

**AMENDED REQUEST FOR THE INDICATION OF PROVISIONAL  
MEASURES OF PROTECTION SUBMITTED BY  
THE GOVERNMENT OF GEORGIA**

**A. INTRODUCTION**

1. I have the honour to refer to the Application submitted to the Court on 12 August 2008 by which proceedings were instituted on behalf of the Republic of Georgia against the Russian Federation under the International Convention on the Elimination of All Forms of Racial Discrimination ('CERD'), and to the Request for Provisional Measures submitted to the Court on 14 August 2008. In view of the rapidly changing circumstances in Abkhazia and South Ossetia, the Republic of Georgia respectfully files this Amended Request for Provisional Measures in accordance with Article 41 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of the Court, in advance of the oral hearing scheduled between 8 and 10 September 2008.

**B. JURISDICTION OF THE COURT**

2. As set forth in the Application, the Court has jurisdiction over the present case pursuant to its Statute and Rules and Article 22 of CERD.

**C. THE FACTS RELEVANT TO THIS REQUEST**

3. The Russian Federation has now assumed control over all of South Ossetia and Abkhazia, as well as adjacent areas within the territory of Georgia, following its invasion commencing on 8 August 2008. Within these areas under Russia's control, ethnic Georgians have been subjected to physical violence on a systematic basis, resulting in numerous civilian deaths and the terrorization and mass-exodus of the civilian population. The homes and property of ethnic Georgians have also been deliberately targeted for systematic burning and looting. The manifest objective of this discriminatory campaign is the mass-expulsion of the ethnic Georgian population from South Ossetia, Abkhazia, and other neighbouring areas of Georgia. It reflects a Russian policy – commencing in the 1990s – to consolidate the authority of ethnic separatists, under Russia's direction and control, over Georgia's territory through ethnic cleansing and denial of the right of return. For Georgia, the humanitarian consequences of

this discriminatory policy have been catastrophic. In addition to the 300,000 internally displaced persons (IDPs) from the 1990s, the United Nations High Commissioner for Refugees estimates that since Russia's invasion on August 8, an additional 128,000 Georgian citizens have been internally displaced.<sup>1</sup> IDPs now constitute almost 10% of Georgia's total population of 4.5 million.

4. This Request for Provisional Measures is directed at an immediate cessation of the violent forms of racial discrimination against ethnic Georgians that continue unabated in the areas of Georgian territory under the control of the Russian Federation and for an immediate cessation of the various measures adopted or supported by the Russian Federation to frustrate the right of return of the ethnic Georgians who have either been forcibly expelled or who have fled as a result of this violence.
5. The factual background to the dispute between the Russian Federation and Georgia under CERD is set forth in Georgia's Application of 12 August 2008. A book of evidence will be submitted to the Court in advance of the oral hearing in relation to the recent and ongoing acts of racial discrimination attributable to the Russian Federation that are the object of this Request for Provisional Measures. The following is a summary of main developments relevant to this Request following the Russian Federation's invasion of 8 August 2008.
6. Since 8 August, Russian forces acting in concert with South Ossetian separatist militia and mercenaries, have engaged in widespread and systematic discriminatory acts against Georgians on grounds of their ethnicity, including the murder of civilians, the taking and mistreatment of hostages, and the plunder and destruction of homes and other civilian property. This policy was initially implemented in territories in the immediate vicinity of Tskhinvali within the boundaries of South Ossetia. Since then, it has expanded to encompass Georgian villages beyond South Ossetia, in the districts of Gori and Kareli, south and southwest of Tskhinvali respectively, and now threatens the Georgian population in the district of Akhalkgori to the east where the separatist authorities are making territorial claims supported by the Russian Federation and actively disseminating Russian passports to the remaining residents.

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<sup>1</sup> United Nations High Commissioner for Refugees, "UNHCR chief visits South Ossetia", 22 August 2008, available at: <http://www.unhcr.org/news/NEWS/48aef0dc4.html>.

