

ANNEX J

Public

Examination of information available

Corrected version of

ICC-01/15-4-AnxJ

A. Information provided by the Georgian and Russian authorities

1. Both the Georgian and Russian authorities have cooperated with the Prosecution and each submitted a large amount of information on crimes allegedly committed during the period under consideration. The Prosecution has analysed the seriousness of the information received bearing in mind considerations of internal and external coherence, as well as the availability of information from other independent sources as a means of bias control.

1. Georgia

2. The Prosecution has received 12 submissions from the Government of Georgia during the period 6 October 2008 to 24 March 2015.
3. On 6 October 2008, the Georgian Ministry of Justice submitted under article 15 of the Statute information related to the alleged forcible displacement of ethnic Georgians during and after the 2008 armed conflict.¹ The submission provided information on the numbers and circumstances of displaced ethnic Georgians from South Ossetia, based on the reporting of the United Nations High Commissioner for Refugees (UNHCR), international non-governmental organizations (NGOs) and local civil registry data. The Government of Georgia later supplemented this with materials submitted in the *Georgia v. Russia* case before the International Court of Justice, including reports by intergovernmental bodies and international NGOs, witness statements, maps

¹ Annex E.7.6: Ministry of Justice of Georgia, “Ethnic Cleansing of Georgians Resulted from Russian Invasion and Occupation since August 8, 2008”, 6 October 2008, GEO-OTP-0003-1779.

and satellite imagery, information on displaced ethnic Georgian civilians and media reports.²

4. On 22-25 June 2010, during a mission to Georgia, the Prosecution gathered additional information on the alleged forcible displacement of ethnic Georgians from South Ossetia and on the conduct of hostilities by Georgian armed forces during the armed conflict. On 13 August 2010, the Prosecution received additional information from the Georgian Ministry of Justice regarding the alleged attack against the Russian peacekeeping forces stationed in the area of Tskhinvali in the night between 7 and 8 August 2008.³
5. The Government of Georgia further submitted information on the status of relevant national proceedings on 26 May 2010⁴, 4 October 2010⁵, 12 December 2011⁶, 8 February 2012⁷, 24 September 2013⁸, 5 November 2014⁹, and 24 March 2015.¹⁰

² Annex E.7.8: “Application of the International Convention on the Elimination of All Forms of Racial Discrimination” (*Georgia v. Russian Federation*), Submissions made by Georgia, GEO-OTP-0005-0001 to 0332.

³ Annex E.7.14: Ministry of Justice of Georgia, Letter to the Office of the Prosecutor, 13 August 2010, GEO-OTP-0008-0858; and attached Annex E.8.38: LiveJournal, “The conflict was anticipated, so we were directed there before hand” [K

], transcript of interview of Dmitry Zubok, 28 August 2009, GEO-OTP-0008-0860.

⁴ Annex E.7.9: Ministry of Justice of Georgia, Letter to the Office of the Prosecutor of the International Criminal Court dated 10 May 2010, GEO-OTP-0006-0003 with annexes.

⁵ Annex E.7.16: Ministry of Justice of Georgia, Letter to the Office of the Prosecutor of the International Criminal Court in response to request for cooperation dated 16 July 2010, 04 October 2010, GEO-OTP-0008-1664 with annexes.

⁶ Annex E. 7.7: Ministry of Justice of Georgia, “Update Report of the Government of Georgia concerning the National Criminal Proceedings Related to August 2008 Armed Conflict”, 12 December 2011, GEO-OTP-0003-1836.

⁷ Annex E.7.39: Government of Georgia, Annex 17, Google Maps satellite imagery of the Verkhniy Gorodok and Tskhinvali areas, as well as of the sites visited by the Georgian investigators, GEO-OTP-0005-0600 through GEO-OTP-0005-0601; Annex E.7.40: Government of Georgia, Annex 18, Google Maps satellite imagery of the Zemo Nikozi and surrounding areas, EO-OTP-0005-0602 through GEO-OTP-0005-0603; E.7.41: Government of Georgia, Annex 19, Google Maps satellite imagery of the Verkhniy Gorodok and Tskhinvali areas where the Russian and Georgian peacekeeping forces were positioned, GEO-OTP-0005-0604 through GEO-OTP-0005-0605; Annex E.7.42: Government of Georgia, Annex 23, Google Maps satellite imagery of the HQ location of the Georgian peacekeeping forces, GEO-OTP-0005-0637 through GEO-OTP-0005-0638; Annex E.7.43: Government of Georgia, Annex 31, E-mail sent by the Prosecution Service of Georgia to the legal representatives of victims before the ECtHR, asking them to convey the invitation for the formal interview, GEO-OTP-0005-0728 through GEO-OTP-0005-0729. .

