping and surveys of public opinion can bolster such efforts.

The following steps can further transitional justice efforts in practice in the short- to medium-term:

1. Building up a transitional justice constituency by
 - Identifying key partners among Georgian, Abkhaz and Ossetian interlocutors who have either directly or tangentially worked on issues relevant to transitional justice and would be interested in pursuing further work in this area if a sound strategy is developed, ideally with their participation;
 - Raising awareness of transitional justice issues and approaches by organizing preparatory seminars on transitional justice issues for key nongovernmental actors, sponsoring participation of such local actors in international events on transitional justice;
 - Translating and disseminating as needed several basic transitional justice texts into Georgian and Russian to stimulate discussion.
2. Pursuing advocacy at all levels, national and international, to raise awareness of the relevance and importance of transitional justice on Georgian, Abkhaz and South Ossetian sides.
3. Broadening the scope for a transitional justice focus by seeking discussion on a regional level with the inclusion of Armenians, Azerbaijanis and possibly representatives of other Caucasian republics and/or Russia. An emphasis on a regional discussion of Nagorny-Karabakh, but if possible also North Caucasus and Armenia-Turkey would be beneficial.
4. Supporting unofficial processes of public hearings/inquiries especially in Georgia proper to further transparency and accountability, and promote a public debate that could contribute to dealing with complex legacies.

And in the medium-to long-term:

5. Elaborating and implementing a formal national transitional justice survey/consultation to ascertain the views of the different sides and the needs of victims, as well as to help put transitional justice issues and approaches constructively on the political agenda.
6. In cooperation with local actors, engage in a process of research on how the societies and elites in the Caucasus are inclined to approach justice or reconciliation, and what the policy implications of each may be.

7. Recommending that the UN and EU consider establishing an independent internationally led mapping exercise that covers the worst violations that have occurred since Georgia declared its independence. This could serve as a springboard for a more formal, concrete transitional justice engagement.
8. Promoting exchange of experience and learning from other contexts where transitional justice issues approaches are being pursued, primarily the Balkans and Cyprus; and initiating comparative studies on property issues.
9. In developing programming, giving prevalence to those aspects of transitional justice that are at the heart of promoting accountability and providing redress to victims: documentation, truth-seeking and reparations.

5. Conclusion

Transitional justice analysis and approaches have not been strategically pursued in the Caucasus, including Georgia and the breakaway regions of Abkhazia and South Ossetia. The context of Georgia's democratic transition, protracted conflicts in Abkhazia and South Ossetia, and the short violent war with Russia warrant a transitional justice focus. Multiple legacies of past infringements and abuse are layered over one another. There has been unlawful action by every party, and victims have suffered violations. Addressing these legacies could help transform the environment of the stalled conflict resolution processes. It could potentially create practical openings for progress. It could also enhance the credibility of Georgia's democratization and contribute to ensuring that the country's next change of government takes place with justice agendas in mind.

Transitional justice processes can be seen as seeking to foster the development of a new social contract based on a common understanding of the past. In the case of Georgia's conflicts, political aspirations of all actors remain far apart or mutually exclusive. This is unlikely to change in foreseeable future, if at all. But a transitional justice process could contribute to changing the context of political intractability between parties. Fifteen years of abortive efforts at conflict resolution indicate that political settlements in the region could be difficult to achieve without addressing demands for justice and the need for reconciliation.

Practically speaking, efforts to apply transitional justice methodology here will be fraught with challenges. Still, the transitional justice agenda is deeply relevant to both the conflict resolution processes and to democratization. Many Georgian, Abkhaz and Ossetian actors have voiced their preoccupation with justice issues and some have expressed an interest in pursuing particular aspects of the transitional justice approach. Introducing the transitional justice dimension into the public discourse in Georgia and its breakaway territories may provide an important complementary avenue to achieving constructive social change.

ICTJ New York
5 Hanover Square, 24th Fl.
New York, NY 10004
Tel +1 917 637 3800
Fax +1 917 637 3900
www.ictj.org

ICTJ Brussels
Blvd. Bischoffsheim 11, 8th floor
B-1000 Brussels, Belgium
Tel: +32 2 227 6140