

# Land, Tenure and Housing Issues for Conflict-Displaced Populations in Georgia

Analysis and Proposals for Post-Conflict Recovery



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# Acronyms

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APLR	Association for Protection of Landowner Rights
BIT	Bureau of Technical Inventory
CEB	Council of Europe Development Bank
CRA	Civil Registry Agency of Georgia
ECHR	European Court of Human Rights
EUR	Euro
GEL	Georgian lari (national currency)
GTZ	<i>Deutsche Gesellschaft für Technische Zusammenarbeit</i> - German technical cooperation agency
HROAG	Human Rights Office in Abkhazia
ICC	International Code Council
IDP	Internally displaced person
IMF	International Monetary Fund
IT	Information technology
JICA	Japan International Cooperation Agency
MED	Ministry of Economic Development
MoJ	Ministry of Justice
MRA	Ministry of Refugees and Accommodation
OSCE	Organization for Security and Co-operation in Europe
SDC	Swiss Agency for Development and Cooperation
SHSE	Social Housing in a Supportive Environment
SIDA	Swedish International Development Agency
SNIP	Construction standards and rules ( <i>stroiteljskih normi i pravi</i> )
UNCT	United Nations Country Team
UNDP	United Nations Development Programme
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
UN-HABITAT	United Nations Human Settlements Programme
UNHCR	United Nations High Commissioner for Refugees
UNOSAT	United Nations Institute for Training and Research - Operational Satellite Applications Programme
USAID	United States Agency for International Development
USD	United States dollar
WB	World Bank

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# Executive Summary

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Housing and property rights in the context of post-conflict rehabilitation are amongst the most complex and sensitive issues affecting displaced populations in Georgia today. This problem stems primarily from a persistent lack of permanent accommodation for those displaced subsequent to intensive conflicts in the country in the 1990s. The more recent (August 2008) conflict has merely exacerbated this already serious situation, as it added to the number of people who cannot return to their homes and places of origin.

The role of UN-HABITAT in the immediate response from the international community to Georgian post-conflict recovery through a *Flash Appeal* involved the quick formulation of proposals towards the restoration of housing, land and property rights to displaced populations. Legal and technical assistance was proposed towards the conversion of collective centres into permanent housing units for Georgia's internally displaced persons (IDPs) as a way of supporting their integration. On top of this, UN-HABITAT also offered expertise to assist in the creation of a comprehensive 'lost property' record (database) for the housing, land and property left behind by displaced Georgian populations.

When profiling proposed solutions for the August 2008 *Flash Appeal*, UN-HABITAT turned to its institutional mandate in order to provide disaster mitigation and post-conflict rehabilitation of human settlements in crisis.

The aim of these activities was to specify and target areas of intervention unaddressed by other international entities.

As a corollary to the *Flash Appeal* activities designed to provide an immediate response to deprivation of housing, land and property rights, UN-HABITAT sought to understand the central challenges in the sector.

Consequently, the institution proposed a comprehensive analysis of housing, land and property issues in Georgia to identify gaps and help address the challenges currently facing Georgia's domestic authorities.

On top of highlighting these concerns, this report summarises Georgia's main housing and property challenges. The first half reviews the housing, land and property issues generally affecting all Georgian citizens, while the second half focuses exclusively on housing, land and property issues faced by the displaced population. Both parts come with specific and practical recommendations to bridge gaps and resolve housing, land and property issues.

The first half of this report provides basic facts on the administrative-territorial organization of Georgia, along with socio-economic data. A general overview of housing, land and property issues starts with an analysis of the Georgian land administration system, focusing on general property legislation as embodied in the Georgian Civil Code. Critical analysis reveals some deficiencies

in the legislative framework, resulting particularly from frequent changes to the Civil Code which have lowered the degree of legal certainty in real estate transactions, as reflected in the growing number property-related legal disputes. Some specific concerns also involve amendments to Georgia's codes of administrative and civil procedure.

The mechanisms in place for the resolution of property-related disputes are analyzed in depth, together with their legal frameworks. The central focus is on land registration and how the Georgian authorities have managed to develop a modern, transparent and efficient system that can serve as a model for other transitional States in the region.

The first half of this report also provides a general overview of all the institutions involved in the management of housing, land and property at both the national and municipal levels, as well as an assessment of their capacities. This assessment focuses on the main challenges in the housing sector, which include condominium issues, deficiencies in urban development, the lack of housing strategies and policies, the unavailability of affordable social housing, the unregulated rental sector and the lack of a disaster risk reduction policy.

In view of the many identified deficiencies, research highlights two phenomena in the housing sector that should be addressed as priorities by UN-HABITAT:

- Assisting domestic authorities to draft strategies for the promotion of affordable social housing; and
- Implementing a strategy for disaster risk reduction.

The second half of this report reviews the specific rights of displaced persons regarding housing, land and property, providing relevant figures and information. The short field visit conducted as part of this research project also allowed for a thorough understanding of the most prominent housing, land and property

issues in the territory of the breakaway province of Abkhazia. Some of the property challenges facing the displaced population are also addressed.

The second half also analyses the achievements of pilot housing and purchase-by-voucher programmes; these were designed to provide permanent shelter for displaced people from Abkhazia, in the process vacating collective centres for restoration and subsequent community use.

This report examines the main challenges the housing sector is facing in Georgia, especially the absence of social/affordable housing policies and the consequences. It provides an in-depth analysis of Georgian authorities' attempts to restore housing, land and property rights to the displaced populations. This refers primarily to the presidential programme known as "My House," which was the first formal attempt to register the abandoned property of Georgian displaced people. Some legal and technical deficiencies in the programme are highlighted.

The earliest attempt by Georgian authorities to establish a legal mechanism for property restitution and compensation for the displaced population from South Ossetia is also analysed in detail. Considering the current post-war climate between the South Ossetian self-proclaimed authorities and the Georgian government (which makes the enforcement of this law impossible), this report concludes that a more viable approach is needed which goes beyond the presidential "My House" scheme, the implementation of which is out of touch with the realities prevailing after the 2008 August events.

As it focuses on restitution and compensation issues, which call for most urgent attention, the report reviews the types of claimants that may have to be involved in this process.

For the past 16 years, Georgian legislation has not allowed displaced people to record in the public registry the property they left



behind in the breakaway regions. Therefore, this report examines the issue of “preliminary registration”. This was introduced by presidential decree N° 255 (8 April 2006) with special regard to displaced people’s immovable property in Abkhazia and South Ossetia. This report reviews the judiciary challenges the brought by displaced persons before Georgian courts and the European Court of Human Rights\* (the *Turkia and Mekhuzla v. Georgia and Russia* cases).

This report discusses Georgia’s recent (2008) strategic changes and orientations regarding long-term housing solutions for the displaced. It also reviews Georgia’s earliest efforts at quick provision and construction of new settlements, and finds it lacking as a permanent housing solution. The main reason is that these efforts have overlooked many important criteria and standards and are, therefore, likely to reduce new settlers’ life standards.

Georgian authorities have since opted for a fresh approach, with international donor support, to facilitate the local integration of the displaced through three distinct options, as follows:

- Conversion and rehabilitation of collective centres into permanent housing units, as an appropriate solution for permanent housing.
- Resettlement to provide private individual housing and land plots for the rural population.
- Lump-sum cash compensation offered to those displaced people who reject the two above-mentioned options.

For each of the three alternatives, the report offers recommendations and guidelines in order to promote lasting solutions.

This report concludes with general recommendations and a suggested two-fold strategy for a future UN-HABITAT role in post-recovery assistance in Georgia. To begin with, and as an immediate response, UN-HABITAT should focus on developing well-adapted technical assistance programmes for the Georgian authorities, in partnership with international and local entities. These programmes should focus on the following:

\* Hereafter ‘the European Court’.

- Support IDP integration and provide (legal and technical) assistance towards conversion of collective centres into permanent housing units for Georgian displaced people.
- Assist in the creation of a comprehensive lost (housing, land and property) record/database for displaced Georgian people.

On top of this, attention should be given to other strategic, long-term objectives, such as creating the conditions for restitution of abandoned property.

Against this background, UN-HABITAT is strongly advised to monitor ongoing Georgian-Russian peace talks and advocate for the inclusion of a housing-land-property component in any future peace agreement. This component should reflect the restitution and compensation options discussed in this report. This commitment derives from the *Principles on Housing and Property Restitution for Refugees and Displaced Persons* (the ‘Pinherio principles’) and more specifically Principle N° 22 according to which *the international community is responsible for the protection of rights to housing, land and property restitution, as well as of voluntary return in safety and dignity.*

# Part one

**General Housing, Land and Property Issues**

# Introduction

---

Georgia was part of the former Soviet Union until it became an independent State on 9<sup>th</sup> April 1991 under the *Act of Restoration of the State Independence*. As a transcontinental south-eastern European country in the Caucasus region, Georgia borders the Black Sea, the Russian Federation, Turkey, Armenia and Azerbaijan, and has a 310 km coastline. Total land area is 69,490km<sup>2</sup>.

## 1.1 Territorial-Administrative Organization

The country's administrative structure comprises nine regions (*'krai'*) and the two autonomous republics of Abkhazia and Adjara. South Ossetia has never been recognized as autonomous by the Georgian authorities. The Autonomous Republic of Adjara is host to the self-governing city, Batumi, and five local municipalities. The Autonomous Republic of Abkhazia has been a breakaway region since 1993, as has been the former Autonomous Region of South Ossetia since 1992.

Georgia's nine regions are as follows: 1) *Guria* (three municipalities), 2) *Imereti* ( 11 municipalities and the self-governing city, Kutaisi), 3) *Kakheti* (eight municipalities), 4) *Mtskheta-Mtianeti* (five municipalities), 5) *Racha-Lechkhumi and Kvemo Svaneti* (four municipalities), 6) *Samegrelo-Zemo*

*Svaneti* (eight municipalities and the self-governing city, Poti), 7) *Samtskhe-Javakheti* (six municipalities), 8) *Kvemo Kartli* (six municipalities and the self-governing city, Rustavi) and 9) *Shida Qartli* (seven municipalities).

Under Art. 2(4) of the Georgian Constitution, the citizens of Georgia regulate matters of local importance through local self-government. Local government bodies are regulated by the *Organic Law on Local Self-governance* (16 December 2005).

According to that law, local government is comprised of 67 districts, six cities and related self-governing units. These self-governing units may be understood as settlements (either stand-alone or in groups), small towns, and cities. Self-governing units are autonomous with regard to territorial planning, local development and land management within their boundaries. Currently, Georgia features five self-governing cities and 63 municipalities. The *Law on the Capital of Georgia* has established the capital, Tbilisi, as a self-governing city.

Local self-governing territorial units and cities have exclusive power to introduce and collect local fees and taxes. These must be in compliance with the limits set under national legislation.

The 2004 Georgian Tax Code established two types of taxes in Georgia: a general State tax, and a local tax primarily based on property and which can be introduced and collected by local self-governing representative bodies. Under the 2006 Local budget law, the budget of self-governing cities is independent from the budget of the central government which, accordingly, cannot interfere with such local autonomy.

In any Georgian locality, the representative bodies include the municipal council, known as *Sakrebulo*, and the executive body, or Council, known as *Gamgeoba*. The State officials in a municipality are the head of *Sakrebulo*, with his/her deputies, the municipal “*Gamgebeli*” (the head of *Gamgeoba*) and the mayor (in the case of a self-governing city).

*Sakrebulo* is elected by the population residing within the administrative boundaries of

the municipality by universal, direct, secret and equal suffrage for a four-year term. The election system is mixes proportional majority and first-by-the-post. The *Sakrebulo* elects a leader from a list of its own members.

The head of the municipality (*Gamgebeli*) and the mayor (for a self-governing city) are elected by the *Sakrebulo* by majority vote. Candidates are shortlisted by the Bureau of *Sakrebulo*. The Tbilisi *Sakrebulo* consists of 37 members.

Under the *Georgian Law on the Capital of Georgia*, the mayor of Tbilisi is elected by the *Sakrebulo* from among its members for a four-year term. Previously, this appointment was made by the president of Georgia. The *Sakrebulo* approves the city budget and determines local taxes. The mayor and other officials are responsible to the *Sakrebulo* and can be dismissed from office by a qualified majority of the council.



Map No. 3780 Rev. 5 UNITED NATIONS August 2004

Department of Peacekeeping Operations Cartographic Section

Source: UN Department of Peacekeeping Operations, Cartographic Section

## **1.2 State Structure**

Georgia is a republic with the president as head of the State. The Constitution (24 August 1995) established a semi-presidential, semi-parliamentary regime which since then has seen a clear ascendance of presidential power, especially after the most recent constitutional amendments (February 2004 and December 2006).

### *1.2.1 The President*

As head of State, the president is the guarantor of the unity and integrity of the nation. S/he represents the country's interests in international relations, and ensures effective functioning of State bodies in accordance with the Constitution.

The president is elected for five years by direct, universal and equal suffrage. S/he appoints the prime minister to whom s/he gives consent to appoint ministers and other government members. The president can dissolve the government both on his/her initiative and in cases provided for by the Constitution. On top of this, the president can dismiss the ministers of internal affairs and defence.

The president can suspend or invalidate decisions made by the government and other executive bodies where they are inconsistent with the Constitution, international treaties and agreements, laws or statutory presidential acts. S/he can also dissolve Parliament.

### *1.2.2 Parliament*

Parliament is the country's highest representative body. It exercises legislative power, determines priorities for domestic and foreign policies, and controls government, among other powers.

The unicameral Parliament consists of 175 members elected by universal suffrage<sup>1</sup> under a mixed (proportional and first-past-the-post) majority system.

### *1.2.3 Government*

The government exercises executive power and determines Georgia's internal and foreign policies. The government is responsible to both the president and Parliament.

The government is led by the prime minister who, along with the ministers, is appointed by the president and approved by Parliament.<sup>2</sup> The government and its members derive their executive authority from the president.

The prime minister steers, organises, co-ordinates and controls government business. As mentioned earlier, the prime minister is responsible for government decisions and achievements before both the president and Parliament.

## **1.3 Economic Conditions, Poverty and Employment**

During the Soviet era, the Georgian economy was considered prosperous. After independence, however, the country found itself unprepared for the new economic environment and unable to compete on a global market. Subsequent de-industrialisation and unemployment resulted in growing poverty and widespread

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1 Art. 4(1) of the Constitution envisages the creation of a bicameral parliament upon restoration of full Georgian jurisdiction over the whole territory and upon formation of local self-government bodies. The two chambers would then be known as the Council of the Republic and the Senate.

2 The president submits the list of government members (including the prime minister) to Parliament for the approval. Parliament endorses or rejects the proposed list. In case Parliament rejects the same proposed list on three successive occasions, the president is entitled to maintain his/her proposal but must dissolve Parliament and call an early election.

corruption, bringing the country to the verge of institutional collapse in the early 1990s. Government was not even able to guarantee the payment of pensions amounting to a USD6.5 equivalent per month.

Immediately after the 2003 “rose revolution,”<sup>3</sup> and during the past couple of years in particular, Georgia embarked on a set of structural, market-oriented economic reforms in a bid to attract direct foreign investment. A favourable business environment has been created, primarily by removing barriers to private sector development, cutting taxes and establishing import tariffs. These measures have been carried out in parallel with privatisation of State-owned companies and immovable property. On purely economic criteria, Georgia’s progress in recent years is impressive. Annual growth in gross domestic product (GDP) has steadily accelerated from 9.6 to 12.4 per cent and in 2008 the country ranked 18th in the World Bank’s *Ease of Doing Business* index, compared with 112th in 2006.

The current government has declared that eradicating corruption was a priority and subsequent action has produced visible results. New criteria and corresponding control mechanisms have been established to govern the selection, training and supervision of civil servants. As a result, the efficiency of public sector management has improved significantly: public services are now transparent, accessible and cost-effective.

Although economic growth has allowed steep increases in social benefits and support (a more than 10-fold increase between 2003(USD47million) and 2008 (USD723 million), poverty numbers have hardly changed. The rural population is most

seriously affected, as economic growth has a limited impact on an autarchic, declining agricultural sector. By 2005, more than half the Georgian population were still working in a largely unproductive sector, as individual cultivation of small fragmented plots results in little but minimum income security compared with other occupations.

Unemployment remains persistently high in Georgia. Official statistics maintain that the unemployment rate grew from 11.5 to 13.3 per cent between 2006 and 2007, but according to the United Nations Development Programme and the International Monetary Fund, the actual percentage is closer to 25 or 30 per cent respectively.

#### **1.4. The Georgian Population**

According to the latest (2002) census, Georgia population has a population of 4,371,500. Georgia is a multiethnic society, with a strong majority of ethnic Georgians (83.8 per cent), as detailed in the table below.

The census data above do not account for the territories of the self-proclaimed republics of Abkhazia and South Ossetia, where the central government of Georgia is prevented from exercising effective power. These territories spread over 9,600km<sup>2</sup>, or 14 per cent of total Georgian territory. The population of the two self-proclaimed republics contributes about five per cent of the total Georgian population.

In 2007, as many as 52.5 per cent of all Georgians resided in urban areas,<sup>4</sup> with an overall population density of 66 per square kilometre. The metropolitan area of the Georgian capital, Tbilisi, is home to 1.1 million, or 25 per cent of the national population.

<sup>3</sup> The late 2003 'rose revolution' was a massive popular protest over a suspected case of parliamentary election fraud, turning into a social and political uprising which forced president Eduard Shevardnadze to resign on November 23, 2003.

<sup>4</sup> 2007 *Statistical Yearbook of Georgia*, p.18.

	Thousand			Per cent of total population		
	1979	1989	2002	1979	1989	2002
<b>Total population</b>	4993.2	5400.8	4371.5	100.0	100.0	100.0
Georgian	3433.0	3787.4	3661.2	68.8	70.1	83.8
Abkhaz	85.3	95.9	3.5	1.7	1.8	0.1
Ossetian	160.5	164.1	38.0	3.2	3.0	0.9
Russian	371.6	341.2	67.7	7.4	6.3	1.5
Ukrainian	45.0	52.4	7.0	0.9	1.0	0.2
Azerbaijani	255.7	307.6	284.8	5.1	5.7	6.5
Armenian	448.0	437.2	248.9	9.0	8.1	5.7
Jewish	28.3	24.8	3.8	0.6	0.5	0.1
Greek	95.1	100.3	15.2	1.9	1.9	0.3
Kurd	25.7	33.3	20.8	0.5	0.6	0.5

Source: 2007 Georgia Statistical Yearbook, p.22.

# Chapter Two

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## Constitutional Provisions on Housing, Land and Property

The Georgian Constitution (as amended on 27 December 2006) does not feature any reference to housing rights or prescriptions for adequate housing. However, the country's fundamental law explicitly refers to the recognition and protection of universally recognised human rights and freedoms as "eternal and supreme human values." Considering that public authorities and Georgian citizens shall be bound by these provisions "as directly enforceable law,"<sup>5</sup> a specific if implicit obligation regarding any housing and property rights as set out in international covenants<sup>6</sup> is intended here.

Art. 6(2) of the Constitution states: "*The legislation of Georgia shall correspond to universally recognised principles and rules of international law.*" Consequently, the Constitution recognises that an international

treaty or agreement when ratified by Georgia has precedence over domestic normative acts, provided that they are consistent with the Constitution.

Property rights, including the right to acquire, vacate and inherit, are recognised and guaranteed under Art. 21 of the Georgian Constitution.

Restrictions on property rights are possible in the case of pressing social need (public interest). The cases must be determined by law and adhere to legal procedure. Save for the case of legally determined urgent necessity, such restrictions should occur only under those circumstances provided for by law, and be enacted by a court decision. Appropriate compensation is inherent to all such measures.<sup>7</sup>

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5 Constitution of Georgia, Art. 7.

6 This refers to housing- and property-related provisions (incl. housing, peaceful possession, right to home, etc.) set out in several international conventions: the International Covenant on Civil and Political Rights (CCPR), the International Covenant on Economic, Social and Cultural Rights (CESCR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter 'the European Convention') and the European Social Charter (ESC).

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7 Constitution of Georgia, Art. 21(3).



# Chapter Three

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## Land Administration

### 3.1 *Housing, Land and Property Legislation*

#### 3.1.1. *The Georgian Civil Code*

The bulk of basic legal provisions on housing, land and property feature in the comprehensive *Georgian Civil Code* (26 June 1997). This body of law reflects the European continental civil law tradition, and more specifically the German Civil Code model. Book II sets out provisions on property (§§ 147-154), including a definition of the various types (movable, immovable as well as fixtures, etc. Possession is addressed under *Title Two of the Civil Code* (§§ 155-169), which provides definitions, including of lawful and unlawful possession, acquisition, ownership of immovable and movable possessions, etc.

Six separate chapters in the Civil Code explain the concept of ownership. Chapter 1 (§§ 170-1730) defines the nature of ownership and common ownership, as well as of the right to ownership of fixtures. Chapter 2 (§§ 174-182) defines the rights and obligations of neighbours. Part I of Chapter 3 details the rules for acquiring ownership of immovable assets (§§ 183-185).