6. The Prosecution has assessed that the information provided by the Georgian authorities on the alleged forced displacement of ethnic Georgians from the South Ossetian *de facto* territory meets the reasonable basis standard to the extent that it includes and is largely corroborated by international governmental and non-governmental organisations, and appears to be based on victim and witness interviews, satellite imagery, as well as statements by involved parties.

2. Russian Federation

7. The Prosecution received a total of 3815 communications submitted under article 15 of the Statute by individuals on alleged crimes committed in the context of the August 2008 armed conflict. These communications were submitted through the Embassy of the Russian Federation in the Netherlands by legal representatives of victims during the period of 18 August 2008 to 28 April 2009.
8. The Russian Federation also submitted documentation upon request with respect to both alleged crimes and ongoing national proceedings. On 24 October 2008, 4 November 2008, 24 April 2009¹¹, 2 March 2011¹² and 18 June

⁸ Annex E.7.45: Government of Georgia, Copy of the “Assignment on the conduct of investigation on the criminal case No 074088079” dated 10 May 2013, GEO-OTP-0009-4942.

⁹ Annex E.7.1: Government of Georgia, Submission of 5 November 2014, GEO-OTP-0003-0003.

¹⁰ Annex G: Government of Georgia, Letter dated 17 March 2015, GEO-OTP-0003-1169 and Annex E.7.4: Short Report dated 13 March 2015, GEO-OTP-0003-1172 and Annex E.7.5. The letter and report were jointly submitted on 24 March 2015.

¹¹ Annex E.7.30: Affidavits submitted by the Russian Embassy, Submission of Additional Information (28 volumes), GEO-OTP-0007-0001 through GEO-OTP-0007-6226.

¹² Annex E.7.31: Government of the Russian Federation, “Memorandum on materials of criminal case no. 201/374108-08, For presentation in the Ministry of Foreign Affairs of Russia in accordance with questions prepared by representatives of the International Criminal Court”, 8-10 March 2010, GEO-OTP-0008-0485 (English translation: Annex E.7.33, GEO-OTP-0008-0575).

2012¹³, the Office of the Prosecutor-General of the Russian Federation provided information regarding its investigation into the alleged attack against the Russian peacekeeping forces, including 28 volumes of investigative material¹⁴ relating to this specific incident, and information on alleged crimes against civilians holding Russian citizenship. During its three missions to Russia, on 8-10 March 2010, 2-4 February 2011, and 23-24 January 2014, the Prosecution received additional information related to the ongoing national investigation at the time, including investigative activities such as witness interviews, forensic and on-site examinations that investigative bodies conducted between August 2008 and September 2009 in Russia and South Ossetia.

9. The Prosecution reviewed the article 15 communications received from Russia with a focus on identifying information relevant to establishing the factual circumstances and possible patterns of the alleged crimes. In order to facilitate the review, the Prosecution grouped the communications by clusters of alleged victims based on their residential address and further by categories of reported crimes. The communications were also cross-checked to assess the degree of corroboration of the same crimes by multiple claimants reportedly residing at the same or nearby locations.

10. The Prosecution, has assessed that some of the information provided under article 15 is relevant for the purposes of establishing the status and profile of alleged civilian victims of crimes attributed to Georgian armed forces, and consistent with the findings of the Investigative Committee of the Russian Federation; however, these communications also consisted of repeated

¹³ Annex E.7.22: Government of the Russian Federation, Letter to the Office of the Prosecutor of the International Criminal Court, 18 June 2012, GEO-OTP-0001-1332.

¹⁴ Annex E.7.30: Affidavits submitted by the Russian Embassy, Submission of Additional Information (28 volumes), GEO-OTP-0007-0001 through GEO-OTP-0007-6226.

submissions and enjoyed limited corroboration from third sources, such as international governmental and non-governmental organisations.

