



# STATEMENT OF THE “GEORGIAN COALITION FOR INTERNATIONAL CRIMINAL COURT” REGARDING THE INVESTIGATION OF THE AUGUST 2008 WAR CONDUCTED BY THE INTERNATIONAL CRIMINAL COURT

Over the last several days, a number of statements have been made regarding the investigation carried out by the International Criminal Court of crimes committed during the August 2008 War and the ongoing processes. Discussions in Georgia have clearly demonstrated that the public does not have complete information on the above process and the challenges related thereto. Based on the foregoing, the signatory NGOs of this statement wish to make some clarifications about the discussions conducted.

## **International Criminal Court and Investigation of the Situation of Georgia**

International Criminal Court Located in The Hague was founded in 2002 on the basis

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of the international agreement- the Roman Statute. The Court investigates the most serious crimes committed worldwide: genocide, crimes against humanity and war crimes. Prior to the initiation of an investigation, the Office of Chief Prosecutor carries out the preliminary investigation and monitors the progress and results of the criminal investigation conducted by a state at the national level.

The Office of the Chief Prosecutor of the Court may initiate an investigation if: a member state of the Rome Statute or the UN Security Council applies to the Chief Prosecutor to start an investigation or, if the Chief Prosecutor considers that at the local level the investigation is not carried adequately and on its own initiative, addresses the judges for obtaining a permit to launch the investigation.

The investigation may not be initiated on the basis of the application submitted by one state against another or a complaint lodged against a high ranking official. The Office of the Chief Prosecutor determines the responsibility of a high-ranking official (such as a military general, head of staff, etc.) within the investigation and not the responsibility of the state and / or ordinary military person.

As for the situation in Georgia, the Office of the Chief Prosecutor of the Court began the [preliminary examination](#) of the crimes committed during the August war on 14 August 2008.

In early 2009, Georgian NGOs submitted a special report [In the August Ruins A](#) to the Office of the Chief Prosecutor of The Hague Court. The report contains the information about the brutal and inhumane acts committed on the territory of Georgia during the August War, including the statements of 1055 victims. Alongside with the final version of the report, the statistical analysis and draft materials which became the basis of the report were also presented to the Court.

Within the scope of the preliminary examination, the Office of the Chief Prosecutor periodically requested from Georgia and Russia the information about the ongoing investigation at the national level. Despite the fact that Russian and Georgian bodies officially stated that the investigation into the crimes committed during the 2008 war was underway at the national level, the progress and the results of the investigation still remained unknown to the public and victims.

Considering the inactivity of the Georgian investigation authorities and for the purpose of ensuring justice for the victims, in 2012, NGOs [addressed](#) the Office of the

Chief Prosecutor to initiate an investigation into the cases mentioned in the report, however, the Court [ ] response did not follow, as the Office of the Chief Prosecutor was monitoring the investigative proceedings at the local level and did not deem necessary to involve the Court in the process.

In 2013, Tea Tsulukiani, the Minister of Justice of Georgia, [declared](#) that the investigation of the crimes committed during the August War was the commitment of the State pursuant to the Rome Statute, but if the country failed to do so, proved incompetent or failed to show a sufficient political will, then the investigation would be brought at the international level.

Two years later, on 17 March 2015, the Chief Prosecutor of The Hague Court received a [letter](#) from the Minister of Justice of Georgia. As the communication with the Court revealed, the Ministry of Justice informed the Office of the Chief Prosecutor that the investigations conducted by the investigative bodies of Georgia failed to progress further due to the existing security issues, and therefore, the investigations would be terminated at the local level for an indefinite period.

Consequently, in October 2015, the Office of the Chief Prosecutor of the Court filed a [request](#) to the Pre- Trial Chamber to initiate an investigation, which [was accepted](#) by the judges in January 2016. The request and the decision of the Pre-Trial Chamber identified the scope of the investigation, which includes as follows: crimes committed during the period from 1 July to 10 October 2008, including: crimes against humanity such as murder, forceful displacement and persecution of persons, war crimes, attacks on peaceful population, intentional assaults on peacekeepers, property destruction and robbery.