An important set of housing provisions regarding ownership in multi-apartment buildings (condominiums) features in Chapter 4 of the Civil Code which comes in two parts: one sets out General Provisions

(§§ 208-214); the other one regulates relations among apartment owners (§§ 215-232), including maintenance duties with regard to common areas in multi-family buildings, along with, the procedures for homeowner action when implementing an association's decisions regarding the repair and maintenance of the common areas of a building.

Chapter 5 (Limited Use of Property Belonging to Others) defines the terms of use, rights and party obligations, among others (§§ 242-246), as well as notions of service (§§ 247-253). Chapter 6 defines property titles as secured by a mortgage on immovable property (guarantee for a mortgage claim), detailing the rights and obligations of the parties involved in a mortgage (§§ 286-310).

Title four deals with the registration (public register) of immovable property (§§ 311-315): the purpose of the public register, rules of property registration and the presumed truthful and complete nature of entries in the public register.<sup>8</sup>

#### 3.1.2. *Marital Property in the Civil Code*

As a basic rule, Georgian family law (Civil Code art. 1152) guarantees equal personal

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<sup>8</sup> For more details regarding the National Public Registry Agency, see under 4.5 below.

and property rights, as well as an equal dispensation of responsibilities between legally wed spouses.

Provisions generally recognise two types of property in marital relations: common property<sup>9</sup> and the individual property of each spouse.<sup>10</sup> Individual property refers to the possessions of each spouse prior to marriage, as well as personal property acquired during marriage such as an inheritance or gifts.

Property acquired jointly by spouses during marriage constitutes their common property, unless otherwise stated in the marital contract.<sup>11</sup> However, in that contract spouses may determine their property rights and duties in specifically different ways; these conditions will remain in effect both during marriage and in the event of divorce.<sup>12</sup> A marital contract must, as a rule, be in writing and approved by notary.<sup>13</sup>

Under Art. 1158 (2) of the Civil Code, a common property arrangement may derive from the spouse's respective professional occupations during marriage, including unpaid work such as keeping the household and caring for the children, which secures the financial position of the traditional female spouse. As a matter of principle, Georgia's Civil Code specifies that spouses have equal rights over common property. Possession, use and disposition of such property shall be exercised by mutual agreement between spouses.<sup>14</sup>

Art. 1160 provides for cases involving common property transactions between the spouses. Under such an agreement, one spouse cannot apply for invalidation of

contractual obligations on the claim that s/he has not been adequately informed or that s/he does not agree with the terms of the agreement. Paragraph 3 of the same article stipulates that the other spouse in the said situation is entitled to the income derived from any such contract.

As a general rule,<sup>15</sup> the property with which each spouse enters into a marital agreement is considered to be his or her own individually. Art. 1163 envisages the possibility of converting individual spouse property into common marital property, particularly when such individual property has significantly increased in value as a result of expenses incurred during the marriage (re-planning, completion of construction, reconstruction, etc.). This rule shall not apply where a marital agreement between the spouses stipulates otherwise.<sup>16</sup>

Common property can be partitioned upon the request of either spouse, both during marriage and after its termination (Art, 1164). Under Art. 1165, common property shall be partitioned by agreement between spouses. If an agreement cannot be reached, however, the case shall be taken to court.

### 3.1.3. *Property Provisions under Inheritance Law*

As already mentioned, Art. 21 of the Georgian Constitution guarantees peaceful enjoyment of property and rights to inheritance. Book 6 of the Civil Code sets out inheritance law, recognising the two classic modalities, i.e., inheritance by law, and by testament or will.<sup>17</sup> The Code also specifies<sup>18</sup> who can be an heir in the case of inheritance by law or by testament. With regard to inheritance by law, this includes surviving family members, including children born after the person's death. In the

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9 Civil Code, Art. 1158.

10 *Ibid*, Art.1161.

11 *Ibid*, Art. 1158 (1).

12 *Ibid*, Art. 1172.

13 *Ibid*, Art. 1174.

14 *Ibid*, Art. 1159.

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15 *Ibid*, Art. 1161.

16 Explicitly envisaged by Civil Code Art. 1163.

17 Civil Code, Inheritance Law Charter, Art. 1306.

18 *Ibid*, Art. 1307.

event of inheritance by testament, legatees include those surviving as of the moment of death, as well as those conceived during the deceased person's lifetime and born after his death, regardless of affiliation with the deceased, as well as legal persons.

Testamentary inheritance is based on the deceased person's free will; certain procedural steps are set out by law, as are formal requirements for validity of a testament.<sup>19</sup> Inheritance by law involves five degrees of legal heirs, in the following order:

- 1st degree: the deceased person's children, and his or her surviving spouse and parents (including adoptive parents). Grandchildren are deemed legal heirs if, at the time of death of the grandparents, their parent is no longer alive. They are entitled to the same share of the estate that their deceased parent would have been entitled to.
- 2nd degree: the siblings of the deceased person. Nieces and nephews, and their children, shall be deemed legal heirs if, at the time of death, their parent who would have been heir of the deceased is no longer alive. They are entitled to the same share of the estate that their deceased parent would have received by inheritance.
- 3rd degree: both maternal and paternal grandparents, and great grandparents. The great grandparents shall be the legal heirs if the grandparents are no longer alive at the time of death.

- 4th degree: uncles (brothers of the mother or father of the deceased) and aunts.
- 5th degree: first cousins, and, in case these are no longer alive, their children.<sup>20</sup>

Art. 1337 also sets out the order in case of inheritance by law: if at least one person in the above-mentioned degrees is alive, second-degree relatives shall be excluded from inheritance. The law is specific that a divorced spouse shall not be an heir by law after the death of his/her former spouse.<sup>21</sup> Additionally, a spouse may be disinherited by court decision if it is found that marriage with the deceased person had been *de facto* terminated for a period of no less than three years prior to the person's death and the spouses had lived separately.<sup>22</sup>

This law also provides for a so-called "mandatory share" in the estate of a deceased person regardless of her/his will. Specifically, the children, parents and spouse of a deceased shall be entitled to such a mandatory share which, in each case, shall be one-half of the share to which each of them would have been entitled under inheritance by law.<sup>23</sup>

Under one of the more important provisions in the Civil Code, a child born out of wedlock shall be in a position to inherit from her/his father if paternity is established under the procedures prescribed by law. Moreover, if s/he does not survive the father, then her/his children can claim the share of the estate to which their father was entitled (Art. 1309).

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<sup>19</sup> *Ibid*, Art. 1344.

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<sup>20</sup> *Ibid*, Art.1336.

<sup>21</sup> *Ibid*, Art.1340.

<sup>22</sup> *Ibid*, Art.1341.

<sup>23</sup> *Ibid*, Art. 1371.

## Conclusion

The Civil Code provides Georgia with a comprehensive body of civil law, including property (general civil law, inheritance, and marital property) in keeping with the European tradition. In this regard, the legal basis for the regulation of property relations is solid and free of any explicit or hidden gaps capable of undermining property rights.

Nevertheless, general notions in the Civil Code need to be further developed, along with their corresponding explanatory norms and policies. For instance, the Civil Code endorsed the basic notion of *condominium* (common parts of multi-family buildings), but it took no less than 10 years for derived legislation and policies to ensure practical implementation when a 2007 *Law on Condominium Households* came into force. The practical effect of such a gap was the deterioration of the existing housing stock in multi-family buildings.

Another factor which could diminish the value of the Civil Code as a comprehensive, self-contained body of law is the recent tendency among legislators to “simplify” certain procedural steps in through frequent amendments and changes. It should be remembered, however, that Georgia is following the model of Continental Europe, where over the past 200 years the Code has represented a consolidated foundation of civil law. While in other European countries some general provisions may need to be further developed, they are not subject to frequent changes that could weaken legal certainties regarding housing, land and property matters.

### 3.2 Deficiencies in the Legislative Framework

#### 3.2.1 Amendments to the Civil Code

As mentioned above, the Civil Code Georgia adopted in 1997 reflects the Western European civil law tradition. By 2004 the “Rose Revolution” had ushered in a trend towards “simplification” in the public sector. As far as legislation is concerned, such streamlining has spawned many amendments to the Civil Code. In particular, the contractual form of real estate transactions has been simplified and the role of the notary significantly diminished.

Prior to the amendments of December 2006, the Georgian Civil Code stated (Art. 323) that any transfer of ownership titles to immovable property (real-estate transactions or purchases towards privatization) had to take the form of a written contract which had to be approved

by a notary in order to be valid. This was a good opportunity to ensure that all the legal conditions required for validity had been met.

Under a 2006 amendment (effective as of March 2007), only the mandatory written contract form was maintained for all real estate transactions, and a notary participation was no longer compulsory.

The recently amended Art. 69 provides that a contract shall be drawn up in written form if such a form is in conformity with the law or the parties have agreed upon this form. In both cases, where the contract is drawn up in written form it is validated through the signatures of the parties. Under the amendment, the signatures of the contract can be authenticated either by a notary or any other person granted the authority to do so by law (e.g., civil servants). Under such

conditions, the role of the notary is reduced to overseeing signatures and the personal details of the parties, with no substantial power over other formal prerequisites to contract validity. These amendments combine to lower the degree of legal certainty in real estate transactions, as confirmed by the growing number of property-related legal disputes.

### 3.2.2 Amendments to the Administrative Procedure and Civil Procedure Codes

In February 2004, a new ‘Chapter VII’ was introduced with amendments to the *Administrative Procedure Code* and the *Civil Procedure Code* allowing the confiscation of “illegally obtained property” and “property of indeterminate origin” belonging to civil servants and those suspected of criminal activities.

Under the new chapter in the *Administrative Procedure Code*, complaints regarding confiscation of property of an illegal nature and indeterminate origin can be lodged against a civil servant, family member, close relative or any other related person. Although they were publicised as an efficient way of tackling corruption (once widespread in Georgia), implementation of these provisions was seriously flawed.

To begin with, the wording in the law – “civil servant, family member, close relative or other related person” – is too broad, particularly in the case of “related person” and “close relative.”

Secondly, a prosecutor could, on “reasonable suspicion”, launch administrative proceedings for the confiscation of property possessed by a civil servant or any other person as mentioned above in accordance with Art. 37<sup>1</sup> of the Criminal Procedure Code. Similar proceedings against the same persons also apply where the prosecutor suspects that the civil servant has acquired the property

by criminal means before a final verdict had been reached. Therefore, this provision clearly weakens the legal certainty of property rights for suspected persons (civil servants and family members) who are unable to prove their innocence in subsequent appellate court proceedings.

This provision was amended in 2006 to grant a prosecutor the right to launch administrative proceedings towards the confiscation of property only in the case of a guilty verdict, but this does not radically change the situation. This is because under the latest amendments to the Criminal Code, court sentences come into force as soon as they are delivered, but appeals lodged before an appellate court do not suspend the confiscation process until the final appellate decision is made.

As applied to property rights, this uncertain provision generates numerous disputes. For instance, in the village of Didi Digomi (just outside Tbilisi), a local civil servant was convicted of illegal practices regarding property. Yet his property was not the only one that was repossessed: the plots he had allocated to villagers during his term of office were also confiscated from current owners. In most such cases, courts have ruled in favour of public authorities, and the former owners affected by these rulings have challenged these decisions before the European Court.

The third most serious flaw in this amendment to the Administrative Procedure Code had to do with its retroactive effect, i.e., the law as amended could be brought to bear on events that had taken place long before its enactment. Again, such retroactive implementation undermines and reduces the degree of legal certainty in matters of property and ownership.

Although this amended chapter (known as ‘VII’) of the Administrative Procedure Code was abolished under subsequent amendments

(4 July 2007), it remains in the Civil Procedure Code in connection with civil servants in possession of illegal property, persons involved in human trafficking, persons who support drug trafficking, and those convicted of money laundering as envisaged under Art. 194(3)(“c”).

### *3.2.3 The Law on the Recognition of Ownership Rights of Natural or Legal Persons over Land in their Possession*

This law, effective since July 2007, sets out conditions and procedures for the legalization of ownership rights for persons (both natural and legal) who actually possess a plot but, for lack of necessary documentation, have been unable to have their ownership recorded in the property register. This law also entitles illegal occupants of plots to regularize their status and obtain an ownership title over the property; on condition they provide the required documentation to the dedicated municipal commissions.

In the case where an individual has a valid title though not have all the documents required to register the plot, and still has her/his application approved by the commission, then s/he is granted the ownership title free of charge and has the property recorded in the registry.

In the case of illegal occupation (without any kind of legal title), a municipal commission could still grant formal ownership to the illegal occupier upon payment of a fee according to an established special procedure used to calculate the value of the property. Calculation of value takes into account the area, condition, situation, region, etc. In case an illegal possessor is able to prove that s/he has occupied the plot since before 1994, s/he is entitled to obtain ownership legal title free of charge. However, certain procedural steps in the appeal system against the municipal commission’s decisions to deny ownership

could undermine the legal certainty of ownership rights.

Applicants who have been denied an application by a municipal commission can appeal the decision with the local administrative court. Code Appeals must be made within a fixed deadline, irrespective of the fact that the interested party (possessor) receives notice directly from the municipal commission.

With the high volume of requests to municipal commissions for legalization of status, the process of granting ownership titles is severely delayed. Under such conditions, where a large number of applicants fail to receive updated information about their cases, it is very likely that a many of them will not be able to appeal the commission’s decision within the prescribed deadline.

The above-discussed law refers to the period prior to enactment, when the possessors, having acknowledged their lack of necessary documentation for registration, formally asked to have their property recorded in the Public Registry.

In cases where the documents provided are inadequate, the municipal commission denies the request. The negative decision can be appealed against to the administrative court. A huge majority of these cases are usually devoid of legal grounds, but once an appeal is lodged the court has no option but to review the case.

Enactment of the law on the recognition of ownership rights in 2007 has effectively resulted in two different sets of criteria for legalizing the possession of property. The law empowers dedicated municipal commissions and is explicit about the criteria, documentation and procedures required for granting ownership. Once these conditions are met, the ownership title is obtained automatically. As for those unsuccessful

applicants who have lodged an appeal, it is understood that the court shall have full autonomy to make its own decision and determine the final outcome of the case.

The 2007 law had another effect: it acted as an incentive for those who had already lodged appeals before the courts to re-submit their earlier applications to the municipal commissions. This effectively suspended their appeal procedure, alleviating the judiciary from an unnecessary burden. Only where the commission once again denies the request

will the appeal procedure resume before the court.

Still, given the high number of possessors who claim ownership of the same plots, the 2007 law has the potential to generate considerable caseloads of property-related disputes in the courts. This might be the result of overly flexible criteria for the legalization of illegally occupied plots, where the only documentary evidence required by municipal commissions is a cadastral plan, and alternatively, neighbours' testimonies.

# Chapter Four

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## Land Management Institutions

### 4.1 *Property Disputes – The Judiciary*

#### **The Georgian Judicial System**

The judicial system in Georgia is regulated primarily by the *Organic Law on the Unified Court System* (13 June 1997) and by a set of other laws,<sup>24</sup> which established a system of general, territorial jurisdiction. The Judiciary is comprised of the following:

- District (City) Courts – first instance
- Appellate Courts – second instance
- The Supreme Court– Court of Cassation (judicial review)
- The Constitutional Court

#### 4.1.1 *District (City) Court – first instance*

As provided for in the *Organic Law on the Common Courts*, district (city) courts are established in regions and cities.<sup>25</sup> The law specifies that no fewer than two judges shall sit on each of these courts, the final number

being determined by Georgia’s Superior Judiciary Council.<sup>26</sup> Where only two judges sit on a district (city) court, one deal with criminal cases, and the other with civil and all other case categories.<sup>27</sup>

Given the caseload in some district (city) courts, the Superior Council can create specialized panels within those (e.g., for civil, administrative and criminal cases). There are currently a total of 57 district (city) courts in Georgia. The number of judges varies across panels and courts, and depends on city size: in smaller towns, only two or three judges will sit, compared with as many as six in Batumi and Kutaisi.

Proposals for a new judiciary system call for “enlarged” district (city) courts which would include first instance cases of a criminal, civil or administrative nature. Deployment of 15 enlarged district (city) courts is planned across the country.

So far, only the Tbilisi, Mtsketa and Gori city courts feature specialized panels for civil, administrative and criminal cases. The civil panel, which deals with property, -brings together as many as 25 magistrates in Tbilisi City Court, but only three in the Mtsketa and Gori District Courts respectively. As

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24 In addition to this basic law, the system of justice in Georgia is regulated by the following main laws: *Decision of the Supreme Council of Justice on the Creation of the District (City) and Tbilisi and Kutaisi Appellate Courts*, defining the area of their operation and the number of judges (9 August 2007); *Organic Law on Supreme Court* (12 May 1999); *Organic Law of Constitutional Court*

25 *Organic Law on Common Courts*, Art. 14.

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26 *Ibid.*

27 *Organic Law on Common Courts*. Art. 15.



mentioned above, property-related disputes are dealt with by the judge or panel specialised in civil and administrative cases. Deciding whether a case is of a civil or administrative nature depends on the parties involved: where both are private (whether a legal or physical person), the case qualifies as civil; when one of the parties is an administrative body (a person of public law), the case qualifies as administrative.

#### 4.1.2 Magistrate Judge / Single Judge

Magistrate Judges were introduced to make the justice system more accessible and more efficient while preventing case overload of first instance courts. Magistrate judges typically deal with less complex civil and administrative cases.<sup>28</sup>

A magistrate judge hears cases single-handedly. In order to streamline the judicial review process, the chair of a district (city) court can order a magistrate judge to hear cases that have arisen outside their “territorial” area, in order to prevent minor cases from congesting first instance courts.

#### 4.1.3 Court of Appeal

The recent (2005) judicial reform established appellate courts on the principle of what in German is known as ‘*Instanzenzug*’ – the successive stages of the judicial process, a practice that is predominant in Continental Europe. Since then, appeals of first instance rulings (including magistrate judges) are heard only by appeal courts.

<b>District (City) Court (Trial Division/First Instance Court) (57 District (City) Courts)</b>			
1	Tbilisi City Court	1. Civil panel (25 judges) 2. Administrative panel (20 judges) 3. Criminal panel (20 judges)	65 judges
2	Mtskheta District Court	1. Civil panel (3 Judges) 2. Administrative panel (2 judges) 3. Criminal panel (4 judges) 4. Four Magistrate Justices	13 judges
3	Gori District Court	1. Civil cases (3 judges) 2. Administrative cases (1 judge) 3. Criminal Cases (4 judges) 4. <u>One Magistrate Justice</u>	9 judges

28 Under Art.14 of the Civil Procedure Code, magistrate judges hear the following civil cases as first instance judges: 1. property disputes, where the value of the claim does not exceed GEL2, 000 (or EUR1,000); 2. indisputable and straightforward cases, except adoption but including simplified payments and declaring the abeyance of property, where the value of the claim or the property does not exceed GEL2,000 (or EUR1,000); 3. disputes on the grounds of family relationships, except adoption, loss of parental rights, determining paternity and divorce, or if there is a dispute between spouses over the right for rearing the child; 4. Industrial disputes.

Other district courts typically comprise two to four judges.

For the purposes of prompt and effective justice, disputes where less than GEL1, 000 GEL (or EUR500) is at stake cannot be appealed. As for criminal cases, rulings on crimes not entailing imprisonment cannot be appealed. However, in the interests of fundamental human rights, exceptions can be made to grant a person the right to appeal and seek acquittal.

Courts of Appeal (Second Instance Courts)		
Tbilisi Appellate Court (for eastern regions- 64 judges)		Kutaisi Appellate Court (for western regions - 34 judges)
<b>Four specialized chambers in each</b>		
1	Civil Chamber (21 judges)	Civil Chamber (12 judges)
2	Administrative Chamber (18 judges)	Administrative Chamber (9 judges)
3	Criminal Chamber (15 judges)	Criminal Chamber (9 judges)
4	Investigation Panel (10 judges)	Investigation Panel (4 judges)

There are two Appeal Courts in Georgia, as detailed in the table below:

#### 4.1.4 Court of Cassation

The Supreme/Cassation Court has jurisdiction over petitions for judicial review, where factual circumstances of cases are neither investigated nor assessed.

Appeals in cassation can be lodged only according to strict eligibility criteria, which are identical in all three judiciary spheres (criminal, administrative and civil). Based on these, the Supreme Court accepts appeals only if the case is significant for the development of the judiciary system and for the establishment of common judicial practice.

Regarding property-related disputes in the sphere of civil law, cassation appeals are accepted unconditionally if the value of the dispute exceeds GEL50, 000 (or EUR25, 000).

The Supreme/Cassation Court plays a doctrinal role, and as such looks to secure a smooth performance for the country's

judiciary as well as consistent case law and judicial practice through authoritative construction of laws and principles.

In a prior effort to alleviate a growing backlog of private property-related court cases, a *Law on Private Arbitration* was adopted in 1997.