7. In Abkhazia, ethnic Georgian villages in the Kodori Gorge have been destroyed by Russian forces and their estimated population of 3,000 has been displaced. The 45,000 ethnic Georgians in the Gali district are denied freedom of movement, completely isolated from Georgia, and their fate is unknown as of this date. Prior to the 8 August Russian invasion, this population was under pressure to assume Russian citizenship, under threats of expulsion and other punitive measures.
8. According to eyewitness, widespread and systematic acts of violent racial discrimination, including murder of civilians, hostage taking and mistreatment, and the pillage and destruction of homes and property, have been committed against ethnic Georgians in the following areas of Georgia under Russian control:
  - Within territories of South Ossetia under separatist control prior to 8 August, to the immediate north and south of Tskhinvali, the Georgian villages of Kekhui, Zemo Achabeti, Kvemo Achabeti, Tamarasheni, Nikozi, and Kvemo Nikozi;
  - Within territories under the Temporary Administration of South Ossetia under Georgian Government control prior to 8 August, to the north of Tskhinvali, the villages of Kurta, Eredvi, and Vanati;
  - Within the Gori District outside and to the south of South Ossetia, under Georgian Government control prior to 8 August, the villages of Tkviavi, Karaleti, Tirdznisi, Kitsnisi, Karbi, Ditsi, and Variani;
  - Within the Kareli District, outside and to the southwest of South Ossetia, under Georgian Government control prior to 8 August, the villages of Ptsa, Atotsi, Ruisi, and Dvani.
9. The Georgian Government continues to receive new reports each day of violence against the ethnic Georgian populations in areas under Russian control. A particular cause for concern is the Russian occupation of Akhgori District, outside and to the east of South Ossetia, and previously under Georgian Government control. In this District, ethnic separatist authorities have asserted their control by expulsion of Georgian police and other officials, and claimed that: "This used to be our territory. This is our territory. And this will be our territory in the

future”.<sup>2</sup> 72.7% of this District’s population is ethnic Georgia amounting to approximately 13,000 persons. They have lived in peace with a 26.5% minority of ethnic Ossetians for years. In view of the conduct of the Russian and separatist forces in other areas, there is an imminent threat of similar discriminatory violence in this District.

10. Russian support and participation in the recent campaign of violence is aimed at permanent changes in the ethnic demography of territories to expand the authority of separatist forces. According to one South Ossetian intelligence officer, “we burned these houses. We want to make sure that they [the Georgians] can’t come back, because if they do come back, this will be a Georgian enclave again and this should not happen.”<sup>3</sup> When asked if the thousands of displaced Georgians would be allowed to return to their homes in South Ossetia, the leader of the separatists, Eduard Kokoyti, stated categorically that: “We do not intend to let anybody in here anymore.”<sup>4</sup> Other sources confirm that “South Ossetia’s two top officials have both said in recent days that they don’t intend to allow back the ethnic Georgians who fled when militias torched their homes.”<sup>5</sup>

#### **D. THE RIGHTS GEORGIA IS SEEKING TO PROTECT**

11. In accordance with Article 2 of CERD:

States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

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<sup>2</sup> “Tanks and Katyushas bristle round isolated Tbilisi”, *Guardian*, 18 August 2008, available at: <http://www.guardian.co.uk/world/2008/aug/18/georgia.russia1>.

<sup>3</sup> “A Caucasian Journal,” *The Economist*, 21 August 2008.

<sup>4</sup> “We have in fact flattened everything there”, *Kommersant*, available at: [www.kommersant.ru/doc.aspx?fromsearch=ef093ba1-b275-41da-8576-5d73596075da&docid=1011783](http://www.kommersant.ru/doc.aspx?fromsearch=ef093ba1-b275-41da-8576-5d73596075da&docid=1011783).

<sup>5</sup> “Georgian refugees’ Return Grows Remote,” *Wall Street Journal*, 22 August 2008.

[...]

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

12. In accordance with Article 5 of CERD:

[...] State Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

[...]

b. The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution;

[...]

d. Other civil rights, in particular:

i. The right to freedom of movement and residence within the border of the State...

13. As a result of its unlawful occupation of the Georgian regions of South Ossetia and Abkhazia, as well as adjacent territories, the Russian Federation has consolidated its effective control over these territories situated within Georgia's internationally recognized boundaries. Consequently, for the purposes of the fulfilment of its obligations under CERD and responsibility for their breach, South Ossetia, Abkhazia, and relevant adjacent regions, fall within the Russian Federation's jurisdiction.<sup>6</sup>

14. Prior to the Russian invasion of 8 August 2008, the Committee on the Elimination of Racial Discrimination had recognised that obligations under CERD are engaged in respect of the *de facto* separatist regimes in Abkhazia and South Ossetia:

[T]he situations in South Ossetia and Abkhazia have resulted in discrimination against people of different ethnic origins, including a large number of internally displaced persons and refugees. On repeated occasions, attention has been drawn to the obstruction by the Abkhaz authorities of the voluntary return of displaced populations, and several

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<sup>6</sup> See: *Case of Ilascu v Moldova and Russia* (European Court of Human Rights, Application No. 48787/99) Judgment, 8 July 2004.

recommendations have been issued by the Security Council to facilitate the free movement of refugees and internally displaced persons.<sup>7</sup>

15. These violations of CERD as identified by the Committee have been significantly exacerbated by the Russian military occupation of, and discriminatory policies, in South Ossetia, Abkhazia, and adjacent regions since 8 August 2008.