In the framework of the investigation, The Hague Chief Prosecutor determined three parties: Georgian and Russian armed forces and Ossetian armed forces. Therefore, the Court may charge both Georgian and Russian high ranking officials who are responsible for commission of the above crimes.

## **Challenges regarding the investigation of the situation of Georgia**

There are many problems related to the investigation and ongoing processes carried out by the Office of the Chief Prosecutor of the International Criminal Court, as well as at the national and international level, which have been repeatedly highlighted by NGOs. We would like to focus on the challenges once again:

**Information about the progress of the investigation:** The investigation conducted by the Office of the Chief Prosecutor of the Court is completely confidential, which means that the information about the progress and the results of the investigation is not available for public, including the victims and their representatives. Regardless of our numerous requests, the current stage of the investigation is kept confidential, including whether a court ruling will be issued against a particular person / persons in the nearest period.

**The refusal of the Russian Federation to cooperate with the Office of Chief Prosecutor of the Court:** One of the major challenges concerning the investigation conducted by the Office of the Chief Prosecutor of the Court is Russia's refusal to cooperate with the Court. The refusal poses a risk that the Office of the Chief Prosecutor will not be able to conduct a thorough and comprehensive investigation. In addition, in the conditions when Russia is not the member state of the Rome Statute, it is not obligated to cooperate with the Court and provide the Court with information and materials necessary for the investigation or transfer suspects for the trial, unlike Georgia, which is the member state of the Rome Statute and shall cooperate with the Court. Consequently, there is a risk that in case of issuing a court ruling on detention of Russian, Ossetian and / or Georgian citizens, only Georgians may face the court trial, since the Georgian government will be obliged to transfer its citizen to the Court unlike Russia, which with high probability will not transfer its citizen, be it Russian or Ossetian, to the Court.

**Lack of information among victims:** Another major challenge in this process is the lack of information and awareness among the victims of the war regarding the ongoing investigation carried out by the International Criminal Court. Although the Court's local representation was opened in Georgia approximately one and a half year ago, the Office is essentially limited in terms of financial and human resources, without which they cannot fully operate, including conduct intensive awareness raising campaigns for the war affected population. This negatively affects the motivation of the victims, their effective involvement in the process and cooperation

with the Court. In addition, under the conditions when the victims are less aware of the mandate and role of the Court, statements made by politicians regarding the ongoing investigation, the responsibility of ordinary soldiers and blaming Georgia for starting the war adds to the uncertainty of the victims and may have a damaging effect on their cooperation with the Court.

**Georgia**  **representation in The Hague** The Georgian Government has no permanent representative in The Hague, who would participate in the Court bureaus and committees sessions, at which important decisions are rendered. An active participation of the representative of Georgia in the working groups of the Court is important for the purpose of advocating and resolving the issues and difficulties, which deal with the refusal of the Russian Federation, exercising the mandate of the Trust Fund of Victims and other important issues.

**Lack of interest:** Refugees are living in severe social-economic condition nowadays. In these conditions, support from international organizations and other countries is important. Active cooperation of Georgia with various states will also be important in the future for the purpose of execution of detention orders issued by the Court. However, there is a lack of support and interest in the activities of the countries towards the situation of Georgia. In some cases, this is due to the inadequate progress of the proceedings on the current situation of Georgia. Moreover, contradictory statements made by politicians and politicizing of the ongoing investigation have a damaging effect.