The law opened up two types of arbitration: *permanent* and *temporary*, for settlement of civil-law disputes. The scheme is recognised as a time- and cost-effective way of settling private disputes, especially those properties-related and of a straightforward nature.

#### 4.2 Georgia's Land Registration System

Georgia inherited a convoluted and dysfunctional system of land registration from the former Soviet Union. This had to do with the very principles upon which that system was built, namely, the distinction between land plots (invariably State property) and real estate property (houses) as two separate categories. As a result, too many

Supreme Court (Cassation Instance)					
Civil, corporate and bankruptcy Chamber (three judges)	Criminal Chamber (three judges)	Administrative Chamber (three judges)	Grand Chamber (nine members when sitting on trial)	Plenary session	Disciplinary Chamber

institutions in Georgia have been involved in land registration procedures.

In such a disjointed system, various property documents (both technical and administrative) were kept by different institutions whose functions would more often than not overlap. To effect any kind of real estate transaction or change, one had to secure documents from many different agencies (municipalities, surveyors, notaries) on top of about 10 others from various government units. To make things more complex, every such unit had its own rates of taxation, fees and conditions for document validation.

Since 2004 and as discussed below, Georgian authorities have carried out innovative structural reforms in property administration and made significant progress towards a modern, efficient system of property registration.

#### 4.2.1 Land Registration Laws

Art. 312 of the Civil Code establishes the *presumption of accuracy* of the data maintained in the public registry, which is guaranteed by the State (i.e., the information kept in the registry is considered accurate until proven otherwise). Structural reforms in this sector started with the introduction of new legislation. The *Law on State Registry* (June 1, 2004) created a unified system for the registration of immovable property under an independent agency, the National Public Registry Agency. This separate legal entity operates under the supervision of the Ministry of Justice. Art. 4 of the Law on the Registration of the Rights to Immovable property (effective since March, 2006 and amended on 18 December 2007) reaffirmed the presumption of data accuracy in the public registry while introducing procedural steps for the registration of immovable property.

These procedural steps for property registration significantly enhance security for

the purchase, use and disposal of immovable property. Under these conditions, a new buyer can acquire, use and dispose of property without hindrance. Registration of ownership rights to land and other details of immovable property is performed by a single body. The Agency is entirely responsible for the registration and validation of information on real estate titles. For a fixed fee determined by the *Law on Service*, the agency makes all data contained in the registry accessible and available to anyone.<sup>29</sup>

#### 4.2.2 The Registration Agency's Functions

The basic function of the agency is continually to record immovable property that is subject to compulsory registration under the *Law for the Registration of Rights to Immovable Property*. The agency also maintains preliminary registration records in accordance with the Civil Code, issues information on restrictions on immovable and movable property (easement, mortgage, lien), and provides information with public authorities (courts and taxation bodies).

Functionally, the agency is comprised of three units: (1) a *Registration Office* in charge of issuing legal titles, (2) a *Cadastral Office*, which maintains the country's cadastral database, and (3) an *Archive Office* which keeps a technical inventory.

Georgia's system of land registration is *unified*, which means that it contains both legal and cadastral property data. It is also *comprehensive*, as it includes all available information on single land plots (size, property status, technical features, and owner and potential restrictions to property titles). Land plots and any real estate property on them are considered part of the same unit, being amalgamated and registered as such. The registration number refers to the cadastral number, and a single document (the

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<sup>29</sup> *Law on Service* (Art. 4(1), 4(3) and 4(4)).

‘extract’) includes all the relevant legal and technical details (status, boundaries, size).

In a further unifying move, issuance of liens and mortgage references has been transferred from the Chamber of Notaries to the Agency, which records and issues this type of data in relation to immovable and movable property through its registration offices.

#### 4.2.3 Main Features of the Land Registration System

##### ➤ *The Agency as an Independent Public Body*

The Agency has an independent budget provided from various government sources, together with loans, grants and fee income from the registration services. Over the last couple of years, significant efforts have been made to make the Agency less dependent on the government budget and nowadays its agency main source of income derives from fees – those for registration and for providing information on registered immovable property. The current fee for registration is GEL50 (or EUR25), which is reasonable and allows for the self-financing of the Agency, especially when one considers the increasing numbers of transactions (currently 800 per day in Tbilisi alone, with about 2,500 throughout the country as a whole).

##### ➤ *A Professional Approach to the Registration Process*

The new and demanding role of the Agency requires higher degrees of professional ability on the part of staff, which are now habilitated to sign off ownership registrations on behalf of the government (adjudication). Special attention is to be paid to the recruitment and training of skilled professionals (register officers) to perform the registration process. Appointments are currently based on a qualification exam, and subsequent training is also provided.

As guarantor for the accuracy and validity of documentation, the Agency has imposed specific technical requirements, such as a special seal to ensure authenticity and security. As part of a drive for quality service, it has also developed methods for reviewing applications, complaints and proposals. One such development is a (free of charge) telephone ‘hot line’ enabling any dissatisfied users to report alleged unsatisfactory behaviour (especially corruption) on part of Agency staff.

The Agency is formally accountable to the Ministry of Justice, which controls and supervises its legal and technical functions to ensure proper performance and efficiency.

##### ➤ *A Streamlined, Accessible Registration Procedure*

Over the past several years property registration procedures and those for obtaining information from the register have been significantly simplified in Georgia. Immovable property can be registered through a standardized application form, complete with bar code, registration number, the details of the public registry office and the date and hour when the application was received.

On reception of an application, the Agency’s registration branch issues a receipt the submission.. The receipt specifies the address, size, and type of property, as well as any existing restrictions (e.g., mortgage) on the property. Where an application is supported by all the required documentation (title deed, cadastral plan, personal documents, agency fee receipt), registration is guaranteed within four working days. Users can check the status of applications on the Agency’s Website. The introduction of such new technologies has significantly curtailed the numbers of users visiting the registration offices – as many as 30 to 40 per cent now opt to access information through the Web. New technologies also

enable third parties to access information they need regarding specific land parcels, which they do mainly to check out for any restrictions by lien and for lien/mortgage tax purposes.

A visit to one of the Agency's offices revealed a high degree of practical efficiency in service delivery. The distinct functions and their locations are clearly signalled, and legal advice and consultancy are offered free of charge *in situ*. Registry offices physically segregate the public areas, where users receive and fill in documents, from the operational parts where applications are processed.

➤ *Modern and Efficient Registration through Information Technologies*

Significant improvements in accessibility and efficiency have come about through ongoing, comprehensive digitalization of the land register paired with a unified electronic registration system. Validated property rights are collected in the unified database, which is supported by registration software developed by the agency's Information Technology unit.

Electronic management of registry databases has already come on stream at the Tbilisi central office and in many other locations. Eventually, the Web-based software will effectively link all of the Agency's offices in a single network (by the end of 2008, the network was expected to involve 50 local offices out of a total 74).

Once all registration offices are connected, the network will fully digitalize the management and delivery of services. This will enable all users to obtain the documents they need in electronic format through a simple Internet connection.

**Constraints and Issues**

➤ Against the background of the Georgian government's declared market-oriented

policies, the main concern regarding the property registration system is that the role of the Agency as a public office remains ill-defined; this refers more specifically to the priority this government agency should give to other public entities (judiciary, tax, etc.) over private interests. Indeed, the system as it currently works seems to give private entities (primarily banks) privileged access over public bodies. Through a memorandum of understanding with the Agency, private banks and insurance companies secure full authorized access to the database; by contrast, some government bodies (including tax and judiciary) enjoy no such access and are left to make case-by-case requests to the Agency. Arrangements with private entities can even go further: Agency staffs (i.e., civil servants) are found working in the premises of Georgia's two major private banking institutions, helping with property registration for the benefit of those bank customers applying for secured loans.

➤ Another significant issue is the accuracy of technical data provided by private surveyors for cadastral records. The main problem has to do with the licensing of these companies. The government eliminated private surveyor licensing in 2005 in a bid to stem corruption and open up access to private professionals. The practical effect of this market-driven approach has been quite the reverse, though. The quality and accuracy of the cadastral data received from private companies are poor, with frequently overlapping coordinates, which only generates additional technical difficulties for the Agency.

➤ So far in Georgia, only 30 per cent of all immovable property is registered and predominantly located in urban areas. This reflects a situation where the rural

population is in possession of property certificates on agricultural land (one hectare per agricultural household) that was distributed by the government in the early 1990s as part of an anti-poverty campaign. Since registration in the

public records is not mandatory and the property market in remote rural areas is not dynamic at all, the majority of the rural population is unaware of the registration system, or simply lacks the motivation to use it.

## **Conclusion**

Over the last couple of years, when the structural reforms of property registration started, the Georgian government has managed to put in place a modern, efficient, accessible, transparent and cost-effective system. Further improvements are required, though – particularly a stricter definition of public- and private-sector roles, and better access for public bodies – before this can be seen as a model for other transitional countries in the area.

# Chapter Five

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## Land and the Rural Population

Although land privatization has generally been considered a success in the aftermath of Georgia's independence, additional attention should be given to its practical impact on the rural population. Surely, granting ownership rights to former collective farm workers and other citizens was an important step in land reform. However, a majority of the Georgian rural population today is still waiting for any significant economic benefits.

Rural poverty persists and has been aggravated by the total collapse of the social infrastructure in rural areas, where schools and hospitals have been closed. This has brought about considerable migration away from villages: across many agricultural areas, depopulation as evidenced by completely abandoned villages.

### 5.1 Agricultural Land Reform

Georgia's agricultural land stock is an estimated 3.02 million ha, or 43.4 per cent of total land in the country, of which approximately 795,000 hectares (or 11.5 per cent) are arable. Commercial farming during the Soviet period was predominantly carried out by State-owned farms (*sovkhos*) and collective farms (*kolkhoz*). With the end of centralised agricultural production, former *sovkhos* and *kolkhoz* workers were one of the categories most affected by the institutional collapse of the Soviet Union in the early days of Georgia's independence.

Desperate social conditions in rural areas forced the government to launch land reforms which, with *Resolution N°48* of 1992, took the form of a general distribution of land allotment certificates. The shift of ownership from the State to rural households was seen primarily as an emergency poverty-alleviating measure rather than a full-fledged land reform policy. During that period 1,055,200 households were allocated 744,000 ha of agricultural land,<sup>30</sup> with an average size of 0.3 ha each. This land distribution was carried out in a rather confused manner, as the entities in charge found themselves unprepared for the task.

In 1993, the government adopted *Decree N° 503* in responses to the situation. The decree empowered local bodies – known as Land Reform Committees – to deliver formal documents, known as *Land Allotment Titles*. However, most new land owners were unable to obtain allotment titles due to lack of information and inability to pay the title fee (equivalent to USD18). This accounts for the initial low rate of land ownership registration.

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30 Three categories benefited from land distribution:

- Former *kolkhoz/sovkhos* workers were allocated 1.25 ha of land per household
- Other rural workers received 0.75 ha per household
- Urban – households were allocated 0.25 ha each.

Furthermore, during the first privatisation in 1992, ownership transfer was similarly defective, since the system registered initial owners only, and not subsequent transactions.

With *Presidential Decree N°327 on “Urgent Measures for the Initial Registration of Agricultural Land Ownership Rights and Issuance of Registration Certificates,”* the

initial registration process was simplified. However, most of the rural population to this day remain unaware of the need for land surveys to convert certificates into ownership titles and properly to register any subsequent land transactions with the National Public Registry Agency, as required by current legislation. No wonder, then, that agricultural land has the lowest registration rate in National Agency records.

## **Conclusion**

The general distribution of land parcels has had some positive effects but failed to bring significant benefits to the majority of the rural population. More specifically, small, fragmented land parcels did not result in major increases in agricultural production.

This is largely because agricultural workers lacked the farming skills required under these new and still evolving conditions. They also lacked the financial resources for even the basic equipment required to embark on large-scale agricultural production.

Under such conditions, Georgia’s agricultural population is confined to self-subsistence farming, with the allocated land parcels representing minimum economic security rather than a springboard for a full-fledged, productive agricultural sector. These unfavourable conditions encourage rural-to-urban migration, especially to Tbilisi (a phenomenon known as the “capital city syndrome”).



# Chapter Six

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## Land Management Institutions

### 6.1 Government bodies

#### 6.1.1 The Department of Urbanisation and Construction

This department is the central institution in charge of housing and urban planning. However and probably owing to the government's free-market policy inclinations, one can denote a visible trend of constant downsizing and reducing this central role.

This by now small department was once known as the Ministry of Urbanisation and Construction, with some 120 staff. With the 2004 reforms, it became a department in the newly created Ministry of Infrastructure and Transport which was dissolved only a few months later. Since then, the Department of Urbanization and Construction comes under the Ministry of Economic Development and employs only 14 professionals.

Among many activities, the department has three main tasks:

- *Urban development policy*: territorial development and architectural/urban planning, construction, housing and communal infrastructure, land development and use, planning and zoning for settlements and other territorial units, and the methodological supervision of these activities.

- *Issuance of permits* for the construction/rehabilitation of major government projects (motorways, ports, etc.) and their supervision. In 2007, 16 such permits were issued.
- *Supervision of construction standards* and setting out norms and rules for construction and development.

The department can also propose new legislation, rules, regulations, changes and amendments. Regarding construction, the standards previously in force in Georgia were based on former Soviet technical standards and rules (*'stroiteljskih normi i pravi'*, or 'SNIP'), which were very stringent and excessively complicated. Indeed those rules acted as the main hindrance on construction in the past. During the transition period, many private developers were unable to meet those norms. The department took the initiative for changes and proposed new legislation which drastically simplified the construction process (as explained in detail under 6.2.1 – The Tbilisi Municipal Urban Development Department). As a result, according to the World Bank's "Doing Business" survey, Georgia now ranks 11<sup>th</sup> in the world for streamlined construction procedures.

Bilateral cooperation has had a role, with the United States Agency International Development (USAID) sponsoring a

joint project (“*Reform of the Business Environment*”) between the Department of Urbanization of Construction and the International Code Council (ICC). Based on ICC experience, a construction code has been drafted and presented to Georgia’s Parliamentary Commission on the Economy and Economic Development for comments and/or amendments. The Code now is in its very last stage of finalisation.

### 6.1.2 *The Department of Geodesy and Cartography (within the Ministry of the Environment)*

Since January 1, 2006 Georgia’s geodesic and topographic surveys have been regrouped as a single unit within the Ministry of the Environment. They had until then operated as a single independent government agency. This small department consists of eight professionals, of whom four are trained in

## **Assessment and Recommendations**

The department’s institutional role seems to be mainly that of a “support office” for government infrastructure, rather than as an institution responsible for ensuring and supervising urban development in Georgia as a whole.

Since the last urban master plan was adopted during the Soviet era and has been ignored over the past two decades, there is cause for serious concern. It is doubtful whether a new urban master plan can be adopted anytime soon because of the department’s institutional position and limited resources (both human and financial). A well-defined housing policy and strategy is currently lacking in Georgia.

It is strongly recommended that this institution be strengthened to full-fledged ministerial status, so that it can respond effectively to several currently pressing issues in the housing and urban sectors, including in particular:

- Institutional reform, including transformation of the existing Department of Urbanisation of Construction into a ministry with a clearer, more powerful mandate. Adequate additional staffing with relevant expertise should also be provided.
- Drafting a master urban plan for the capital city, Tbilisi on top of effective urban planning legislation and policies. Awareness of urban planning should be enhanced as an essential step towards effective urban land management.
- An initiative should be launched through this Department (future Ministry) to develop a national housing strategy. An integral part of this should be a scheme for various models of affordable housing, which is currently lacking in Georgia.
- Proposing (and implementing) legislation, rules and adequate policies for the rehabilitation, maintenance and management of existing housing stock in order to avoid further depreciation.

geographic information systems (GIS). These services upgrade topographic maps and provide cartographic services to users (mostly public bodies). With the 2008 conflict, the importance of these two services has only been enhanced, with many domestic and international entities requiring maps for reconstruction purposes.

Traditionally in Georgia, as in all ex-Soviet countries, cartography was considered a strategic government service (maps of a certain scale were classified), and the general practical importance and usefulness of geographic information were overlooked.

International cooperation with the Japanese International Cooperation Agency has recently given rise to a three-year technical assistance programme known as “*Research toward a Digital Topographic Programme.*” The rationale is to develop a modern information system (GIS) in order to promote effective use and sharing of geographic data. The research was performed over a densely populated 24,000 sq km area.

From a technical point of view, this programme promoted a new system of standards and coordinates, as well as digitalization of mapping data. The newly-developed geographic information system was based on the allocation of GPS (global positioning system) control points in determined areas. The rationale behind this project was the practical application of various models of geographic information systems for future government projects (e.g., for optimisation of agricultural land use, environmental protection, etc.)

Of particular importance is that the GIS-based model could have a practical application for urban development (e.g., in Tbilisi), assisting in master plan development, determining restrictions and directions for future urban development, tracing areas for settlement extension, as well as evaluating land suitability for urban use.

The agency’s topographic record consists of detailed digital maps of the western (Black Sea) seaboard (scale 1:10,000), background maps of Georgia (1:500,000 scale) and, thanks to the project with Japan, recently developed digital 1:50,000 topographic maps. A full topographic map on a scale of 1:10 000 is currently lacking.

## 6.2 Local institutions

### 6.2.1 The Tbilisi Municipal Urban Development Department

The urban development unit of the Tbilisi municipality has four main functions:

- 1) City planning and development of a master plan.
- 2) Groundwork ahead of land plot privatization (for investment purposes). This includes checking the status of specific plots, since comprehensive records of municipal immovable property are still lacking in the public registry; the practical import is that at the moment all property in Tbilisi is formally government-owned, although *de facto* belonging to the municipality. This means that for the purposes of privatising government-owned immovable property, no those plots located within the Tbilisi municipality can be auctioned off before they are registered under municipal ownership. Only in this case can the municipality carry out a (sale, purchase) transaction on immovable property.
- 3) Issuing building permits<sup>31</sup>: existing construction standards set out a three-step

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31 This three-step process (as set out in “*Government Resolution N°140 (11 August 2005) setting out rules and conditions for issuing Building Permits*”) is valid for single private constructors (where building permits are issued by a municipal body) and for infrastructure projects (where building permits are issued by the Ministry of Economic Development.)

procedure for building permit applications

- (i) Architectural planning permission (which a municipality or the Ministry must decide on within 30 days): current construction density standards are based on three coefficients<sup>32</sup> (ground surface, volume, green area) which condition the issuance of permits for multi-storey buildings.
- (ii) Approval of the project (by municipal authorities (within 20 days). Where the prescribed coefficients are met municipal authorities approve the architectural plan, and can make adjustments with regard to visual aspect and the materials used for external coating.
- (iii) Issuing building permits (within 10 days).

In addition, the Tbilisi development department has recently embarked on the regularization of illegal constructions built in the area before 1st January 2007.<sup>33</sup> Under this scheme, municipal authorities can legalise any previously unauthorized building (or one that was in breach of the building permit) upon request from the interested party.

32 The prescribed coefficients for multi-storey buildings are as follows:

$K_1 = 0.7$  -for area that can be used for construction purposes

$K_2 = 2.2$  -for living space within the construction

$K_3 = 0.1$  -for green area around construction

In practical terms, if the area of a plot allocated for multi-storey construction purposes is 1,000 m<sup>2</sup>, then:

$K_1 = 1,000 * 0.7 = 700$  m<sup>2</sup>, meaning that on a 1,000 m<sup>2</sup> plot, only 700 m<sup>2</sup> can be used for the construction/building itself;

$K_2 = 1000 * 2.2 = 2\,200$  m<sup>2</sup>, meaning that for a 700 m<sup>2</sup> construction/building on the ground, there shall be a maximum 2,200 m<sup>2</sup> multi-storey living space;

$K_3 = 1000 * 0.1 = 200$  m<sup>2</sup>, meaning that the green area on the plot shall be 200 m<sup>2</sup>.

33 This possibility was envisaged by *Presidential Decree N°660* (24 November 2007).

Where an interested party produces all the necessary documents, the municipality can regularise the illegal construction. However, the municipality retains the power to request additional documents, and can also impose construction works, mainly for external appearance. Applicants must meet the municipality's requests at their own expense.

The terms of legalisation leave any risk relating to the construction's sustainability entirely to the owner.

A municipality must decide on legalisation requests within 30 days, otherwise the construction shall be considered as having been formally legalised.

#### 4) Statutory Instruments

Tbilisi's Municipal Urban Development Department can also propose laws and amendments with regard to urban planning.

For instance, the department was behind two recently adopted statutory instruments:

- *Presidential Decree N° 660* (24 November 2007) setting out rules on the legalisation of illegal constructions or those in breach of architectural plans built before January 1<sup>st</sup>, 2007.
- *Government Resolution N° 140* (11 August 2005) setting out rules and conditions for the issuance of building permits (with amendments in force since 1st November 2008).