11. The 28 volumes of material collected in the course of its national investigation into the alleged attack against Russian peacekeepers contain 877 witness statements out of which 790 statements are relevant for the attack against the Russian peacekeepers while the remaining 87 witness statements contain potentially exonerating information on the alleged crimes attributed to Russian and South Ossetian forces. The majority of the 790 witnesses appear to be Russian servicemen deployed on the ground during the active phase of hostilities, including at the time of the alleged attack against the Russian peacekeepers and their posts. These witnesses provided information relevant for the factual circumstances of the attack. The remaining witnesses of 87 statements appear to be ethnic Georgian villagers claiming that they had not witnessed any alleged crimes attributed to Russian and South Ossetian forces.

12. The statements include details on the identity of witnesses and investigators who took the statements, as well their signatures, respectively. A number of these accounts also enclose supporting material to the claims, such as the identification documents of witnesses, witnesses' markings of locations of the RUPKFB and the outline of their compound as well as the locations where the dead bodies of peacekeepers were found within the RUPKFB compound.

13. Following a comprehensive review of the submitted volumes, the Prosecution identified a number of witness statements with identical or largely similar excerpts of testimony that appear to have been replicated under the names of different witnesses. These particular witness accounts

were also mostly provided by members of the Russian military, including the peacekeeping battalion, which was the affected party in this case. For these reasons, pending independent investigation, the Prosecution has given little weight to some of the witness accounts contained in the 28 volumes.

14. The material provided by the Russian authorities also includes forensic material such as photographs of victim's dead bodies, analysis, medical and autopsy reports as well as expert opinions on the body injuries of killed and wounded Russian peacekeepers and the destruction of the RUPKFB property, which appears on its face to provide credible information, in particular with respect to the material aspects of the alleged attack.

B. International and regional organisations

15. The Prosecution has examined information from three international and regional organisations that conducted fact finding assessments, the International Independent Fact-Finding Mission on the Conflict in Georgia (IIFFMCG), the UN and the OSCE.
16. The Prosecution has given substantial weight to corroborative information emanating from third parties in line with the criteria outlined in paragraph 44 of the Application. The Prosecution has evaluated in particular the quality and the completeness of the information provided, the robust and clearly explained methodology, along with the independent and impartial nature of their respective mandate. The ability of the missions to have direct access to the crime scene and to collect first-hand evidence from witnesses and victims

on the ground was also taken in due account by the Prosecution in its evaluation.

1. IIFFMCG

17. The IIFFMCG was established by the Council of the European Union on 2 December 2008 to “[investigate the origins and the course of the conflict in Georgia, including with regard to international law (footnote: including the Helsinki Final Act), humanitarian law and human rights, and the accusations made in that context (footnote: including allegations of war crimes)”.¹⁵ The IIFFMCG report, published in three volumes in September 2009, constitutes a credible and complete body of information emanating from a reliable source.

18. The Mission requested and collected information from the authorities in Moscow and Tbilisi as well as from the *de-facto* authorities in Sukhumi and Tskhinvali, and invited submissions by all relevant regional and international organisations. Members of the Mission frequently travelled to Tbilisi, Moscow, Tskhinvali and Sukhumi as well as to sites where fighting had taken place and/or which were of particular interest.¹⁶ The Mission was able to collect first-hand evidence from witnesses and victims, documents, as well as from personal observations on the ground. Open contradictions of accounts that could not be resolved by the Mission were presented as such.¹⁷

19. The IIFFMCG report proved useful for establishing the context of the crimes alleged, for assessing the relationship between Russia and South Ossetia, and for identifying crime patterns and their attribution.

¹⁵ Council of the European Union, Council Decision 2008/901/CFSP, 2 December 2008, article 1(2), cited in Annex E.2.35: IIFFMCG, Volume I, GEO-OTP-0002-7757 at 7760

¹⁶ Annex E.2.35: IIFFMCG, Volume I, GEO-OTP-0002-7757 at 7763-7764.

¹⁷ Annex E.2.35: IIFFMCG, Volume I, GEO-OTP-0002-7757 at 7765-7766.