(i) ***The Right to Security of Person and Protection Against Violence or Bodily Harm***

16. By its Application filed on 12 August 2008, Georgia is seeking, *inter alia*, the Court's order directing the Russian Federation to take all necessary measures to ensure that the remaining ethnic Georgian populations of South Ossetia and Abkhazia are not subject to discriminatory treatment contrary to Articles 2 and 5 of CERD. Pending the Court's consideration of the merits of Georgia's claims and its request for relief, Georgia respectfully requests the Court to indicate provisional measures to prevent irreparable prejudice to the right of ethnic Georgians to be free from discriminatory treatment, in particular violent or otherwise coercive acts, including but not limited to the threat or infliction of death or bodily harm, hostage-taking and detention based on ethnicity, the destruction and pillage of property, and other acts intended to expel them from their homes in South Ossetia, Abkhazia, and adjacent regions located within Georgian territory.
17. There is compelling evidence that Russian forces are directly involved in using violence and other coercive measures to consolidate and make permanent the removal of ethnic Georgians from South Ossetia, Abkhazia, and adjacent regions, that was first begun during the conflicts of the 1990s, and which has been and continues to be the fundamental basis for the authority of ethnic separatists under Russia's direction and control. The Russian Federation's conduct in this respect frustrates the rights of the remaining ethnic Georgians in South Ossetia, Abkhazia, and adjacent regions, to be secure in their persons, to be protected from violence and bodily harm, and to continue to reside in their homes and villages.

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<sup>7</sup> Concluding Observations of the Committee on the Elimination of Racial Discrimination: Georgia, 27 April 2001, CERD/C/304/Add.120, at para. 4.

(ii) ***The Right of Return***

18. The Committee on the Elimination of Racial Discrimination has, in its Recommendation No. 22 entitled 'Article 5 and refugees and displaced persons', elaborated on the rights enjoyed by refugees and displaced persons under Article 5 of CERD and the corresponding obligations of the State Parties:

(a) All such refugees and displaced persons have the right freely to return to their homes of origin under conditions of safety;

(b) States parties are obliged to ensure that the return of such refugees and displaced persons is voluntary and to observe the principle of non-refoulement and non-expulsion of refugees;

(c) All such refugees and displaced persons have, after their return to their homes of origin, the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void;

(d) All such refugees and displaced persons have, after their return to their homes of origin, the right to participate fully and equally in public affairs at all levels and to have equal access to public services and to receive rehabilitation assistance.

19. In its Application, Georgia seeks, *inter alia*, the Court's order to direct the Russian Federation to take all necessary measures to permit and facilitate the return of displaced ethnic Georgians to South Ossetia and Abkhazia in conditions of safety and security in recognition of the right of return guaranteed under Article 5 of CERD. Pending the Court's consideration of the merits of Georgia's claims under CERD and its request for relief, Georgia respectfully requests the Court to indicate provisional measures to prevent irreparable prejudice to the right of return of ethnic Georgians to South Ossetia and Abkhazia.

20. Before the latest hostilities in South Ossetia and Abkhazia in August 2008, the right of return of ethnic Georgians was emphatically endorsed by the United Nations General Assembly in its Resolution 62/249 of 29 May 2008. The Resolution:

Recognizes the right of return of all refugees and internally displaced persons and their descendants, regardless of ethnicity, to Abkhazia, Georgia;

Emphasizes the importance of preserving the property rights of refugees and internally displaced persons from Abkhazia, Georgia, including victims

of reported 'ethnic cleansing', and calls upon all Member States to deter persons under their jurisdiction from obtaining property within the territory of Abkhazia, Georgia, in violation of the rights of returnees; and

Underlines the urgent need for the rapid development of a timetable to ensure the prompt voluntary return of all refugees and internally displaced persons to their homes in Abkhazia, Georgia.