#### 6.2.2 Tbilisi's Municipal Economic Policy Agency

This agency's (and its 20 staff members') mandate is to develop social-economic and local economic development programmes, to support small enterprises and tourism, and to provide the legal framework for municipal services and infrastructure (i.e., drafting laws and by-laws). The agency deals with strategic planning and urban development

programmes, encouraging expansion in the local economy and the labour force on top of monitoring municipal services and infrastructure.

### 6.2.3 *The Tbilisi Corps (Municipal Department of Civil Integration and Participation)*

Within the 'Tbilisi Corps', the Division of Civil Initiatives has three main tasks: (1) identification and definition of civil initiatives and priorities, (2) the development of projects supporting multi-family building

condominiums, and (3) support and consulting for construction and subsequent registration of condominiums. The Tbilisi Corps plays a crucial role in the maintenance of common areas in multi-storey buildings, the lack of which was a major factor in the deterioration of Georgia's urban housing stock.

Now, under the recent (2007) *Law on Household Condominiums*, the Tbilisi Corps is the main support of flat-owners' associations for the repair of common areas in multi-family buildings. The Corps'

## **Assessment and Recommendations**

One of the major deficiencies in Tbilisi's urban management stems from the lack of an urban master plan since the Soviet era. The resulting regulatory vacuum has brought about intensive but unregulated construction. After independence, political instability combined with an absent regulatory framework for urban planning and widespread corruption, which has had dire consequences, particularly on living conditions. In the absence of master plans and zoning, building permits were granted on a case-by-case basis, and the consequences are all-too visible today throughout Tbilisi: due to corruption, many recreational areas, parks and common spaces have given way to dense construction.

Owing to budget shortages, the municipality has only been able to develop a five-year urban plan instead of a comprehensive master plan and it should be adopted soon. However, its positive aspects already find themselves under threat from Government Resolution N° 140), which looks to stimulate the construction sector, currently in the throes of a slump induced by the financial crisis and political instability. The resolution allows contractors to 'buy' additions to the living space coefficient ( $K_2$ ). This effectively gives free rein to additional large-scale construction regardless of the basic aim of urban planning, namely, ensuring proper living conditions.

Given the initial positive efforts of local authorities to improve urban and housing sector development, it is recommended to direct UN-HABITAT support to a recently launched (August 2008) initiative known as "*Cities Alliance – Cities without slums*". As part of this initiative, various international bodies (the United Nations Development and Environmental Programmes, the World Bank and the German international cooperation agency) are committed to assist Tbilisi to improve municipal governance and management, including urban development. UN-HABITAT should find a feasible form of well-designed support, in line with its own policies on urban development indicators and slum upgrading.

division of coordination and registration centralises maintenance-related requests and provides lists of registered companies who subsequently provide estimates for the project at hand. Once they have agreed on a company and type of project, flat-owners apply to the agency for financial support. It is for the agency to decide on its own share in the costs, which typically ranges between 30 and 50 per cent.

In 2008, the Tbilisi Corps co-financed 1,552 such condominium maintenance/repair projects, of which 580 (or 37 per cent) involved water supply. Since 2005, when the Tbilisi Corps was set up, its overall budget has been continuously increasing, from an initial GEL2.2 million (or USD1,6 million) in the first year to nine million US dollars in the past two years.

# Chapter Seven

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## The Main Challenges in Georgia's Housing Sector

### 7.1 Condominium Issues

The basic factor behind the gradual deterioration in Georgia's housing stock goes back to the 1992 privatization of State-owned buildings<sup>34</sup>, which was not matched by legislation on management and maintenance of common areas in privatized multi-family buildings.

The privatization of residential property triggered by *Government Resolution N° 107* (1 February 1992) effectively enabled tenants to become owners of their current flats for a token fee. Unfortunately, and as mentioned earlier, regulations on the management and maintenance of common areas (including roofs and lifts) failed to follow suit. As a result, a phenomenon known as “block apartment slumization” has become widespread in Georgia's major urban centres.

The 1997 Civil Code did not improve the situation, since the provisions on

condominiums remained largely ineffective for lack of derived legislation. It took another 10 years before basic standards on condominiums (the common areas of multi-family buildings) laid out in the Civil Code were finally developed.

This was the rationale behind the *Law on Household Condominiums* (11 July 2007, in force since 1<sup>st</sup> August 2007). This law defines the forms of condominium and types of property ownership among members, setting out the duties of apartment owners regarding maintenance and restoration of common areas. ‘Condominium’ (*copropriété* in French) refers to the common areas (hallways, stairs, etc.) that are shared by the owners/occupants of all the flats located in a single building. These common areas are managed by owners/residents' associations/companies.

However, in practice and since it is relatively new, most people in Georgia are still not aware of this important legislation; therefore, most multi-household residential buildings are still without a residents' association. Public awareness campaigns are strongly recommended in order to familiarize the public with the important role of residents' associations, in a crucial bid to prevent further deterioration in the conditions of multi-family housing blocks.

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34 Dwellings owned by the following institutions were privatized:

- Local administrative bodies (belonging to the State housing fund)
- Institutional (belonging to State organizations, institutions, enterprises) and
- Housing-construction cooperatives.

## 7.2 Deficiencies in Urban Development

In Georgia as in former Soviet States, the planning of urban development used to be a government monopoly. Municipal authorities had no involvement in what was a highly centralised system of urban planning, and consequently the specific needs and particularities of individual cities were not properly addressed.

The institutional collapse of the Soviet Union has caused a drastic change in the role of the State and has had negative effects on cities. Government shifted virtually overnight from total monopoly to an inability to play any significant role in planning, especially as the new national authorities were bound up with other priorities in the aftermath of independence. Unfortunately, the legal and urban policy void persists to this day with visible consequences, as follows:

- Master urban plans (where any) are outdated, having been drawn up in the Soviet era: the most recent date back to the 1970s and therefore are way out of touch with the social and economic needs of today's urban centres. Georgian authorities attempted to fill this 'vacuum' with the 2002 *Decree Extending the Validity of Master Plans*. As of this day, though, not even the capital, Tbilisi, has a proper master plan, and as mentioned above has only recently managed to develop a transitional five-year urban plan instead.
- Lack of master plans and of specific urban planning policies is fertile ground for intensive but fragmented and dense construction of residential units by private developers, with an ensuing dramatic fall in living standards, especially in the capital city.
- Stimulated as it is by current, strongly free-market government policies, massive privatisation of urban land is not bound

by any basic guidelines on urban planning. The public interest in spatial organisation is ignored by private developers. It should not be overlooked, though, that the primary aim of urban policy is to improve the quality of life in human settlements.

- The role of local authorities as key agents in urban development and the administration of urban services has yet to be properly addressed in Georgia. The current legislative framework does not clearly define this role, which an absence of urban master plans can only further erode.

## 7.3 The Tbilisi Construction Boom

As of early 2000, construction was one of the largest growth sectors in Georgia, contributing 8.8 per cent to gross domestic product. In the sole 2006-2008 period, a total USD660 million were invested in construction, almost exclusively by private developers. In the capital, the boom is evident. Construction spending reached USD426 million in 2006, a fivefold increase compared with USD85 million three years earlier. In terms of surface, approved projects stood at a combined 500,000 m<sup>2</sup> in 2003 and reached 2,300,000 m<sup>2</sup> in 2006.

High demand focuses almost exclusively in the capital city; instead of the financial resources of the average Georgian citizen,<sup>35</sup> it is based on remittances and investments from the Georgian diaspora, which together were behind a USD545 million cash inflow from abroad in 2006. This high demand boosted the prices of newly constructed units from USD400 per m<sup>2</sup> in 2003 to USD1,400 in 2007.

The current construction boom in the capital

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<sup>35</sup> Despite continuous economic growth since the year 2000, the average monthly salary remains low, around USD150.



is largely facilitated by the absence of any urban plans and related policies, a situation that gives a free rein to dense construction in the most attractive city districts.

This growth in construction is summarized in the table below.

#### 7.4 Lack of Housing Strategies and Policies

The challenges and deficiencies currently facing Georgia’s housing sector call for rapid development of a comprehensive housing strategy/policy. Unfortunately, this urgent need has been largely overlooked in the past. On several occasions, the government took to drafting housing strategies, but none has ever been formally enacted. Early attempts took place in the 1990s, when the former Ministry of Urbanisation and Construction first came up with an analysis and suggested solutions to redress the poor situation in the housing sector. At the time, the perceived priorities

were an improved legislative framework, housing restoration and maintenance as well as government involvement in favour of affordable housing.

Since then, though, a number of factors have combined to stand in the way of such reforms: lack of financial support was only exacerbated by the structural institutional reforms carried out in the aftermath of the 2003 “Rose revolution,” which (as mentioned earlier) saw a dwindling in the size and standing of the Ministry of Urbanisation and Construction.

Lately, in line with post-2003 market-oriented economic reforms, housing has not been considered a priority in any sense, as the new government relied on unfettered market forces as the exclusive regulators in the sector. Under these conditions, and despite assistance from international entities (primarily the United Nations Country Team), the results have been negligible. In particular, and led by the country team, those entities have produced

Number of building permits						
Year	Number	Area as a whole (m <sup>2</sup> )	New construction		Reconstruction/rehabilitation	
			Number	Area (m <sup>2</sup> )	Number	Area (m <sup>2</sup> )
<b>In Georgia</b>						
2004	1,050	472,865	...	...	...	...
2005	1,655	847,479	...	...	...	...
2006	2,725	3,201,067	2,015	3,000,569	710	200,498
2007	3,217	2,620,812	2461	2,371,842	756	248,970
<b>In Tbilisi</b>						
2004	290	300,429	...	...	...	...
2005	485	546,436	...	...	...	...
2006	656	1,181,615	475	1,091,549	181	90,066
2007	891	1,884,683	777	1,777,078	114	107,605

Source: Municipality of Tbilisi, Urban Development Dept, 2008.

two documents where they addressed housing as part of a more comprehensive vision for Georgia:

- The 2005 *Economic Development and Poverty Reduction Programme (Progress Report)*, called for mechanisms for housing stock restoration and maintenance in order to develop an overall strategy for public housing policies, with the aim of improving the legislative framework for housing and introducing the concept of social housing.
- Under *Millennium Development Goals in Georgia (N°7)* for the period 2004-2005, the Georgian government specifically committed to a housing policy in line with international standards. The policy document also stressed the need for social housing with a decentralised, municipal social tenure dimension.

Neither of the above commitments, especially those regarding a housing strategy and social housing development, has been fulfilled.

Furthermore, an analysis of the latest *Millennium development goal (component 7)* for the municipality of Tbilisi suggests that the Country Team was not sufficiently attentive when agreeing on the wording of Development Goal Component 7 (ensuring environmental stability Target 15 involves a commitment to “*Developing residential housing in close cooperation with the private sector*”<sup>36</sup>; now, in view of the current policy void with regard to housing and with the sector governed by market forces, the Country Team should have been much more specific and discussed the potential for partnerships with private developers (e.g., private-public partnerships); this would have been in line with the Millennium commitment to “*Scale-up slum upgrading and invest in decent, affordable housing.*”

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<sup>36</sup> Tbilisi Millennium Development Goals Report, 2007, p. 42.

## 7.5 Lack of Affordable Social Housing

In general terms, the housing policies in Georgia have gone from one extreme to the other: from the conditions of the Soviet era, when the State monopolised regulation and guarantees for all citizens (with *collective* favoured over *individual* rights, and housing considered a social right for all), to the current situation where, as mentioned earlier, the State altogether holds back from anything like a housing policy. The resulting lack of government support for social housing projects most likely stems from an inadequate understanding of public authorities’ roles regarding housing in a modern market economy.

This calls for a more specific definition of this role, which is three-dimensional: (1) it is for public authorities to make sure that market mechanisms work well in the housing sector; (2) the government must deploy proper mechanisms and policies to protect the needs of vulnerable and low-income groups; and (3) the government must remedy the excesses of unfettered market forces in the housing sector.

Official data show that 25 per cent of the Georgian population live below the poverty line. This suggests that the government still does not fully grasp the role played by social housing in poverty alleviation. Any assessment of actual social housing needs is further complicated by a lack of reliable official data on this sector.

Only two social housing projects are currently under development, and both are funded by foreign/international entities that openly support the Georgian government, namely:

1. The Swiss Agency for Development and Cooperation (SDC): *Pilot project - Social Housing in a Supportive Environment* (SHSE)
2. A project led by the United Nations

Development Programme (UNDP) known as *Support to Social Service Capacities and Policies in Georgia*

- 1) The Swiss-supported pilot-project involves construction of four two-storey housing units with 26 apartments for vulnerable people, and another two flats for vulnerable families, to be built on land plots allocated by the Tbilisi municipality. Beneficiaries are selected during construction works. The target groups are the homeless and most vulnerable groups: single, elderly, single-parent households, persons with disabilities, families without breadwinners, families with many children, and those reared in State childcare institutions. Depending on the final selection, the project may include, if needed, special training for the local social agents and social workers providing services to the beneficiaries.
- 2) The United Nations Development Programme project also looks to strengthen municipal and national capacities and policies in favour of social housing and the needs of more vulnerable groups. The focus is on strengthening the capacities of the Tbilisi Municipal Department of Social and Cultural Affairs. The project has two main objectives. The first one is to assess the needs of the municipality and to train staff to deliver specific social services related to social housing.

The second objective is to promote the concept of social housing in Georgia and provide relevant technical/policy advice to the government. In practical terms, the project complements the Swiss-led initiative in Tbilisi (providing the first four social housing units). The idea is that both capacity-building and promotion could further government-owned social housing strategies, and, if successful, lead to a pilot- project expanding the Tbilisi initiative to other parts of the country.

As a final remark, however, it must be noted that the degree of local authority commitment to social housing projects hardly suggests that these are high on the current government's agenda, and for the reasons stated above. The authorities fear that public intervention would undermine the free interplay of market forces in the real estate sector, regardless of the need for affordable homes or the role of social housing in poverty alleviation.

## **7.6 Banks and Affordable Housing**

With the recent opening of local branches of foreign institutions, Georgia's banking sector is by now well developed but has yet to provide affordable individual loan conditions. At the moment, domestic commercial banks (largely controlled by foreign capital) offer very unfavourable terms, i.e., high interest rates even on short-term credit.<sup>37</sup> The typical loan is for 10 to 14 years with interest rates between 14 and 18 per cent, and the first repayment equivalent to a 20 per cent down payment.

Loans are secured with a mortgage or alternatively with real estate collateral owned by the borrower or a relative. Collateral must be secured for the full duration and full amount of a loan, and borrowers are charged a 0.32 per cent insurance fee every year. Mortgage loans are available to individuals with proven stable incomes (between USD300 to 500), or alternatively a USD600 minimum rental income, or stable monthly share dividends equivalent to USD1,000.

Georgian commercial banks do not offer any specific housing savings accounts entitling holders to more affordable housing loan conditions. As they currently stand, loan conditions are hardly accessible to the vast majority of Georgian citizens, especially young professionals. This phenomenon

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<sup>37</sup> Based on an analysis of the conditions offered by major Georgian commercial banks (TBC Bank, Bank of Georgia and Basis Bank).

could be called “*generational burden*”. While middle and older generations have satisfied their housing needs with relative ease and have taken advantage of the extremely favourable conditions for privatised State-owned apartments, young people cannot hope to obtain housing under prevailing, purely free-market criteria in the absence of specific government housing policies.

### **7.7 The Unregulated Rental Sector**

Following privatisation of State-owned apartments, more than 90 per cent of Georgia’s urban residential housing stock now is privately owned. However, lack of reliable official data makes it impossible to determine the percentage of rentals in the total. At the moment, the rental sector is unregulated and not all rented apartments are officially registered. The conditions attached to free rent (i.e., bargaining) do not offer adequate guarantees for lessors or lessees alike, and tenants have no protection against eviction.

Legislation on tenancy/lettings is strongly recommended and should be considered in the interests of all stakeholders, government included. It is of particular concern that the current market-oriented government, which has proven to be very sensitive to tax compliance and stronger fiscal discipline, has not bothered to evaluate the losses potentially incurred by leaving the housing rental sector unregulated.

### **7.8 Disaster Risk Reduction Policies are lacking**

Being located in the Caucasus area, Georgia is at risk from natural disasters, primarily earthquakes, landslides and avalanches, which come on top of man-made, technological catastrophes.

Responsibility for institutional disaster response is vested in the Emergency

Management Department at the Ministry of Internal Affairs. The legal framework is based on the recently adopted (2007) *Law on the Protection of Population and Territory from Natural and Man-made Emergencies*. However, an operational disaster management strategy is still lacking, while the high probability associated with such risks requires appropriate policies and associated actions. These should primarily strengthen institutional capacities in functional disaster management, enabling the government to anticipate and address future post-disaster recovery needs, while managing information about on-going risks and implications for response planning.

Identifying the areas where urgent intervention (disaster risk reduction) is most likely to be needed should be a priority. As part of these efforts, the legal framework should be reviewed to assess, and if required amend, existing building codes and regulations. Additionally, any general contingency plans must be developed.

Georgian institutions, first and foremost the Emergency Management Department at the Ministry of Internal affairs, should be out in a position to identify the priorities regarding disaster risk reduction as well as the development of emergency management strategies and relevant action plans.

### **7.9 Recommendations for UN-HABITAT Action in the Housing Sector**

Among the many deficiencies exposed above, two issues deserve particular attention and call for well-adapted responses:

- The inexistence of affordable social housing
- The lack of a disaster risk reduction strategy

### 7.9.1 A Proposed Strategy for Affordable Social Housing

- *Strengthen partnerships with all international entities already involved in social housing projects in Georgia.* This would be close to a pioneering step, since so far only Switzerland and the United Nations Development Programme are involved (in the country's first social housing pilot-projects).
- *Encourage the Georgian government more actively to engage with the Council of Europe Development Bank (CEB),* a major source of funding and facilitator of favourable loan terms for social projects. The Bank is strongly committed to improved living conditions in South-Eastern Europe through properly developed projects.
- *Advocacy and dissemination of knowledge of the modern social housing concept and the role of the State in this sector.* To avoid potential misunderstandings and ideological interference with the concept of social housing, a partnership with the Council of Europe, the United Nations Economic Commission for Europe (UNECE) and other international institutions is strongly recommended. An international conference on social housing, focusing on best practice and affordable housing in transitional European countries, would be very useful.

*Make it clear with public authorities that Georgia is bound by international standards on housing that require a definite commitment. The relevant instruments are listed in Box N° 1 below.*

In addition, *the Millennium Development Goals in Georgia* (Goal N° 7: environmental sustainability) which included specific commitments by the Georgian government for 2004-2005, prominent among which was enactment of a housing policy in line with international standards.

### 7.9.2 Further practical recommendations

- In partnership with the above-mentioned and other entities, *well-adapted social housing projects should be developed and provided in favour of vulnerable populations* (the urban poor, etc.).
- Deployment of such well-adapted social housing projects should be seen as *an opportunity to find adequate modalities for affordable housing that do not involve government input* (e.g., public-private partnerships).
- Help Georgian authorities to draft a *comprehensive strategy for affordable housing.*
- Conduct *capacity-building programmes* for professionals in charge of urban management and social assistance.

### 7.9.3 Risk-Mapping for Emergencies and Sustainable Recovery

- Improve the capacity to predict and address future post-disaster recovery needs as well as manage information about on-going risk and the implications for response planning.
- Capacity-building to provide quick and efficient post-disaster responses and to optimize resource utilization.
- Identify the areas where urgent intervention (disaster risk reduction) should take place in order to reduce risks and vulnerability for the population.
- Provide a set of guidelines on how best to meet the needs in risk analysis and contingency planning.
- Conduct risk-mapping and analysis exercises.
- Introduce general planning issues in relation to risk-mapping and contingency planning.
- Assessment of existing building codes and regulations.
- Application of a simplified risk-mapping tool to produce response plans for high-risk areas and to ensure that recovery activities take future risks into account.

## Box N° 1. International Standards on Housing as Applicable to Georgia

### *The International Covenant on Economic, Social and Cultural Rights (ICESCR),*

Art. 11(1)

“The States Parties recognise the right of everyone to an adequate standard of living for himself and his family, including ...housing.

Art. 11(2)

“Every State Party to the present Covenant undertakes to take steps with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

The United Nations Committee on Economic, Social and Cultural Rights is entrusted to provide an authoritative interpretation of this International Covenant and its provisions,

*General Comments N° 4* provides clear indications of the substance of the right to adequate housing (Art. 11 (1) of the Covenant)

*General Comment N° 4, point 8* explains the concept of adequacy, detailing the form of shelter which could be deemed as adequate under the Covenant, provisions, and in particular:

(c) *Affordability:*

....State parties should grant housing subsidies to those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases.

(e) *Accessibility:*

Disadvantaged groups must be granted full and sustainable access to adequate housing resources. Such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority with regard to housing. Housing laws and policies should fully take into account the special housing needs of these groups.