### **Other disputes conducted at the international level over the violations committed during the August war**

The International Court of Justice (ICJ), founded in 1945 pursuant to the United Nations Charter, is also located in The Hague. The Court considers disputes of the countries that deal with violations of the international law. Consequently, unlike the International Criminal Court, the International Court of Justice establishes the responsibility of states. On 12 August 2008, Georgia filed an application to the Court on the alleged violation of the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD). On 1 April 2011, the International Court of Justice ruled that, prior to the application to the Court, Georgia, for the purpose of settlement of the dispute, had not held negotiations with Russia to force the latter to fulfill the obligations undertaken by the CERD. Consequently, the Court believed that Georgia

had not completely exercised the mechanism provided by Article 22 of the Convention. Hence, **the International Court of Justice deemed the application filed by Georgia inadmissible without considering it on merits.** Within 10 years after making the decision, the Party has the right to appeal to the Court with the request to renew the dispute based on any newly revealed circumstances.

In addition to the International Criminal Court and the International Court of Justice, the issue of the crimes committed by the Russian Federation during the August War 2008 is also reviewed by the European Court of Human Rights- Strasbourg Court. The Court shall establish the responsibility of the state, and the application filed by the Georgian authorities serves as the basis of the dispute. As of today, the inter-state dispute between Georgia and the Russian Federation is still considered by Strasbourg Court.

The above mentioned ambiguity, challenges and questions raised by public indicates the need for activation of the work of the International Criminal Court, its local representation and respective bodies of the Georgian Government to properly inform public on the ongoing process.

**Based on the above mentioned issues, we call upon:**

**Relevant bodies of the Georgian Government:**

- To intensify the cooperation with international organizations and diplomatic missions of various countries regarding the ongoing investigation process.
- To appoint a permanent representative and ensure his/her active participation in the activities of the International Criminal Court Assembly bureaus and committees;
- Considering the high public interest to the war crimes committed in August 2008, to clarify what forced the Ministry of Justice of Georgia to send the above mentioned letter to the Office of Chief Prosecutor in 2015;

- Based on the principle of complementarity, to carry out an efficient investigation at the national level and inform the public about the progress of the investigation into the crimes committed during the August War. Taking into consideration the gravity and scope of the crimes committed by the Russian Federation during the August War, it is crucial to carry out all necessary and important measures to ensure that the offences committed by the Russian Federation will be investigated and punished.

### **Government officials and opposition parties:**

- To refrain from making unverified and inaccurate statements about the investigation being conducted by the Office of the Chief Prosecutor as well as from politicization of the process, as it may have a damaging effect on the interest of Georgia on the international level;

- Dissemination of misleading information may trigger wrong expectations among the victims and society in general, which may affect the ongoing process in the future and have a counter reaction, which may result in the loss of public confidence into the international institutions of justice;

### **The Office of the Chief Prosecutor of the International Criminal Court, the Office and the local representation of the Court:**

- To intensify public awareness campaigns and periodically inform public about the mandate, activities and role of the Court;

- To inform the public, including the victims and their representatives, about the progress of the investigation;

- To clarify the key aspects of the investigation, including the scope of the investigation, how many parties may be involved in alleged crimes that are investigated by the Court and the guarantees the Court provides to prevent unilateral investigation.

### **International organizations and foreign diplomatic mission:**

- Due to the high public interest towards the above-mentioned issues, to ensure various activities at the local level to support and improve the socio-economic conditions of the refugees and monitor the ongoing processes and raise awareness

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thereto.

## **Signatory organizations:**

Human Rights Center

Article 42 of the Constitution

Justice International

Georgian Young Lawyers' Association (GYLA)

The Georgian Center for Psychosocial and Medical Rehabilitation of Torture Victims (GCRT)

## **Georgian Coalition for International Criminal Court**

*Georgian Coalition for International Criminal Court was established in 2003 with the aim to strengthen democracy and the rule of law and determine responsibility for genocide, aggression, crimes against humanity and war crimes and provide legal assistance to victims of such offences at the national and international level. Since 2010, the Georgian Coalition has been the member of the Global Coalition for International Criminal Court.*

*Since 2008 the member organizations of the Coalition have been actively involved in the ongoing processes and represent the interests of war-affected refugees at the national level, as well as in the European Court of Human Rights and the International Criminal court.*