21. There is compelling evidence that the Russian Federation, both directly and through its direction and control of South Ossetian and Abkhaz ethnic separatists, as well as Cossack and Chechen mercenaries, is consolidating, recognizing, and making permanent the new demographic composition of South Ossetia and Abkhazia following the further expulsion of ethnic Georgians from these regions since 8 August 2008. The Russian Federation's conduct in this respect is frustrating or rendering impossible the return of ethnic Georgians to their homes of origin.

#### **E. URGENCY**

22. The Russian Federation is continuing to discriminate against ethnic Georgians in Abkhazia, South Ossetia and neighbouring areas, and by its acts and omissions is threatening the right of ethnic Georgians to be secure in their persons, to be protected from violence resulting in death and bodily harm, to be protected against hostage-taking and detention based on their ethnicity, and to continue to reside in their homes and villages, and it is frustrating or rendering impossible the exercise of their right of return to their homes of origin. The Russian Federation is, moreover, actively supporting groups and individuals in South Ossetia and Abkhazia that are hostile to the ethnic Georgians remaining in these regions, opposed to the return of ethnic Georgians to their homes of origin, and continuing to perpetrate acts of violence against ethnic Georgians based on their ethnicity. In view of this conduct, the remaining ethnic Georgians in South Ossetia, Abkhazia, and adjacent regions, are at imminent risk of violent expulsion, death or personal injury, hostage-taking and unlawful detention, and damage to or loss of their homes and other property. In addition, the prospects for the return of those ethnic Georgians who have already been forced to flee are rapidly deteriorating. This situation is significantly exacerbated by Russian Federation's manifest support for the consolidation and recognition of the authority of ethnic separatists, militias and mercenaries over territories in South Ossetia, Abkhazia, and adjacent regions, acquired through ethnic cleansing of thousands of ethnic Georgians. Provisional measures are urgently requested by Georgia to avert a situation whereby the implementation of a judgment of the Court

upholding the rights of Georgian citizens under Articles 2 and 5 of CERD to remain in South Ossetia, Abkhazia, or adjacent regions, or to return to their homes in these territories, is rendered impossible.

**F. THE MEASURES REQUESTED**

23. Georgia respectfully requests the Court as a matter of urgency to order the following provisional measures, pending its determination of this case on the merits, to prevent irreparable harm to the rights of ethnic Georgians under Articles 2 and 5 of CERD to be secure in their persons and to be protected against violence or bodily harm in the areas of Georgian territory under the effective control of the Russian Federation:

- (a) The Russian Federation shall take all necessary measures to ensure that no ethnic Georgians or any other persons are subject to violent or coercive acts of racial discrimination, including but not limited to the threat or infliction of death or bodily harm, hostage-taking and unlawful detention, the destruction or pillage of property, and other acts intended to expel them from their homes or villages in South Ossetia, Abkhazia and/or adjacent regions within Georgia;
- (b) The Russian Federation shall take all necessary measures to prevent groups or individuals from subjecting ethnic Georgians to coercive acts of racial discrimination, including but not limited to the threat or infliction of death or bodily harm, hostage-taking and unlawful detention, the destruction or theft of property, and other acts intended to expel them from their homes or villages in South Ossetia, Abkhazia and/or adjacent regions within Georgia;
- (c) The Russian Federation shall refrain from adopting any measures that would prejudice the right of ethnic Georgians to participate fully and equally in the public affairs of South Ossetia, Abkhazia and/or adjacent regions of Georgia.

24. Georgia further requests the Court as a matter of urgency to order the following provisional measures to prevent irreparable injury to the right of return of ethnic Georgians under Article 5 of CERD pending the Court's determination of this case on the merits:

- (d) The Russian Federation shall refrain from taking any actions or supporting any measures that would have the effect of denying the exercise by ethnic Georgians and any other persons who have been expelled from South Ossetia, Abkhazia, and

adjacent regions on the basis of their ethnicity or nationality, their right of return to their homes of origin;

- (e) The Russian Federation shall refrain from taking any actions or supporting any measures by any group or individual that obstructs or hinders the exercise of the right of return to South Ossetia, Abkhazia, and adjacent regions by ethnic Georgians and any other persons who have been expelled from those regions on the basis of their ethnicity or nationality;
- (f) The Russian Federation shall refrain from adopting any measures that would prejudice the right of ethnic Georgians to participate fully and equally in public affairs upon their return to South Ossetia, Abkhazia, and adjacent regions.

25. Georgia reserves the right to amend further the Request and the measures sought.

Respectfully submitted,



Agent for the Government of Georgia

Maia Panjikidze

Ambassador of Georgia to the Kingdom of the Netherlands

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25 August 2008