**The Habitat Agenda (1996)** highlighted States’ commitment to ensure access to adequate housing. In the Agenda, the right to adequate housing means that:

“Everyone will have adequate shelter that is healthy, safe, secure, *accessible and affordable* (emphasis added) and that includes basic services, facilities and amenities, and will enjoy freedom from discrimination in housing and legal security of tenure”.

It should be stressed that under Art. 61 of the HABITAT Agenda, States commit , to take appropriate action in order to protect, promote, and ensure full and gradual realisation of the right to adequate housing.

In the **1996 Revised European Social Charter**, the Right to housing (Art. 31) is defined as follows: “With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

- to promote access to housing of an adequate standard;
- to prevent and reduce homelessness with a view to its gradual elimination;
- to make the price of housing accessible to those without adequate resources”.

# Part Two

Housing, Land, Property and Displaced Populations

# Chapter One

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## Background

### 1.1 *The Georgian Conflicts*

The Georgian conflicts have deep roots going back long before the dismemberment of the Soviet Union and Georgia's declaration of independence in 1991. At that time, the immediate reaction of the ethnic Abkhaz population was to reject Georgian sovereignty over their territory and seek independence, a claim that has never been recognized by the Georgian government. Prior to the conflicts of the 1990s, Abkhazians contributed 1.8 per cent to Georgia's population, according to 1989 census data.

The situation is different in the region of South Ossetia, which in the 1990s applied for a greater degree of autonomy within Georgia. The first Georgian president after independence, Gamsakhurdia, denied South Ossetia's demand and repeal the region's previous autonomous status. According to the 1989 census, ethnic Ossetians made up three per cent of Georgia's total population. The two conflicts in the 1990s, and the more recent one in August 2008, resulted in an effective loss of control on the part of the Georgian government over the two breakaway provinces.

### 1.2 *Displaced populations*

The persistent, unresolved disputes over the respective status of South Ossetia and

Abkhazia have generated armed conflicts over the past two decades, seriously undermining the stability of the Georgian State. The first and most intensive displacement occurred in 1992-1994 with flows of ethnic Georgians out of Abkhazia; since then, 222,634 displaced individuals still depend on assistance and accommodation in collective centres in Georgia.

The more recent conflicts in South Ossetia in August 2008 caused an exodus of 192,000, of which 133,056 were displaced within Georgia, 30,000 within the territory of the self-proclaimed, breakaway republic, and the remaining 35,000 found themselves within the borders of the Russian Federation (North Ossetia).<sup>38</sup> The latest updated figures for the displaced populations from the two conflicts are displayed in the table below.

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38 UNHCR, "Emergency Operation in Georgia", 12 September 2008.



<b>Breakdown of population displaced by the August 2008 and 1992 conflicts (South Ossetia and Abkhazia)</b>					
<b>Regions</b>	<b>IDPs from the “August 2008 conflict” [CRA1 as at 3 October 2008]</b>		<b>IDPs from the 1992 displacement [MRA2 figures of July 2008]</b>		<b>Total per region</b>
Adjara	1,980		4,367		6,347
Guria	1,130		581		1,711
Imereti	5,716		24,885		30,601
Kakheti	4,350		1,098		5,448
Kvemo Kartli	6,523		8,069		14,592
Mtskheta-Mtianeti	3,344		1,263		4,607
Racha-Lechkhumi and Kvemo Svaneti	182		948		1,130
Samegrelo-Zemo Svaneti	178		82,088		82,266
Samtskhe-Javakheti	6,297		2,235		8,532
Shida Kartli	14,601		9,555		24,156
Tbilisi	86,995		87,545		174,540
Not identified	1,760		0		1,760
<b>Total</b>	<b>133,056</b>		<b>222,634</b>		<b>355,690</b>
	<b>CC</b>	<b>PA</b>	<b>CC</b>	<b>PA</b>	
	64,374	68,682	94,169	128,465	

CC: Collective Centres, PA: Privat accommodation

Regarding the overall return of IDPs, the figures are as follows:

<b>Overall return estimates</b>	
Return to areas adjacent to South Ossetia, August/September 2008 [source: CRA]	75,000
Return to areas adjacent to South Ossetia, October 2008 [source: MRA]	24,500
	<b>99,500</b>

UNHCR, “Emergency Operation in Georgia”, 12 September 2008.

- 1 CRA (Civil Registry Agency of Georgia), registration numbers of the population affected by the August 2008 conflict
- 2 MRA (Ministry of Refugees and Accommodation), results of regular IDP registration completed in April 2008

# Chapter Two

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## Specific housing, land and property issues in Abkhazia<sup>39</sup>

As mentioned above, the largest displacement occurred in the territory of Abkhazia, where some 300,000 people fled during the 1992-1994 conflict. In the aftermath of the Georgian-Abkhazian conflict, the first basis for a possible return and potential repossession of abandoned property was laid out: in a *Quadripartite Agreement on the Voluntary Return of Refugees and Displaced Persons*, in which the Abkhazian self-proclaimed authorities and the Georgian government committed to “voluntary return in safety and dignity.” However, as far as return is concerned, one must distinguish between two different realities. One is to be found within the administrative borders of the Gali district, where the spontaneous return of ethnic Georgian Mingrelians is taking place; however, an altogether different situation prevails in the rest of Abkhazia, where returns have been extremely scarce.

Before the conflict, at the time of the last (1989) census, Abkhazia had a population of

about 480,000, including 48 per cent ethnic Georgians and 17 per cent native Abkhazians. The Gali district had a population of 79,000, 45,000 of which have since returned to that area: many are not permanently settled but migrate on a security or seasonal basis, depending on agricultural cycles. In the Gali district, restoration of housing, land and property rights mostly involves reconstruction or rehabilitation of abandoned houses for returnees, with help from the international humanitarian community. The situation across the rest of Abkhazia is completely different, as shown below.

➤ *Housing, land and property: law and practice in Abkhazia*

Until 2003, all *de facto* Abkhazian authorities integrally endorsed Soviet legislation through decrees enacted by a *de facto* Abkhazian parliament. After 2003, the *de facto* Abkhazian authorities sought to enact legislation on the Russian model with minimal if any changes. As for housing, land and property rights, the *de facto* Abkhaz Constitution (1994) formally guarantees the *right to ownership and private property* (art. 13.)<sup>40</sup>

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<sup>39</sup> The findings are derived from a brief field mission in Abkhazia and consultations of available *de facto* Abkhazian legislation. Interviews were held only with some international staff operating there and those of Abkhazian non-governmental organisations. No interview was held with officials from the *de facto* institutions, due to the high sensitivity of housing, land and property issues linked to the recent (August 2008) conflict.

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<sup>40</sup> Abkhazia's *de facto* Constitution (Chapter II) also refers to human rights and freedom standards as set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and on Economic, Social, Cultural Rights, as well as other universally adopted international instruments.

The Abkhazian *de facto* authorities officially considered that abandoned property located on their territory was a resolved issue, and consequently no mass property restitution or compensation was needed: only isolated claims for compensation on a “case by case” basis could be considered before the *de facto* Abkhazian courts. The main argument for eschewing any large-scale restitution and compensation programme was grounded in the idea that Abkhazian territory had suffered damage caused by “Georgian aggression” amounting to between USD11 and 14 billion, which was much higher than the total value of all the property abandoned by potential claimants.

However, even the few cases involving displaced individuals’ property in the *de facto* Abkhazian courts came to an end in May 2006 when, , enforcing a decree (*On Regulating Residence Issues to Ensure the Right of Abkhaz Citizens to Residence*) from Abkhazia’s *de facto* parliament, , all claims by displaced people for repossession of occupied property were declared inadmissible. As a result, all eviction procedures have come to a halt.

This suggests that the rule of law is not adequately acknowledged in Abkhazia, especially by the judiciary. The cases where eviction is not enforced against illegal occupants (and which can last for up to five years) only compound the situation and probably to the detriment of elderly and other vulnerable residents, especially where attractive properties are at stake. Such valuable properties (seaside, etc.) are largely unprotected in the face of high buyer demand.

➤ *The main housing, land and property issues in Abkhazia*

(i) Destruction of property stems from two factors: (1) voluntary damage as a result of conflict, usually motivated by personal revenge or as a punishment to those belonging to ‘the other side’, or (2) wear and tear resulting from long-term abandonment of

buildings. In any future restitution process, the only option for ruined houses will be financial compensation, or provision of alternative property of equal value.

(ii) Secondary or multiple occupation is another major problem. In most cases, an occupant owns multiple properties and rents them as a source of income. This process, however, prevents any feasible form of property return. No survey has been conducted by the Abkhazian *de facto* authorities to understand whether occupants are displaced persons in need of housing, or whether occupation is used for personal financial gain.

(iii) In both Georgia (see Chapter 4.4.) and Abkhazia, the tenancy rights of lawful possessors have been invalidated. This practice derived from a court order based on the “sixth-month vacation rule” set out in the 1983 Housing Code, a legacy of the Soviet Union. Under Art. 69 of that Code, a tenant could lose tenancy rights in the case of absence from his/her apartment “without valid reason” for a period exceeding six months. Now, during the Abkhazian conflict many, mostly ethnic Georgians, left their apartments *en masse* due to widespread violence and lack of personal security. In the case of private property, the original owners, again mostly ethnic Georgians, were deprived from their homes or apartments when the *de facto* Abkhazian authorities enforced the Abkhazian Civil Code; Art. 233 of the code defines a *bona fide* possessor as one who occupies a given house or apartment and, after 10 years’ adverse possession (*‘usucapio’*) could become the owner, compared with 20 years in the European civil law tradition. Spontaneous, illegal occupation of abandoned private houses also happens on a large scale.

(iv) Illegal, informal sales of private property are another major problem: many abandoned houses, especially those located in attractive seaside areas, have been informally sold by

temporary occupants to third parties (several times in certain cases), and often below market prices. This practice is bound to make any future restitution to original owners even more complicated and difficult.

(v) Finally, a rapid increase in real estate/property prices, especially in urban and scenic areas, is also a problem in Abkhazia. This phenomenon results from high demand on the part of buyers and potential investors from Russia, especially in coastal areas (including abandoned property). For example, in the years 2000 a medium-sized apartment (70-100 m<sup>2</sup>) cost USD6,000-8,000; eight years later, the same apartment sold for around USD120,000! This high demand usually stimulates illegal, informal and non-transparent transactions.

➤ *Inadequate Property Protection in Abkhazia*

Apart from institutional weakness, the voluntary sector in Abkhazia (except the Gali district) is undeveloped, still ethnically affiliated, and unable to offer adequate universal protection against violations of human rights, including property rights. This lack of advocacy for the protection of property rights is further compounded by the sparse local presence and weak mandates of international human rights organisations.

The only entity that could offer a degree of protection is the *Human Rights Office in Abkhazia*, which is jointly staffed by the United Nations High Commissioner for Refugees and the Organization for Security and Co-operation in Europe. As its name suggest, the office monitors human rights in Abkhazia, including judicial procedures, advocacy and awareness. The office can receive individual petitions from Abkhazian citizens and remains in direct contact with local *de facto* authorities, providing protection and improving human rights.

➤ *Responsibilities of the de facto Abkhazian Authorities for the Protection of Property Rights*

As one of the signatories to the *Quadripartite Agreement on the Voluntary Return of Refugees and Displaced Persons*, the Abkhazian *de facto* authorities are committed to the “voluntary return in safety and dignity” of displaced persons. Free access to, and repossession of, abandoned property is an essential precondition for return. The *de facto* Abkhazian authorities should furthermore be aware of a number of international standards for the respect and protection of housing, land and property rights, which also bind even self-proclaimed authorities.<sup>41</sup>

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41 This refers primarily to the *Guiding Principles on Internal Displacement*, particularly Principle 28: “Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence....”

# Chapter Three

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## An Institutional Mandate to Restore Housing and other Rights in Georgia

Georgia's Ministry of Refugees and Accommodation (MRA) is responsible, among others, for supporting and organizing the return of displaced populations to their places of permanent residence, for the organization of temporary or permanent settlements for the displaced, refugees and other migrants, and for supporting their adaptation and integration into the community.

Within the ministry, the Department of Internally Displaced Persons is in charge of all relevant issues, including registration and the creation of a specific database, as well as granting and cancelling 'displaced' status. This department also organizes and monitors temporary or permanent resettlement of displaced persons, and their employment and integration in the local community. One of the core mandates of this department is the registration of the property displaced persons have left behind in their places of origin, and the adoption of mechanisms for the protection of their property rights.

The department of Internally Displaced Persons has three units:

- registration of displaced persons
- social issues;
- property restitution (known as the "My House" unit)

### **3.1 Property and the Displaced: Main Challenges**

#### *3.1.1 Privatisation and the Threat of Eviction*

This issue involves situations where State-owned collective centres accommodating displaced people are to be privatised under the *Law on the Privatisation of the Property of State and Local Government Bodies*. Challenges can arise, especially where privatisation involves commercially attractive buildings (e.g., former hotels) that are currently hosting displaced people. The way privatisation has been carried out so far shows the negative consequences the process can have for displaced people hosted in such collective centres.

#### ➤ *Lack of Information*

Displaced people hosted in collective centres, mainly in former kindergartens, hotels or schools, are not informed in a proper and timely way when privatisation can involve the buildings they live in. For all the formal guarantees that privatisation of any property must be publicly announced, the precarious economic condition of displaced people does not allow them easy access to full information from specialised institutions or through access to mass, electronic media.

#### ➤ *Lack of Communication*

Under current legislation, the body in charge

of carrying out privatisation, the Ministry of Economic Development (MED), is under no obligation to notify or inform in due time any displaced people hosted in collective centres that are to be involved in a process which, or can adversely affect them. Local government bodies (e.g., municipalities) are under no obligation either. Conversely, documentation on buildings prepared for auction (the other option being direct sale) does not always feature all essential information for potential investors, such as the fact that the building is occupied by displaced people at the time.

An analysis of the most significant instances involving collective centres – known as the ‘Adjara’ and ‘Iveria’ hotel cases<sup>42</sup> – shows that several discrepancies have arisen between international standards and domestic legislation regarding displaced people.

➤ *Lack of Responsibility and Supervision in the Resettlement Process (the role of the ministry<sup>43</sup>)*

Instead of being carried out under the guidance and supervision of the ministry

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42 Resettlement of displaced people from collective centres hosted in the *Adjara* and *Iveria* hotels occurred in 2004 after some 10 years’ occupation. The hotels were located in attractive areas of Tbilisi and had been privatized between 1994 and 1997. The owners paid displaced people compensation equivalent to USD 7,000 per room in return for freeing the buildings by 2004. Resettlement finally occurred in 2004-2005.

43 At the time of the resettlement from those two collective centres, the Ministry of Refugees and Accommodation was in charge of supervising the process. More specifically, as prescribed by the 1996 *Law on Internally Displaced Persons* in force at that time, the government provided accommodation to the displaced (Art. 7.12) and the ministry saw to it that other government bodies and local authorities made sure that displaced people effectively enjoyed their rights in their new places of residence (Art. 7.2).

in charge, the resettlement process involved *ad hoc* government bodies, namely two commissions formed by the Prime Minister’s Office and the head of the Tbilisi municipal council. In reality, neither of these *ad hoc* commissions had a role in determining the amounts of compensation to be offered to the displaced for vacating the two hotels, which instead were decided by the private-sector buyers. No Georgian government official was involved in the process or proposed guidelines for resettlement.

➤ *Inability to Ensure Adequate Resettlement Conditions*

In the *Iveria* and *Adjara* resettlement cases, neither the Ministry for Refugees and Accommodation nor the *ad hoc* commissions showed high regard for the commitment set out in the *Law on Internally Displaced Persons* to a consistent (as opposed to lower) standard of living in the case of further resettlement.<sup>44</sup> It is difficult to believe that the private buyers took this principle into consideration when defining the amount of compensation for the displaced. On the other hand, no government bodies bothered to check whether the displaced people resettled from the *Iveria* and *Adjara* hotels eventually found permanent shelter or not.

All the two *ad hoc* commissions provided only technical assistance, acting mostly as mediators to evolve an agreement between the displaced people (instead of the ministry) and the new buyers; the Ministry of Refugees and Accommodation was not involved, which is at odds with the international standards for the

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44 *Law on Internally Displaced Persons*, Art. 7.

protection of the rights of displaced persons.<sup>45</sup>

➤ *Lack of Administrative Procedure and Guidance in Resettlement*

Privatization and the subsequent resettlement of displaced people should come under the provisions set out in the 1999 *General Administrative Code* of Georgia. Unfortunately, these provisions could not be applied in the *Adjara* and *Iveria* cases (the two hotels having been privatized in 1994-1997).

However, in future cases, acts of privatisation are to be considered as administrative agreements as defined under Art. 65 of the *General Administrative Code* and in accordance with the interpretation of the Supreme Court of Georgia. Art. 67 of the Code states that administrative agreements

that restrict the rights of, or are binding on, third parties come into force only after those parties have given written consent. The administrative body must inform third parties whose interests might be affected by such contracts.

This is an important protection for any displaced people settled in collective centres that are liable to privatisation. As noted above, privatisation that is conducted without consideration for the rights of the displaced currently living in the building can be declared null and void for breach of the law. The legal mechanisms provided in Georgia's *General Administrative Code* are strong *per se* if correctly implemented.

3.1.2 *Land Purchases and Implications for 'Displaced' Status*

Inadequate interpretations of some legislative provisions has combined with a general lack of information among the displaced to stand in the way of effective property rights, a situation that has persisted for many years. Under Georgia's 1996 *Law on Internally Displaced Persons*,<sup>46</sup> 'displaced' status should be lost upon permanent settlement and registration in a part of the territory of Georgia different from the place the displaced individual was forced to abandon<sup>47</sup> (Art. 1). This provision significantly penalises those displaced people seeking integration, and pushing many to purchase and register land parcels under other peoples' names in order to retain 'displaced' status.

However, some displaced people have challenged this provision before the

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45 As for the *Guiding Principles of International Displacement*, Principle 28(2) is as follows: "Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration" See also: Committee on Economic, Social and Cultural Rights, General Comment N° 4 on the Right to Adequate Housing (Art. 11 (1) issued on 13 December 1991: the human right to adequate housing includes, among others: "(a) Legal security of tenure. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups (emphasis added)." The Committee defines 'forced eviction' as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection."

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46 The 1996 Georgian Law on Internally Displaced Persons, Art. 6 paragraph 2(c).

47 *Ibid.*, Art. 1.

Constitutional Court of Georgia,<sup>48</sup> based on two counts: (1) they were treated differently from ordinary Georgian citizens, and (2) the provision in Art. 1 infringed on their property rights because they could not register immovable property under their name and retain 'displaced' status. On 7 November 2003 the Constitutional Court of Georgia found in their favour, declaring that the challenged provision of the *Law on Internally Displaced Persons* was unconstitutional. More specifically, Art. 1 was in breach of Art. 14 of Georgia's fundamental law (which prohibits discrimination and unequal treatment). Parliament has subsequently removed this provision.

### 3.1.3 Preventing the Displaced from Buying Agricultural Land

Additional obstacles to displaced peoples' integration can be found in Georgia's *Law on the Privatisation of State Agricultural Lands*<sup>49</sup>, which prohibits the displaced from buying land parcels through special auctions. The law specifies that sales of agricultural land must go through special auctions where bidders can only submit a single bid in writing. In the absence of first-round bidders at a special auction, the next stage involves open auctions, which are restricted to those Georgian citizens who are permanent residents in the administrative-territorial units where the land for auction is located. This effectively leaves out displaced people with temporary status and without permanent residence.

Such differentiation could lead to discriminatory treatment that puts displaced people at a disadvantage compared with

'ordinary' Georgian citizens. This situation does not contribute to self-reliance among the displaced; it is particularly detrimental to those accommodated in rural areas where many would be willing to become permanent owners of the 1,000m<sup>2</sup> agricultural plots they are currently cultivating on a temporary basis.

The Association of Young Georgian Lawyers – an active advocate of displaced people's rights – submitted a proposal in 2007 for amending the *Law on the Privatisation of State Agricultural Lands*; the idea was to allow those displaced people registered in administrative-territorial units to participate in auction procedures for the purchase of State-owned agricultural land. One year later, nobody knew whether the proposal might go anywhere.

## 3.2 Courts and the Restitution of Abandoned Property

The Georgian judiciary has consistently upheld the rule of law regarding restoration of property rights to Georgian displaced persons regardless of ethnic origin. In particular, judges have reinstated the property rights of ethnic Ossetians. In the year 2000, 30 displaced ethnic South Ossetian families asserted claims on the houses they formerly owned in various areas of Georgia and which at the time were occupied by other people. The Georgian court upheld their claims and uniformly ruled in their favour, ordering the eviction of the current occupants. An alternative housing solution for those occupants has since been provided by the UN High Commissioner for Refugees. In an earlier development, courts in 1998 and 1999 ordered the eviction of ethnic Georgians who illegally occupied the houses of ethnic Ossetians in the Kareli region. Georgian courts have had several further such opportunities to decide on eviction cases.

It is impossible to estimate the total number of cases because no organisation has defended or assisted ethnic Ossetians when lodging

48 The said provision was claimed to be in breach of Art. 14 (prohibition of discrimination), 21 (peaceful enjoyment of property) and 22 (free choice of place of residence) of the Constitution of Georgia, and to infringe on displaced people's rights.

49 Law on Privatisation of State Agricultural Land, Art. 3 and 13.



collective claims before Georgian courts. A second obstacle stems from a lack of specific statistical data from the judiciary. In any case, these examples are quite significant, clearly showing that the stance taken by Georgian authorities is grounded on the rule of law and that the judiciary actively removes obstacles to the return of displaced persons.

This stance stands in sharp contrast to the situation in South Ossetia, and even more so in Abkhazia where the *de facto* Abkhazian parliament in May 2006 adopted a decree (N° 1327-C-XIV) *On regulating residence issues to ensure the rights of Abkhaz citizens to residence*. This decree suspended all court decisions and evictions based on rulings in favour of lawful owners who had claimed restitution of their abandoned property through the *de facto* Abkhazian courts. The *de facto* courts have also denied all new restitution claims, declaring them inadmissible, and this situation prevails to this day.

### **3.3 The “Housing Voucher” Purchase Programme in Practice**

Georgia’s pilot programme enabling housing purchases through vouchers<sup>50</sup> looked to provide permanent shelter to displaced people from Abkhazia and to vacate the collective host centres for rehabilitation and future use for community needs. The programme was restricted to Kutaisi, the country’s second largest city with one of the highest concentrations of displaced people. The pilot project started in August 2005 and was completed one year later. The second phase started in October 2006 and ended in August 2007.

The programme was voluntary as far as beneficiaries were concerned. The collective centers involved were those closest to Kutaisi and with the worst living conditions (particularly smaller units like kindergartens, schools, etc.). The purchase vouchers were issued based on family size and composition, with values ranging from USD3,000 to 6,000. Payments were made through local banks under contract with the donors, making sure that the funds were used as intended and in the process enhancing transparency.

In the first phase of the project (2005-2006) 131 vouchers were issued, of which 126 were used (i.e., 126 beneficiaries purchased either flats or houses); in the second phase, (2006-2007) 134 vouchers were issued, of which 81 were used. Most beneficiaries opted to purchase houses with agricultural plots in villages adjacent to Kutaisi, which apparently were less expensive than flats in multi-storey buildings in Kutaisi. As a result of the project, seven collective centres were vacated and came under government control.

The voucher pilot-programme seems to have run into difficulties during implementation, especially in the second phase, due to two main reasons:

- Inadequate funding for the purchase of houses/apartments as market prices kept rising (in some cases, displaced people went out of pocket for a portion of the purchase price). It appears that the project was so well advertised that it unwillingly encouraged price increases, especially in the second phase when 53 vouchers could not be used.
- None of the vacated buildings have since been rehabilitated, either because they were re-occupied by displaced people or the government did not provide funding for rehabilitation.

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50 The programme was funded by the U.S. State Department Bureau of Population, Refugees and Migration and the Urban Institute of Armenia, together with two local non-governmental organisations: the Kutaisi Information Centre and the Charity Humanitarian Centre – Abkhazia.

# Chapter Four

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## Georgia's Efforts to Restore Displaced Persons' Rights

### 4.1 *Parliamentary Resolutions*

Georgian authorities have attempted to restore the housing, land and property rights of displaced people through two resolutions voted by Parliament in March 2006. *Resolution N° 2799* establishes a public commission for the evaluation of damage inflicted on Georgia during the recent conflicts (in Abkhazi, and in the Former South Ossetia Autonomous Oblast). *Resolution N° 2800* provides for an international tender for the selection of a law firm with a specific mandate: preparing and submitting claims before the European Court of Human Rights for compensation for the damage inflicted on the Georgian State during the conflicts in Abkhazia and the Former South Ossetia Autonomous Oblast.

### 4.2 *The Presidential "My House" Programme*

The presidential programme known as "My House" can be seen as the first organised attempt by Georgian authorities directly to tackle the issue of displaced populations' property. The government, or rather, the Georgian president, launched the scheme through *Presidential Decree N° 124* (14 February 2006) *On the Measures to be taken for Registering Rights to Immovable property located in the Abkhazia Autonomous Republic and Tskinali Region*. More specifically, the objective was to register the immovable property of displaced people, commercial and

State-owned property located in Abkhazia and South Ossetia. The draft for the presidential decree on the preliminary registration of displaced persons' property was prepared by the Georgian Ministry of Justice.

The 'My House' programme is based on the provisions for restoration of displaced persons' property found in the *Law on Internally Displaced Persons*.<sup>51</sup> Under the decree, the Ministry for Refugees and Accommodation drew up a registry of immovable property located in the Autonomous Republic of Abkhazia and the Tskinali Region (i.e., South Ossetia), developing adequate rules and procedures as it went; the ministry also set up a database of lost property. The programme costs four million *lari*, (or USD2,6 million) is funded directly through the president's budget.

The basic rationale behind the programme was to identify the number of those (internally displaced individuals and legal persons) owning immovable property in the breakaway regions since 23 September 1993, the date when the first conflict began, as well as an approximate determination of the amount of property lost in the breakaway region of Abkhazia.

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51 Art. 7(a), Law on Internally Displaced Persons, includes a commitment to restore housing and property rights of the displaced populations.

The above-mentioned *Presidential Decree N° 124* was followed on 31st March 2006 by supporting legislation in the form of *Order N° 30 of the Minister for Refugees and Accommodation on the Rules for Recording Immovable Property in Abkhazia and South Ossetia*. This order provided more detailed instructions regarding registration.

Under the scheme, displaced persons making claims for abandoned property must fill in the 'Declaration form' prepared by the ministry. The form must necessarily be accompanied by documentation confirming lawful use of the property (adjudications, extracts of cadastral records, etc.). Such declarations will be entered into the computerized systems dedicated to sorting out information about lost property in Abkhazia and South Ossetia.

All declarations supported by cadastral maps must be cross-checked with satellite images of the property. The government intends to publish these satellite images on the Web, designating any property under illegal occupation. In these cases, occupants will be publicly named, in an attempt to discourage and prevent the illegal occupation and sales of registered abandoned property. A separate "black list" of illegal occupants will be drawn up and published. This electronic database of lost property will be largely accessible (though with different levels of accessibility) on the ministry Website.

Under the 'My House' scheme, displaced persons are required to document ownership under various forms: purchase agreement, house order, extract from the house registry, court decision, document confirming one's right to inheritance (will), a map of the plot area issued by a relevant public authority, an extract from the rural house holdings, a "*propiska*" (former Soviet permanent residence form) or any other document proving title over the declared property. Those who are not in a position to provide any of those documents are entitled to apply to a court to prove their legal rights.

Those internally displaced persons meeting all the requirements are entitled to a "certificate of record" where the ministry specifies the plot and the immovable property declared. A map of the plot is attached to the certificate, of which it is an integral part. All "certificates of record" and "declaration forms" are archived by the ministry.

#### *4.2.1 The Dynamics of Registration*

To carry out this programme, a special unit comprised of 11 temporary data entry officers has been set up within the ministry. Additionally, two experts from an external, privately contracted company are recruited to maintain and develop the geographic information (GIS) data system. Georgian authorities plan to carry out all preparatory work (property declarations, satellite photographs, cadastral maps of the plots, advertisement and training activities) listed in the decree by the end of 2008.

As for the practical registration of property, the ongoing process should be complete by the end of 2009. A rough estimate of the immovable property units to be registered in the Tskinali Region (South Ossetia) suggests about 5,000 abandoned houses (whose owners it will be necessary to identify) and about 100 State-owned infrastructural premises; in Abkhazia, estimates are about 100,000 households and numerous State-owned buildings and infrastructure.

According to the most recent figures (November 2008), 67,000 families have submitted declaration forms, which means that approximately 80 per cent of the displaced population from the 1990s have registered their property.

#### *Assessment and Recommendations*

As mentioned earlier, the Georgian government has introduced the "My house" programme as a first formal attempt to register property abandoned by displaced

Georgians. For all its ambition, though, the scheme is riddled with legal and technical deficiencies. As a general observation, it seems that this costly and complex registration process is incomplete: it should be seen as a first step towards a future restitution mechanism, rather than as an end in itself. Specific deficiencies and problems are as follows:

- In interviews with well-placed department officials (the ‘My house’ programme is managed by a separate unit within the ministry known as the “restitution department”) and with representatives of the displaced population, it appeared that precise information on the final goals of the programme was unavailable. The effect of the registration process as it stands appears to be primarily psychological, the intention being to discourage further illegal occupation and selling of abandoned property in the two breakaway provinces, while any ultimate objectives and general usefulness of the registration process (i.e., restitution) are overlooked.
- Under the above-mentioned order, only those displaced in possession of one of the documents listed in the decree to prove their ownership of immovable property are entitled to fill out a property declaration form.<sup>52</sup> According to paragraph 15 of the relevant presidential decree, if a displaced person fails to present such documentation, his or her declaration form will not be accepted. In practice, however, it was enough for a displaced person to declare they willing to fill out a property declaration to be allowed to do so, even in the absence of documentation proving ownership or lawful possession of the declared property. This could

cause problems for data accuracy and trustworthiness that is precisely one of the main objectives of the ‘My House’ programme. Furthermore, issues regarding those displaced persons without documentation for immovable property in Abkhazia and South Ossetia remain unaddressed.

- The high numbers of Georgian displaced people who submitted declarations in the 1990s showed that programme had become effectively compulsory (although being officially voluntary only). What happened practically was that every year, when applying for re-registration, the displaced from Abkhazia and South Ossetia were required by officials from the Ministry of Refugees and Accommodation to fill out declaration forms specifying the immovable property they had lost in those regions.
- Under the above-mentioned Ministerial Order, those displaced people without title documents to property have had to apply to courts in order to establish the legal fact of their ownership. However, under the Civil Procedure Code of Georgia as amended in July 2007, it is not possible to establish legal ownership/possession over property by court decision.
- As for the process of collecting data on property abandoned around August 2008 by displaced persons from South Ossetia, it has not started yet. This will take six months to one year, depending on available financial and human resources.
- A privately contracted foreign company has carried out the satellite surveys; but the quality is very poor, and the prices were very high compared with those charged by the United Nations Operational Satellite Applications Programme (UNOSAT).
- The Ministry used old (1988-1989) satellite photographs to identify the

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52 As determined by Paragraph 15 of the Order, if a displaced person fails to present such documentation, his/her declaration form is not accepted

location and conditions of property declared by the displaced prior to the conflict. As a result, cadastral records are based on these old pictures instead of newer ones. Again, due to lack of documentation, the ministry's cadastral records may not be precise or accurate, possibly coinciding realities only about 80 per cent of the time.

- The satellite survey was carried out only in the major urban areas of Abkhazia (i.e., Gargra, Sukhumi, etc), to the exclusion of any rural area
- No survey has been performed on the territory of South Ossetia in order to determine the current status of recently abandoned property.
- The provisions for the processing and registration of cases where fraudulent registration is suspected are also unclear. Staff processing these registrations are invited to “share information with neighbours” as well as with police and/or the mayor's office and land registries formerly operating in the areas where the property is located.

### **4.3 Attempts at Restitution and Compensation**

The Georgian authorities' first attempt to establish a legal mechanism enabling refugees and internally displaced persons from South Ossetia to repossess, or to receive compensation for, their lost property came with a law “*On Property Restitution and Compensation on the Territory of Georgia for the Victims of Conflict in the Former South Ossetian Autonomous District*” which was adopted on 29 December 2006 and entered into force in January 2007.

This long-awaited law was drafted and developed by the Georgian Ministry of Justice with legal assistance from Council of Europe experts, the Venice Commission (i.e., the

Council of Europe's consultative ‘*Commission for Democracy through Law*’) and Georgia's own advisory body on constitutional issues. This law sought to redress the consequences of the armed conflict in South Ossetia, which in the early 1990s had forced a majority of Ossetian citizens to flee *en masse*, abandoning their homes. This law focused on the restitution process and primarily on South Ossetia where, contrary to Abkhazia, the conflict seemed to be less intense and the circumstances on the ground suggested that the restitution process would be met with greater success.

#### *4.3.1 The Substance of the Law*

The 2006-2007 law explicitly recognized the rights of displaced persons and other victims of conflict to return to their previous places of residence. Three options were provided for restitution to displaced and dispossessed persons resulting from the conflict in Georgian territory: (1) The displaced were entitled physically to repossess the property they had lost as a consequence of the conflict; (2) where it was not possible to restore the previously owned immovable property, the displaced were entitled to receive alternative, adequate residences of the same value; (3) where it was impossible to provide adequate (substitute) residence(s), the alternative was financial compensation.

To implement the process, an *ad hoc* Commission on Restitution and Compensation (‘the commission’) was to be established for an initial period of three years, though this task was expected take up to nine years. The commission was to have 12 members, appointed according to a special procedure and with a guaranteed equal number of representatives from Georgian, South Ossetian and international organizations.

In order to enhance efficiency, the commission was to be split into sub-committees of three members each. The decisions made

by the commission and committees were to be enforced “within the whole territory of Georgia,” although the law did not set out detailed enforcement procedures.

Appeal of commission decisions was allowed on two different counts. Violations of procedural steps prescribed by law were to be appealed before the Supreme Court or before the commission itself; in the case of newly arisen or altered circumstances, an appeal for reconsideration could be lodged. Decisions by sub-committees could be appealed before the commission, as was also the case for violations of the procedures set out in the 2006-2007 law. Appeal procedures involved distinct deadlines: appeals against committee decisions must be made within one month from the moment the decision becomes executive, during which the decision was suspended. Those appeals against the commission’s decisions based on newly found circumstances must be made within a 90-day period from the date when those circumstances became known.

The 2006-2007 law also provided for adequate guarantees for secondary occupants, as follows: “If the initial property or other immovable property is in the possession of a *bona fide* owner, it may be returned to its initial owner only after the *bona fide* owner receives adequate (substitute) immovable property or, should s/he desire, pecuniary compensation” (Art 29(2)).

When the law came into force in early 2007, the expected caseload of potential claimants was estimated to comprise 60,000 Ossetian and Georgian refugees or displaced persons who had left their residences as a result of the 1991-1992 conflict.

### *Assessment and Recommendations*

The 2006-2007 law came as an important and appreciated first attempt at enacting a restitution mechanism for abandoned property. And yet, though still formally in

force, it is a “dead law” by now: the basic bodies and institution for its implementation have never been established, and practical implementation after the August 2008 conflict seems to be impossible.

The gaps in the 2006-2007 law can be summarized up as follows:

- Territorial scope: the law referred only to the territory of South Ossetia and not to Abkhazia, where displacement had occurred on a much larger scale.
- Lack of involvement of South Ossetian *de facto* authorities: despite repeated requests to contribute to the drafting of the law and to appoint representatives to the commission, the South Ossetian authorities have withheld any such participation.
- Furthermore, the South Ossetian authorities have never (at least prior to August 2008) officially recognized the 2006-2007 law. Instead, they considered it as a “failed” way to meet the needs of refugees and internally displaced persons, and as propaganda on the part of the Georgian authorities.<sup>53</sup> Consequently, South Ossetian authorities have never formally appointed members to the commission as prescribed by the 2006-2007 law.
- Provisions for the enforcement and effective applicability of the commission’s decisions were only of a declaratory nature. Procedures and sanctions for obstruction and hindrance to the Restitution Commission’s activities were not specified under the law.

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<sup>53</sup> Statement by Boris Chokier, Deputy Chairman of the self-proclaimed South Ossetian government during talks with the representative to Georgia of the United Nations High Commissioner for Refugees (19 April, 2006, Tskhinvali).

- Available funds for compensation: the Georgian authorities do not seem to have properly assessed the scale of compensation costs. Furthermore, establishing how compensation could be provided for destroyed or not saleable property is another crucial issue.

The 2006-2007 law represented the earliest legal framework for restitution of abandoned property. Unfortunately, considering the current post-war situation between the South Ossetian self-proclaimed authorities and the Georgian government, which precludes any possibility of enforcement, the Georgian law can no longer be considered (after August 2008) as a viable framework for restitution, –as it is by now completely out of touch with reality.

#### **4.4 A Proposed Strategy for Restitution and Compensation**

After this unsuccessful early domestic attempt at a restitution mechanism focusing on South Ossetia, the international community should make a serious effort comprehensively to address this issue across the whole Georgian territory, including Abkhazia where displacement has occurred on a larger scale.

After August 2008, the conditions for a comprehensive restitution process seem to be unfavourable: relations and confidence-building between the Georgian, Ossetian and Abkhazian authorities must start from scratch again.

Bearing in mind this post-conflict scenario, the international community should play a more active role in housing, land and property issues, and look to include them in the agenda of ongoing peace talks in order to arrive at a viable restitution process.

The international community, and more specifically those agencies involved in post-conflict restoration of housing, land and

property rights, should militate in favour of an effective mechanism for property restitution or compensation; this should be done with strong international support in order better to guarantee impartiality and respect for the rule of law.

Considering the political and geographical consequences of recent events, it could be proposed to all sides to set up a temporary, impartial body for property restitution, grounded on the rule of law (including international human rights standards) and with the above-mentioned strong international support.

The international community must also be aware that were restitution of abandoned property in Georgia (an issue that has not been addressed properly for almost two decades) to be overlooked, the outcome could easily look like a Palestinian or Cypriot scenario, two areas where disputes over abandoned property have not been effectively resolved for 30 and 40 years, respectively. This risk should be clearly understood now, when the international community is still receptive to active involvement in post-conflict reconstruction in Georgia.

##### *4.4.1 Claimants in the Future Restitution Process*

With an expected caseload of 70,000 families, the above-mentioned category of displaced persons from Abkhazia and South Ossetia surely represents the largest number of potential claimants in any future restitution or compensation process. However, other categories of displaced persons, also victims of the Georgian conflict who have been deprived of their property, cannot be overlooked. Therefore, the following two categories of potential claimants should also be considered: (1) displaced people who lost tenancy rights on State-owned apartments under the ‘six-month vacancy clause’; and (2) refugees and displaced people from South Ossetia.

- *Displaced persons who lost tenancy rights on State-owned apartments under the ‘six-month vacancy clause’*

Georgia’s 1983 Housing Code in force at that time specified that tenancy rights to State-owned apartments were based on allocation decisions, or “Housing Orders,” issued by local public executive committees (*raispolkom*’).

Under the previous, Socialist regime, the State did not just provide apartments, but also preserved the public interest in housing, specifying that tenancy rights could be lost if the holder was absent from the apartment for a determined period of time. Specifically, under Art. 69 of the Housing Code and in the case of absence from the place of residence without a “valid cause,” a tenant or family members retained the right to tenancy for a period of six months. This clause also specified eight types of circumstances (including military service, work obligations or education, compulsory medical treatment, pre-trial detention, etc.) in which the right to tenancy could be retained for longer than six months. These tenancy rights could be revoked by courts if they found that a particular case of absence could not be considered as “valid” under the 1983 law. .

When the Georgian conflict started, many, mostly non-ethnic Georgians, fled their apartments due to lack of personal security and threats to safety. Against this background, the courts made liberal use of the “six-month rule” to terminate holders’ tenancy rights without properly considering the specific context generated by war and inter-ethnic tension. A number of displaced people who had sought to avail themselves of what they saw as a legitimate exception to the six-month rule have found instead that the courts did not consider the conflict and lack of personal security as a valid reason for such an exception.

Since this particular piece of legislation is no longer in force and privatisation of the State-owned apartments has already run its full course, this category of potential claimant may be entitled to compensation only. The potential caseload is impossible to determine, but a rough estimate would suggest it runs into several thousand.

- *Refugees and Displaced People from South Ossetia*

The first Georgian-Ossetian conflict displaced more than 50,000 persons; an estimated 42,000 ethnic Ossetians found refuge on the territory of the Russian Federation (North Ossetia), while 10,000 ethnic Georgians were displaced within Georgia.

These figures should be merged with the August 2008 caseload; at the moment, though, and for lack of humanitarian access to South Ossetia, it is impossible precisely to assess how many returnees have repossessed their property. It is worthy of note that during the recent (August 2008) conflict, 92 per cent of South Ossetian residents left that province. According to current figures, Georgia is host to 45,852 displaced persons and the Russian Federation to 30,000; so far, only 19,255 have returned to their places of origin.<sup>54</sup>

To this caseload should be added those displaced people or refugees who did not benefit from privatisation of State-owned apartments in South Ossetia. Although official promises by South Ossetian authorities that apartments belonging to displaced people would be left out of privatisation, there is no effective guarantee that this commitment has been fulfilled.

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<sup>54</sup> Source: International Displacement Monitoring Centre, end of August 2008.



# Chapter Five

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## Preliminary Registration of Displaced Person Property

### 5.1 Background

For the past 16 years, Georgian legislation has not allowed displaced people to record with the National Public Registry Agency any abandoned property located in the breakaway regions. Displaced people requests for registration have been repeatedly rejected. To remedy this “legal vacuum,” Presidential Decree № 255 (8 April 2006) introduced a special regime of *preliminary registration* for displaced people’s immovable property in Abkhazia and South Ossetia.

The main difference between *ordinary* (as, for example, in the case of ordinary citizens of Georgia) and *preliminary* registration of immovable property, is two-fold:

- 1) Preliminary registration does not require the same set of documents and does not entitle an owner to make any transaction involving the property.<sup>55</sup>
- 2) Preliminary registration is a precondition for subsequent *ordinary* registration, which may occur when Georgia fully restores legal order to the breakaway regions.<sup>56</sup> For Georgian authorities, this is the main reason behind the mandatory nature of preliminary registration.

Apart from those mentioned above, further discrepancies undermine the effectiveness of preliminary registration:

- Preliminary registration does not solve the problem of those displaced people who did not manage to preserve the documents proving their ownership rights (as they are required to submit at least one of these for proof of those ownership rights listed in the decree when applying for preliminary registration). Consequently, since *preliminary* is a precondition for future *ordinary* registration, those displaced people devoid of any evidence find themselves in an uncertain position with regard to ownership rights.
- A preliminary registration certificate, that is, the document issued through the preliminary registration process, does not represent any added value for those displaced people who possess documents proving their ownership rights, insofar as it does not entitle them to make any transactions involving the property.
- The preliminary registration process suffers from technical problems as well. Under the presidential decree, the Ministry of Justice should have prepared the special preliminary registration forms by September 2006, and the Ministry of

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<sup>55</sup> Presidential Decree № 255, Art. 10(2).

<sup>56</sup> *Ibid*, Art.10(1),

Refugees and Accommodation should have had provided the National Public Register Agency with the information collected through satellite photos by October 2006, even though the process of preliminary registration has not been started yet.

However, many displaced people were dissatisfied with the “preliminary registration” rules, which they saw as discriminating against them and preventing them from free access to their property. As a result, some have sought to challenge the scheme before Georgian courts, asking for straightforward recognition and registration of their property rights.

The next few paragraphs provide an overview of the most important recent issues, in particular those exposed by the landmark *Mekhuzla* and *Turkia* court cases. These involved two individuals who had separately sought to register property through court proceedings, although each relied on a different legal basis to do so. Mr. Turkia had applied for registration in Georgia of property located in Sokhumi (Abkhazia) and based on evidence of his ownership rights prior to the conflict. As for Ms. Mekhuzla, she wanted formal legal recognition of her ownership of immovable property also located in Sokhumi; she did so through non-adversarial proceedings, insisting that her house had been illegally resold a number of times by illegal occupiers. In order to prevent any further illegal transactions over her property, she had requested a valid title deed.

### 5.1.1 *The Turkia Case*

The Civil Panel of Sokhumi City and District Court<sup>57</sup> had to decide in 2006 on the case brought by a Mr. I. Turkia against Georgia’s National Public Register Agency and the Municipality of Sokhumi. Mr. Turkia’s claim

was two-fold: he wanted to be recognised as the owner of a house located in Sokhumi (Abkhazia), requesting its subsequent registration in the National Agency’s Public Register; on top of this, he wanted the Sokhumi Municipality to ensure free access to, and peaceful enjoyment of, his property.

Prior to submitting his claim to the court, Mr Turkia had applied for registration by the National Agency of his immovable property located in Sokhumi. However, his request had been denied on grounds that “*at this stage, registration of his property in the Public Register is impossible.*” This came as an indirect reference to the inability of Georgian authorities to restore *de facto* jurisdiction over Abkhazia, where Mr. Turkia’s property was located. Consequently, the Agency argued, the property should be registered in the Sokhumi Agency by virtue of the territoriality principle. Moreover, the Agency noted that the applicant had not presented the court with the documents required by Georgian legislation for registration of immovable property.

The court granted Mr Turkia one his claims, namely, his right to be recognised as the owner of the house located in Sokhumi and his right to have it registered by Georgia’s National Agency. The court stated that there was no law to stand in the way of the applicant’s request for registration. The court did not agree with the Agency, which had argued that registration of the applicant’s immovable property in the Public Register would have been in breach of the presidential decree introducing the rule of preliminary registration for the property of displaced people from Abkhazia and South Ossetia. In this regard, the court found, the fact that the applicant was not in a position to provide a cadastral plan could not be considered as an obstacle to registration by Georgia’s National Agency or as a condition to apply the rule of preliminary registration to the applicant’s case.

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57 Sokhumi City and District Court is Abkhazia’s court of first instance ‘in exile’ located in Tbilisi but with jurisdiction over the breakaway province.

The court's interpretation was based on the rationale that preliminary registration as mandated by presidential decree and ministerial order should be seen as a mechanism to fulfil the State obligations set by Parliament, especially with regard to those displaced persons who do not possess any documents proving their ownership over property abandoned in Abkhazia. In light of these facts, the court found that preliminary registration did not deny the applicant's right to be recognised as the owner of property located in Sokhumi; consequently, the court ordered the Georgian National Agency to record that property in the Public Register.

On the other hand, Mr Turkia was not granted his second request – that the Sokhumi Municipality ensure his access to, and peaceful enjoyment of, his house in that locality. The Court decided that mandating the Sokhumi Municipality to ensure peaceful enjoyment of property was neither legally proper nor realistic, since Georgian authorities could not exercise any effective power in the locality at that time.

Mr Turkia and the National Agency lodged separate appeals, but the Appeals Court upheld the initial decision, and by now the case is pending before the Supreme Court of Georgia.

The first instance court's ruling was important insofar as it undermined the compulsory nature of preliminary registration. Based on an interpretation of the facts, the court reasoned that preliminary registration regarded primarily those displaced people without documentation attesting to ownership of property abandoned in Abkhazia; in the court's view, there was no way this situation could prevent displaced persons from registering their ownership

rights to property located in the territory of the two breakaway provinces.

An earlier claim for compensation had also clarified the legal situation of displaced persons with abandoned property. It had been brought in 2004 by a Ms. L. Ubilava, who claimed for damages caused by deprivation of property abandoned before displacement. The Supreme Court of Georgia (on 26 February 2004) did not uphold the action for the damages (claims for pecuniary and non-pecuniary damages) incurred by the claimant due to the loss of her immovable property in Abkhazia. The Court instead rules that under the Civil Code of Georgia (Art. 457), claims for compensation for pecuniary damages must generally be supported by evidence of unlawful government action and of a causal link between the action and the damage suffered by the claimant. The court found that in this particular case, the damages suffered by the claimant did not result from unlawful acts of government, and therefore the claim was denied.

## **5.2 Displaced Georgians' Property Rights before the European Court**

Issues involving displaced people's property took on an international dimension when Georgia became a member of the Council of Europe in 1999. From that moment onward, the country was bound by a number of requirements from the Council's Parliamentary Assembly<sup>58</sup>; the most relevant here was a requirement to set up an adequate legislative framework and take all necessary administrative measures (within three years)

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58 Resolution N° 1257 of the Parliamentary Assembly of the Council of Europe, 24-28 September 2001.

to guarantee the property rights of those who have suffered damages and lost immovable property due to the conflicts of 1990-1994. However, the political circumstances on the ground in Georgia have made the fulfillment of those commitments practically impossible.

Georgian membership of the Council of Europe implies acceptance of the European Court of Human Rights as judicial guarantor of compliance with the European Convention on Human Rights and Fundamental Freedoms ('the European Convention'). This can only enhance the human rights protected by the convention, including compliance with property-related rights, in particular Art. 8, *Respect of Home* and Art. 1 of Protocol N°1, *Peaceful Enjoyment of Possession*.

The inability of displaced people to register property in the face of continuing interference with the possession of abandoned property was best illustrated by the *Mekhuzla v. Georgia and Russia* case (European Court, Application N° 5148/05), which is summarized below.

#### 5.2.1 *The Mekhuzla v. Georgia and Russia Case*

One of the first precedents regarding registration of immovable property with Georgia's National Public Register Agency was set by a case involving a Ms. K. Mekhuzla. She had applied to the Agency for registration of her property located in Sokhumi, basing her right to ownership on the 'Housing Book' (*domovaja kniga*) that had been delivered to her by the Executive Committee of Sokhumi People's Council (*Ispolkom*). Under the legislation in force prior to the conflict, this documentation effectively proved her right to ownership.

Still, the Georgian Agency denied Ms. Mekhuzla's claim to register her abandoned property, on the grounds that "*at the material time, registration of her immovable property in*

*the Public Register was impossible due to the fact that the Sokhumi territorial Agency had not been created and registration activities in the territory of Abkhazia had not been conducted.*"

In subsequent, alternative (non-adversarial) proceedings), Ms. Mekhuzla requested full legal recognition of her ownership of immovable property located in Sokhumi. She argued that her house had been illegally resold a number of times by illegal occupiers, and in order to avoid illegal transactions over her property she wanted a fully valid title deed. She claimed that her current title (in the form of documents proving her ownership right) was not in compliance with the then Georgian legislation, and this was why she applied for her legal ownership to be formally established in court.

Throughout the various tiers of Georgia's judicial system, though, Ms. Mekhuzla's claim was denied. The rationale was that a court's power legally to formalize an existent title deed applied only in particular cases and in extraordinary circumstances (e.g., the destruction of documents), rather than to ownership rights over property as such. On top of this, the courts held that the claimant's property had never been registered with the National Public Register Agency; therefore, courts were in no position to recognize or establish as fact something that had never taken place.

Having exhausted all internal modes of appeal in Georgia, in January 2005 Ms. Mekhuzla submitted a claim to the European Court of Human Rights against Georgia and the Russian Federation (Application N° 5148/05). She claimed that the Georgian government had failed to meet its positive obligations to ensure her property rights; and as far as the immovable property that displaced persons had abandoned in conflict zones was concerned, there had been no registration mechanism capable of ensuring

peaceful enjoyment of such possessions for 12 years. The case is in its final stages, still pending before the European Court.<sup>59</sup>

## Conclusion

The fact that displaced people have begun to bring cases before the European Court of Human Rights (located at Strasbourg, France) clearly reflects the current reality in Georgia where the displaced are prevented from enjoying possession of their property by two factors: (1) Georgian authorities' inability to guarantee effective legal order in Abkhazia and South Ossetia; and (2) the breakdown of the rule of law in the two breakaway provinces, resulting in insufficient protection, for abandoned property.

It will be very interesting to see how the European Court rules in this case. Of special additional interest will be whether, and to what extent, the court will consider that this case is similar to some in its own previous case law, such as, e.g., *Ilascu and others v. Moldova and Russia*, (application N° 48787/99) regarding government legitimacy under international law, or *Loizidou v. Turkey* (application N° 40/1993/435/514) and *Cyprus v. Turkey* (application N° 25781/94) regarding peaceful enjoyment of possession.

59 Ms Mekhuzla complained of several counts of violation of the European Convention (Art. 3, 8, 13), Art. 1 of Protocol N°1 and Art. 14 in conjunction with Art. 1 of Protocol N° 1 which refers to the *peaceful enjoyment of possession*. Based on Art/ 1 of Protocol N° 1, the claimant complained that:

- she was forced to abandon her property as a result of the occupation of the town where she was residing;
- she was now unable to return to Sokhumi because of life-threatening risk;
- she could not exclude that her property might have been sold and illegally registered under the name of an illegal occupier;
- Georgia was under a positive obligation to guarantee legal and practical recognition of her property rights; therefore, rejection by the authorities of her application for registration under the 1997 Civil Code was in violation of Art. 1, Protocol N° 1 of the European Convention;
- she was prevented by the Russian Federation from enjoying the use of her property as a result of Russia's support of Abkhazia's *de facto* authorities;
- by virtue of the actions of the Russian Federation and violation by Georgia of its positive obligations, she was and continued to be the victim of *de facto* expropriation of her property, a situation that was not in accordance with any law, and she was not provided with any compensation.

# Chapter Six

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## Towards Durable Housing Solutions

### 6.1 *Housing, Land and Property Rights in the State Strategy on Displaced Persons*

The *State Strategy for Internally Displaced Persons* was adopted by the Government of Georgia on 2 February 2007 (Decree N° 47). In this document, the government openly admitted to the challenges it faced when providing assistance to the displaced. In particular, the document recognised that as far as those people were concerned, most of the solutions found so far had been of an *ad hoc* nature rather than designed in a long-term perspective.

The strategy identified two main problems regarding the housing, land and property rights of displaced people. The first has to do with the lack of land and immovable property among the displaced. Though this is problem for the country as a whole, –lack of own houses or land makes displaced people vulnerable for years.

Accommodation of the displaced in existing collective centres is another concern. For the moment, almost half (45 per cent) of the displaced are hosted in (public sector) collective centres where living conditions are exceedingly poor. This situation causes two kinds of problems: (1) the negative socio-economic impact of poor living conditions; and (2) the fact that the displaced are hosted in half-ruined buildings which have a

negative effect on urban development and the management of infrastructure.

The situation is hardly different for those displaced people in private- sector accommodation –purchased houses, with friends and relatives, or rented flats. For all the presumption that living conditions in the private sector are more favourable, displaced people accommodated there have often been found facing similar or even worse problems than those hosted by the public sector. Therefore, being hosted in the private sector does not mean that 55 per cent of displaced people fare any better than the others.

Taking these problems into consideration, Georgia's 2007 'State Strategy' set out two major goals:

1. Create conditions for the dignified and safe return of displaced people, and
2. In the meantime, support decent living conditions for the displaced as well as their engagement with Georgian society.

In the Strategy, the government readily recognised the need for restoration and protection of displaced people's property rights upon return to their places of permanent residence (i.e., once the conflict is over, or whenever possible). At the same time, the Strategy also emphasised that realisation of property rights did not depend solely upon

the return of displaced persons, but also on a formal record of their immovable property which as featured in the Strategy.

The Strategy set out three major gradual steps towards integration of displaced people into local communities: (1) gradual closure of collective centres, to be vacated for rehabilitation; (2) resettlement of displaced people, taking into account particular needs on a case-by-case basis; and (3) reducing displaced people's dependence on government assistance, though those more vulnerable would come under general welfare schemes.

Gradual closure of government-run collective centres is to take place in a variety of ways. Those buildings with commercial value will be vacated for subsequent sale to private investors, with adequate compensation for displaced people based on market prices. Some of the collective centres that are suitable for conversion to housing and where displaced people would like to take

permanent residence will be privatised for their benefit. Such privatisation will not come free of charge, but prices will be a function of the socio-economic conditions of the displaced people concerned.

The 2007 State Strategy recognises as a principle the protection of displaced people's rights from arbitrary or illegitimate eviction. The document also includes a detailed action plan for implementation, which was finally adopted in July 2008 based on joint work by government bodies and international institutions.

The action plan specifically addresses the housing, land and property rights of displaced people. Having acknowledged that displaced peoples' houses, land and property had been and are continuing to be illegally confiscated, occupied, damaged or destroyed in the two breakaway provinces, the action plan seeks to register this type of property as a matter of priority under the presidential 'My House' programme.

### **Assessment and Assumptions**

With the State strategy and the attached action plan, the Georgian government has committed itself to a more articulate and specific approach to housing, land and property issues as well as assistance for the displaced. Starting from full admission of the gaps and challenges involved in displaced people accommodation so far, these two documents were developed with a long-term perspective in mind. As a result, housing for the displaced is discussed in detail, and the priorities and procedures in connection with the gradual closure of collective centres (and more generally to overcome the existing critical situation) are identified.

Criticism of an overly ambitious timeframe, which does not seem realistic for the achievement of the envisaged goals, may raise certain criticism as well as the fact that the planned mid and long-term objectives may seem unclear. Another weak point in the strategy, and as highlighted earlier, lies with the ultimate objectives of property registration as described under the "My House" programme. These goals may seem misleading, since registration should be seen as an initial step rather than an end in itself in any future restitution process.

## **6.2 Durable Housing Solutions – Georgia’s New Approach**

Although it had already been announced in the 2007 *State Strategy for Internally Displaced Persons* that the government would prioritise local integration of displaced persons, it was only after the 2008 conflict that the Georgian government began to put its commitment into practice. This approach is obvious in the most recent government *Ordinance, N° 667* (10 October 2008) *on adoption of a State strategy for those rendered homeless by military aggression by the Russian Federation*.

The government has entrusted the Ministry of Refugees and Accommodation to carry out this strategy, adopt a corresponding action plan, and propose any legislation that may be required. The basic idea is to combine together “old” and “new” displaced people and embark on all-inclusive integration.

The government’s new strategy makes it clear that its commitment in favour of displaced persons will focus primarily on long-term solutions, namely, granting ownership titles to houses and flats as well as to agricultural/residential plots. As for those to whom it is not possible to provide immediate durable solutions, they will be resettled in temporary shelters in the meantime.

As stated in the October 2008 ordinance, government assistance will not be restricted to construction of new houses but will also include all the necessary household items that come with them, such as furniture and even food. Additionally, it is envisaged that fixed temporary allowances will be granted to those provided with permanent housing. New beneficiaries of permanent housing will also receive vouchers for electricity, gas, and firewood for the winter period, on top of social benefits and medical insurance as well as a financial support to university students from families in temporary shelter.

This new government approach should be welcomed, as current inadequate housing conditions in collective centres have only maintained the vulnerability of displaced people who have been waiting for a lasting solution for the past 17 years. One should not disregard the fact that 120,000 “old” displaced people are still hosted in overcrowded collective centres where, in most cases, basic sanitation and privacy conditions are substandard.

However, the Georgian government’s first practical step under the new strategy – the prompt provision of new settlements, which will be analysed below – cannot be seen as a desirable way of providing permanent housing solutions to displaced people in Georgia.

## **6.3 Newly Constructed Settlements for Displaced People**

The August 2008 conflict displaced many people and the Georgian government decided to respond to the related housing problem immediately. This involved the urgent construction and restoration of 6,220 housing units (of which 1,736 were under repair by December 2008). This process began on 14 September and in certain areas had been completed by December. The progress of construction work has been impressive, and no international entity currently involved has managed to respond this fast to the housing needs of displaced people.

This being an emergency situation, the scheme was funded straight from the government budget and the Minister of Internal affairs was instructed by the president to supervise the construction of new houses for displaced people in the Mtskheta, Gori, Kareli and Kaspi regions. By December 2008, over 30 companies and 5,000 workers were at work.

Around Gori, the region most affected by the August 2008 conflict, the government has



constructed 1,036 new housing units. Each settlement will have an inner road and water supply system; for the new settlements, wells

are drilled (60-150 meters deep on average), and damaged water systems are repaired in villages as required.

#### Box N° 2

##### A Field Visit to the Tserovani Settlement

The Tserovani settlement is located 25 km from Tbilisi on the main road to Gori. It consists of 2,000 housing units with basic services and can host some 6,000 displaced people.

The settlement was to be connected to the gas grid in 2009. The newly constructed houses will be provided with electric power, but not all of them were to be equipped with gas fixtures for the winter of 2008. In the meantime, until gas can be provided, settlers will be supplied with firewood for heating or with electric radiators.

All houses are a standard 65 m<sup>2</sup>, comprising a sitting room, kitchen and two rooms; every house has a 400m<sup>2</sup> backyard.

The units in the settlement will be connected with 300,000 m<sup>2</sup> of inner roads.

A new school building (capacity: 2,000) was planned, though not yet started by December 2008.

The Ministry of Economic Development provides displaced households in the settlement with various goods and items, including basic furniture and equipment.

At the same time, the government is purchasing houses from private citizens to accommodate displaced people in the Kakheti and Samegrelo regions (far from the areas affected by the recent conflict). In some villages, families will be allocated plots for agricultural purposes.

However, behind this immediate and rapid response to provide housing for displaced populations, many basic criteria and standards for human settlements have apparently been overlooked, as follows:

- All ongoing construction is fully funded out of the government budget, but financial contributions from donor organizations are welcome. However, the international humanitarian community has not been given the chance to participate in the construction process or to express their views in this regard.
- The criteria for selection of beneficiaries are unknown. Officially, it is recognized that only local municipalities will be involved in this process and that displaced people are to be provided with homes close to their places of original residence.
- The criteria for the selection of construction companies are also unknown, and no formal tender has been announced officially.
- The social impact of new settlers on the villages in the vicinity has not been fully considered.
- The government decided to grant full ownership titles to settlers on their newly built houses. This entitles them to enjoy their property in full and to conduct any transaction with regard to this property. With this approach favouring newly-settled displaced people, the government differentiated between 'old' and 'new', which could trigger social tensions among the displaced community, considering that the 'old' displaced from Abkhazia and South Ossetia have been living in collective centers for 16 years under extremely poor conditions.
- The government did not assess whether reliable livelihood opportunities were available for the settlers in the vicinity. The settlement is in the middle of nowhere, completely isolated, and only connected to the main road. Officially, the government is planning to build a factory to employ the new settlers.

This assessment shows that for all its keenness to provide a quick response to the housing needs of newly displaced populations, the Georgian government has overlooked many important criteria and standards, which could reduce the quality of life for the new settlers. This example might be seen as contrary to the UN-HABITAT official policies of slum prevention and safer cities.

Picture 3: The Tserovani settlement under construction (October 2008)

#### **6.4 The Law on Occupied Territories**

The Georgian authorities enacted this law in November 2008, with the objective of setting out a special legal regime and various restrictions in response to their lack of effective control over the breakaway territories of Abkhazia and South Ossetia. This law is temporary in nature and will be in force until full Georgian jurisdiction returns to the two regions. This law imposes three kinds of restrictions: (1) on *free movement*, forcing all foreign citizens to enter Abkhazia and South Ossetia from the Georgian side only; (2) on *business*, prohibiting any real

estate agreements or investments; and (3) on *property rights*, specifying that any agreements concluded during the period of occupation would be devoid of legal value. Any transaction on immovable property in the occupied territories that is inconsistent with current Georgian legislation will similarly be null and void. The only exception to this rule regards inheritance, insofar as procedures in this regard are consistent with relevant Georgian legislation.

Like the 'My house' programme, the primary objective of this law is to prevent and discourage occupation of residential and commercial property by potential buyers or investors.

# Chapter Seven

## Durable Housing for Displaced Populations: New Strategies

When providing lasting housing solutions, the basic principle should be that the newest groups of displaced people cannot be treated differently from 'old' ones. International donors support this approach as they insist on equal treatment for both categories. The earlier discussion of the Tserovani settlement (see Box N° 2) instead suggests that "new" (2008) displaced people are receiving more favourable treatment from public authorities.

Since then, with support from international donors, Georgian authorities have developed a new approach. The general idea is to facilitate local integration of displaced populations by providing permanent housing, and the plan includes the following:

1. **Conversion and restoration of collective centres into permanent housing units:** this refers to the collective centres that currently house displaced people (mainly former kindergartens, dormitories, etc) as well as to vacant public buildings, which should be assessed and considered for permanent housing where appropriate.
2. **Resettlement:** this involves provision of private individual housing and land plots for rural populations that cannot return to their places of origin, but for whom the more appropriate form of permanent housing lies in rural areas.

3. **Lump-sum cash compensation:** this alternative could be offered to those displaced people who decline solutions (1) and (2).
4. One can also envisage a number of subcategories of requirements which would require more specific responses, such as for *vulnerable people* who are not self-sufficient, or for *individual housing* in urban areas.

### 7.1 Recommendations for Lasting Solutions

- *Conversion-restoration of collective centres into permanent housing units*

Conversion and restoration of collective centres into permanent housing units is one of the tasks that could require UN-HABITAT involvement. In this respect interviews with displaced people hosted in collective centres and with other stakeholders suggest the following recommendations:

- (i) Displaced people should be free to accept, or otherwise, proposals for the restoration of collective centres; they should also be thoroughly informed of the dynamics and consequences of that process, i.e., that their status would change from assisted persons to self-reliant owners of the housing units they live in.

(ii) Any proposed conversion or restoration of collective centres should be based on, and preceded by, in-depth surveys of the inclinations and wishes of displaced people. In this respect, patterns are not necessarily uniform and can vary across collective centres and urban areas.<sup>60</sup>

(iii) On this basis, it will be necessary to support community mobilisation if the involvement of the displaced and other beneficiaries is to be secured at all stages of the rehabilitation process.

(iv) The high degree of preference for the conversion (privatisation) of collective centres among the displaced people hosted in Tbilisi is grounded on the fact that most are from urban areas in Abkhazia and are familiar with the urban lifestyle. A majority have relatively stable sources of income, i.e., at least one family member is employed and the local host community accepts them. Most are already involved in business, locally employed or otherwise linked to their place of temporary residence; at the same time, affordable housing could hardly be found

for them in Tbilisi.<sup>61</sup> According to the most recent data from the Ministry for Refugees and Accommodation, Tbilisi alone is host to 20,401 displaced persons in 109 collective centres.<sup>62</sup>

(v) The selection of collective centres for rehabilitation should be well-adapted and gradual, with the buildings assessed for their ability to guarantee normal living conditions for future private owners. In some buildings, such as former kindergartens, such rehabilitation will be relatively easy (the small block units are typically used by 10 to 15 families), while in other centres, like large dormitories and former barracks, rehabilitation will be extremely difficult, if at all possible.

➤ *Resettlement - Individual Housing in Rural Areas*

While providing assistance towards private individual housing and land plots for the rural population, the following particulars should be considered:

(i) Resettlement to rural areas should be voluntary and based on the free will of the new settlers. Displaced people should be fully informed, and receive assistance to find the most suitable and acceptable solution. A guide to resettlement is needed here.

(ii) The proposed resettlement solutions should be *skill-based*, i.e. aimed at the majority of the displaced population whose skills primarily lie in agriculture, in order to help them become self-reliant in rural areas.

(iii) Effective integration of displaced people will depend on in-depth assessments of potential areas for the livelihood

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60 The various inclinations of displaced people living in collective accommodation in a number of Georgian towns and cities was confirmed in a 2007 survey by the Danish Refugee Council as part of a project on “*Strengthening State-Civic Dialogue on Housing Solutions for Collectively Accommodated IDPs*”. The survey showed that of all displaced people in collective centres in Tbilisi, 70 per cent would opt for conversion (privatisation) of those centres, 17 per cent for compensation and 16 per cent for other alternatives; by contrast, of those in collective centres in Kutaisi, only 14 per cent said they would prefer conversion (privatisation), compared with 63 per cent in favour of compensation and 23 per cent opting for other alternatives; in Zugdidi, only 2,5 per cent said they would accept conversion (privatisation), with again 63 per cent in favour of compensation and 23 per cent for other alternatives.

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61 Conclusions drawn from a string of interviews with displaced persons held by this author in several collective centres in Tbilisi.

62 UN High Commissioner for Refugees, Georgia, Return estimates, 20 October 2008.

opportunities they can offer. The international humanitarian community should provide well-adapted support to the search for sustainable economic opportunities.

(iv) Where livelihoods are to be based on agriculture, a legislative change in favour of the new (i.e., displaced) settlers should be considered. This could include tax rebates, either of a general nature or for specific produce, since the agricultural production of new settlers will hardly be able to compete under free market conditions. It must be noted here that government free-market policies are one of the main causes behind the rapid shrinking of rural populations in Georgia, including liberal agricultural import policies.

(v) Initial economic sustainability for the new settlers will greatly depend on well-adapted financial support in the form of micro-credit with favourable and affordable interest rates. Financial support will require assistance to proper use of loans. New settlers should also be able to benefit from affordable housing loans that enable them to buy the building materials of their choice.

(vi) Along with economic support, successful integration of displaced people as new settlers will depend on upgraded local infrastructure and utilities, since a shrinking rural population over the past two decades has caused a total collapse of the social infrastructure, including schools and hospitals. Priority should be given to the reestablishment of social services to facilitate the initial reintegration stage for the displaced.

➤ *Lump Sum – Cash Compensation*

As mentioned earlier, cash compensation is the alternative for those displaced people who reject the property-owning options. While intended as an immediate measure to support new home purchases by displaced people, this option could be risky, as many of those people may lack the experience required to manage significant amounts of money, which might be wasted or quickly used purposes that have little to do with housing. In view of such serious concerns over the feasibility and wisdom of cash compensation, this option may be retained for limited and specific cases only.

# Chapter Eight

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## Final Conclusions

### 8.1 *General Recommendations for UN-HABITAT*

The role envisaged for UN-HABITAT in post-recovery assistance to Georgian authorities is twofold:

1) As an immediate response, UN-HABITAT should focus on three distinct, specific technical assistance programmes in partnership with international and local organisations. This includes restoring the housing, land and property rights of displaced people, with a third component that stands to benefit the whole population. The proposal is as follows:

- *Support integration of displaced people and provide assistance (legal and technical) to conversion of collective centres into permanent housing units;*
- *Support creation of a comprehensive database of land, housing and property lost by displaced people.*
- *Risk-mapping for emergency response and sustainable recovery, and development of a strategy for affordable housing.*

2) In conjunction with those tasks it is suggested that attention be given to other strategic long-term objectives; this includes creating general conditions for restitution of abandoned property. Realistically speaking, after the August 2008 conflict, any comprehensive restitution or compensation

for property abandoned by all Georgian displaced people and refugees can only take place through an impartial and neutral body with stronger international involvement.<sup>63</sup>

It is also strongly advised that UN-HABITAT monitor Georgian-Russian peace talks and advocate the inclusion of a ‘housing, land and property’ component in any future peace agreement. This component would correspond to the restitution and compensation option in the new Georgian strategy. UN-HABITAT’s involvement would come under its mandate of restoring housing, land and property rights in post-conflict situations.

In this regard, the option suggested here is a direct partnership with the United Nations High Commissioner for Refugees, which led the refugee working group in the ongoing peace talks, focusing on the links between housing, land and property issues and the right to return of all displaced persons and refugees. This pledge derives from the *Principles on Housing and Property Restitution for Refugees and Displaced Persons* (the ‘Pinherio’ principles – N° 22, below).

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<sup>63</sup> After the August 2008 conflict, the *Law on Property Restitution and Compensation in the Territory of Georgia for the Victims of Conflict in The Former South Ossetian Autonomous District* can no longer provide a valid legal framework for property restitution/compensation.

**Pinherio Principle N° 22 (extract)**  
**Responsibility of the international community**

22.1 The international community should promote and protect the right to housing, land and property restitution, as well as the right to voluntary return in safety and dignity.

22.4 International organizations, including the United Nations, should strive to ensure that peace agreements and voluntary repatriation agreements contain provisions related to housing, land and property restitution, including through the establishment of national procedures, institutions, mechanisms and legal frameworks.

In order to ensure adequate advocacy for property restitution in the Georgian post-conflict situation, it is proposed to involve all the international organisations involved in the protection and restoration of housing, land and property rights, primarily the UN High Commissioner for Refugees, UN-Habitat and the Council of Europe.

The next step towards advocacy for a comprehensive restitution process in Georgia should be a more pro-active involvement of the Council of Europe. This is because both Russia and Georgia are members of that organization and are thereby bound by the European Convention on Human Rights, which requires respect for property-related rights (Art. 8; “*respect for home*” and Art, 1 of Protocol N° 1: “*peaceful enjoyment of possession*”).

Any objective and realistic analysis of existing housing, land and property situation leads to the conclusion that current conditions are not conducive to a comprehensive solution (restitution). Bearing in mind the importance of a settlement over housing, land and property rights as a prerequisite for the return and rehabilitation of displaced populations, the international community should consider more consistent and formal involvement in these issues. In this regard, appointment of a specifically mandated official (‘Special Envoy’) or high-level mission should be considered.

The objective would be to create positive conditions in the housing, land and property area, trying to devise a feasible proposal for Georgians and Abkhazians, and trying to steer both sides in a more reconcilable direction. The proposed Special Envoy or High-level mission should be mandated to provide guidelines for integration of housing, land and property issues into the overall medium- and long-term post-conflict recovery activities of the international community involved in Georgia.

Finally, any response of the international community to post-war rehabilitation involving housing, land and property must not overlook the legitimate restitution rights of the displaced population as a long-term and final objective, especially in view of Georgia’s challenging social-political conditions.

Riddled though as it is with serious deficiencies (see Box N° 2), the new government’s more durable approach is welcome insofar as it looks to bring significant improvement to current living conditions for the displaced, especially those dating back to the 1990s’ conflict.

Admittedly, in that regard, new, lasting solutions for the displaced as an immediate or medium-term response can in no way extinguish legitimate restitution rights as a comprehensive and final settlement of

housing, land or property issues that have arisen over time as a result of conflicts in/ around Georgia.

## **8.2 UN-HABITAT and Housing Assistance to the Displaced: Recommendations**

The proposed UN-HABITAT intervention for the restoration of HLP rights to displaced populations would consist of two technical assistance programmes, as follows:

1. Support integration of the displaced through assistance (legal and technical) to conversion of collective centres into permanent housing units
2. Support creation of a comprehensive record (database) of property abandoned by the displaced

More specifically, regarding (1) – conversion of collective centres into permanent housing units – the suggested approach includes the following types of support:

- Technical expertise for proper use of building materials and techniques as well as planning and rational use of space;
- Ensure adherence to UN-HABITAT policies regarding social impact, ‘safer cities’ and slum prevention;
- Help with property records (where required), monitoring services, advisory opinions and possible solutions regarding the legal status of plots identified for construction projects for displaced people, and in conjunction with selected partners;
- Training and support to community mobilisation, making sure that beneficiaries are properly informed about, and involved in, rehabilitation of collective centres.

- Well-adapted training, on top of information on the consequences of integration (through conversion of collective centres), so that the displaced are fully aware that their status is to change from assisted persons to full-fledged property owners.
- Provide future apartment owners with guidelines and training for the maintenance of common areas (including cellars and roofs) in prospective privatised buildings and related responsibilities; enhance awareness of condominium conditions, rules and regulations.

More specifically, support to creation of a comprehensive record (database) of property abandoned by the displaced would significantly improve the technical and legal aspects of the existing ‘My house’ presidential programme. Once this is completed, the international community and domestic authorities will have comprehensive and clear data regarding the size, type and quantity of property abandoned in the whole of Georgia. Such a comprehensive record would provide the basis for any future restitution and compensation schemes. It would be in full accordance with the *Principles of Housing and Property Restitution for Refugees and Displaced Persons* (the ‘Pinherio principles’ - N° 15: *Housing, land and property: records and documentation*).

In these areas, technical assistance to the Georgian government could involve the following:

- Technical support and expertise to reconstruction of original (pre-conflict) topographic maps of urban areas in Abkhazia and Ossetia.
- Use of modern software to cross-check data collected through geographic information systems (GIS) before and after the conflict, in order to assess the degree



of physical damage to, and destruction of, houses, and construction of new ones during the absence of lawful (by now displaced) owners.

- Capacity-building programmes for technicians and professionals responsible for collection and analysis of data collected through geographic information systems (GIS).
- Training, in order to promote best practice for mass claim collection and processing (claim forms, database functions, accessibility, etc.); in this respect, procedures already enacted in post-conflict areas such as Bosnia, Kosovo and others could prove useful.
- Improve the legal section of the existing form (declaration) for abandoned property collected from displaced people, which currently consists of a single page only.
- Develop a list of additional documents and evidence to be included in a new form, in order to induce more comprehensive declarations. Develop a method for double-checking evidence (both *prima facie* and alternative) of abandoned property.
- Develop a valid, practical form of alternative supporting documentation for those displaced people who are unable to document lawful titles to property they have abandoned.

# Appendix

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## International/Local Bodies Involved in Land/Housing Projects<sup>64</sup>

**The Swiss Agency for Development and Cooperation (SDC)** This agency was first involved in South Caucasus in the aftermath of the Spitak earthquake in Armenia (1988). Since then, the Agency has opened a regional cooperation office in Tbilisi (Georgia) and country cooperation offices in Yerevan (Armenia) and Baku (Azerbaijan).

For more than a decade, Swiss involvement in Georgia's housing sector initially focused on emergency repair to collective centers for the displaced, and later on emergency rehabilitation of houses for the displaced and returnees.

From 2001 to this day, Switzerland has funded the following projects:

- Emergency repair to 52 collective centers with approximately 13,000 beneficiaries in eastern and western Georgia.
- Construction of 45 houses for some 130 displaced families in Samegrelo (west Georgia).
- Rehabilitation of some 300 houses for the

same number of vulnerable (including displaced) households in Zugdidi town and villages around Samegrelo.

- Rehabilitation of apartment blocks/ individual houses for over 6,000 conflict-affected, particularly vulnerable persons in Abkhazia (in 1998-2008).

It must be stressed that the Swiss are unique for undertaking a pioneer project for affordable /social housing in Georgia. Known as *Social Housing in Supportive Environment (SHSE)*, the scheme improves housing conditions and social services for those most vulnerable, including displaced persons, single elders and single mothers. The project supports government efforts to adjust national social and housing policies to the needs of vulnerable groups.

As mentioned earlier in this report, the Swiss-supported project includes two main components:

Construction of four two-storey housing units with 26 apartments for vulnerable people and another two for vulnerable host/foster families (who will provide permanent support to vulnerable beneficiaries on a land plot allocated by the Tbilisi municipality). Beneficiaries will be selected during construction, and if needed, municipal social

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<sup>64</sup> This overview refers only to the main international bodies currently involved in land reform/housing projects, and not those involved in ongoing international post-conflict (2008) rehabilitation.

workers will receive special training to take care of them.

### **The International Land Coalition**

The International Land Coalition in 2005 implemented a project to build the capacities of rural populations to establish community-based organizations. The project involved farmers in five villages –in the Imereti region (western Georgia).

The project familiarised communities with land legislation in order to put them in a position to take well-informed decisions on land-related issues, including proper management of collective pastures. This involved the creation of a community-based mediation/arbitration system for land-related disputes.

The project brought together community-based organisations and local institutional representatives for training in various issues including land privatization, registration of land rights, and micro-credit.

### **USAID**

The United States Agency for International Development (USAID) is currently developing a three-year *Land Market Development* project. The budget is just under USD2.7 million, plus additional funds for 2008 amounting to USD480,000 for the privatisation of agricultural land. Registration is supported by geographic information systems (GIS) centers and is carried out by USAID's local partner, the Association for Protection of Landowner Rights (APLR), which generally fulfils this role for rural land parcels across Georgia. Those centres also act as a data source for regional registry offices.

As part of the US project, the local company under contract for land surveys is responsible for all the technical work (field visits, land data collection, evaluation of land parcels), defines boundaries and prepares a parcel

design map for entire settlements and villages, specifying coordinates and cadastral numbers.

Cadastral and registration data are publicly displayed in all local territorial units where the survey is carried out, in order to ensure good data quality and to correct any errors. This ongoing project also looks to stimulate the agricultural sector through easy access to micro-credit.

As already mentioned, the US agency has also facilitated Georgia's efforts to become (through the Ministry of Economic Development) a member of the International Code Council, which standardises building legislation and policies across the world.

### **German cooperation (GTZ)**

To date, the *Deutsche Gesellschaft für Technische Zusammenarbeit* (GTZ - German agency for technical cooperation) has mainly supported zoning projects in urban centres, including Tbilisi, and pilot projects in Kutaisi and Gori.

Of particular interest is the agency's involvement in the creation of a network of apartment owners' associations. The previous lack of legislation and policies in this area, which lasted many years, was the main factor behind the deterioration and rapid depreciation of Georgia's multi-family building stock. Even before a *Law on household condominiums*<sup>65</sup> was added to Georgia's statute book, the German agency provided training for community groups (along with building maintenance and drafting of a financial scheme) in order to raise awareness of the important role of residents' associations in multi-family buildings. The German agency also helped to set up the already mentioned Tbilisi Corps, the municipal department supporting

65 Law adopted 11 July 2007; for details, see under 7.1 -Main Challenges in the Housing Sector - Condominium Issues.

construction and proper maintenance of condominiums in the Georgian capital

## **Swedish cooperation (SIDA)**

The Swedish International Development Agency is implementing a project known as “Support to the Development of the Land Cadastre and Land Information Systems in Georgia”, and also provides technical assistance (building capacity) and best practice in land registration based on Swedish experience. The agency also brings technical equipment and innovative computer-based management (new software development).

The project strengthens institutional and functional capacities of National Public Registry Agency and is due for completion in 2009.

## **The Association for Protection of Landowner Rights (APRL)**

*The Association for Protection of Landowner Rights* is one of Georgia’s major non-governmental organizations and is frequently contracted by the government for cadastral work. This includes integration of cadastral data, creating unified geo-information databases, and land registration (initial and subsequent).

The Association also provides private arbitration services to land and property owners as an extra-judiciary scheme for the settlement of property disputes. The Association is officially accredited to conduct property surveys, immovable

property valuation and title recording of land parcels on the public registry

## **GEOSCOPE**

Since 2004, Geoscope has focused on the creation and servicing of geo-information systems. This includes programming of geo-databases and other information and ruling systems, creating digital data and preparing maps of the Caucasus, Georgia and its many regions, cities and other settlements, all based on geographic information systems (GIS).

In these capacities, Geoscope has completed various projects under contract with public authorities as well as private local or foreign companies.

The projects completed so far include Tbilisi’s land-tenure general plan, processing of the Senaki municipality map, provision of digital maps for the communication and information systems in connection with biological hazards, data research in Tbilisi archives and digital processing, and an inventory of Georgia’s monumental heritage.

Other Geoscope projects include the following: aero-photography and wholly digitalized geo-information system for Tbilisi (scale: 1:500); work on cadastral data and geo-database in the Ninotsminda, Aspindza and Akhalkalaki regions, and a general map for Zestaponi town (scale 1:2,000); topographical maps for the Tskhinvali region (scales: 1:200,000, 1:50,000 and 1:10,000) and a Georgian digital topographical map (scale: 1:200,000).