2. *United Nations*

20. The UN conducted an inter-agency humanitarian assessment mission to South Ossetia from 16-20 September 2008.¹⁸ The mission report provides credible information on the humanitarian situation in South Ossetia after the conflict.

21. The mission visited Moscow, North Ossetia in the Russian Federation and South Ossetia. It met with Russian officials and representatives of the *de facto* authorities in South Ossetia as well as the ICRC and UN representatives. The mission visited also villages in South Ossetia affected by displacement and destruction during and after the conflict.

22. The UN mission report provided useful statistics for this Application regarding the alleged crime of forcible transfer of population. The Prosecution has furthermore relied on satellite imagery and maps from the UN Operational Satellite Applications Programme (UNOSAT) showing destroyed villages in South Ossetia during and after the armed conflict.

3. *OSCE-HRAM*

23. The OSCE deployed a Human Rights Assessment Mission (HRAM) composed of members of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Office of the OSCE High Commissioner on National Minorities between 11 October and 10 November 2008 to assess the human rights situation in the areas affected by the armed conflict in Georgia. The

¹⁸ Annex E.2.3: UN Office for the Coordination of Humanitarian Affairs (OCHA), UN Inter-Agency Humanitarian Assessment Mission to South Ossetia, "Mission Report", 16-20 September 2008, GEO-OTP-0001-0846.

OSCE published a report by the HRAM in November 2008 which the Prosecution considers to be a reliable and credible source of information.¹⁹

24. Most of the report is based on 172 interviews with individuals affected by the conflict from 55 different locations, as well as a number of group interviews. The report also incorporates information collected in meetings with governmental officials at different levels, elected representatives, national and international NGOs, and international organisations.

25. Information contained in the OSCE-HRAM Report was particularly useful for the contextual analysis, and for identifying incidents and patterns of alleged crimes.

4. *OSCE Mission to Georgia*

26. Upon the Prosecution's request, the OSCE has submitted 81 documents which contain relevant information for the purpose of this Application.²⁰ The documents consist mainly of activity and spot reports that the OSCE mission to Georgia, established from 1992 until the end of 2009, provided to OSCE headquarters covering activities between 1 June and 31 October 2008.

27. The documents were identified by the Prosecution during two separate missions to the OSCE archives in Prague during which a large number of OSCE public and restricted documents were reviewed for relevance.

¹⁹ Annex E.2.38: OSCE Office for Democratic Institutions and Human Rights, "Human Rights in the War-Affected Areas Following the Conflict in Georgia", 27 November 2008, GEO-OTP-0003-1921 ("OSCE-HRAM Report").

²⁰ Annex E.3.16 (Conf-Exp.): OSCE, Material provided in response to the OTP Request for Information, 8 May 2013, GEO-OTP-0005-0763 through GEO-OTP-00050-1101

28. Selected mission reports used in support of this Application provided first-hand information from OSCE military observers or other OSCE staff on the ground at the time relevant for this Application, as well as information received by the OSCE from parties to the conflict and third parties. This includes information on the nature of military operations, zones of responsibility of parties to the conflict, structure of their armed forces and identification of places and incidents of alleged crimes.

29. Given the independent mandate of the OSCE mission, and the first-hand knowledge of the developments on the ground that the observers enjoyed, the information received was assessed as largely reliable and credible.

C. European Court of Human Rights

30. The August 2008 armed conflict in Georgia gave rise to extensive litigation before the ECtHR, much of which is yet pending.

31. In February 2009, Georgia filed a complaint against the Russian Federation alleging indiscriminate and disproportionate attacks against civilians and their property by the Russian military and separatist forces under their control.²¹

32. Furthermore, between 2008 and 2011, over 3500 individual applications were lodged against the Government of either Georgia or Russia, or both States, by persons claiming breaches of their rights under the European Convention on

²¹ The application was declared admissible in December 2011 and is currently pending before the Grand Chamber of the ECtHR. The initial application had been submitted on 11 August 2008 and had resulted in the application of an interim measure, which is still in force, inviting both Governments to comply with their engagements under the Convention, particularly in respect of Articles 2 (right to life) and 3 (prohibition of torture). See, ECHR, *Georgia v. Russia (n. II)*, Appl. no. 38263/08, “Admissibility Decision”, 19 December 2011.

Human Rights resulting from the hostilities and/or the subsequent lack of an effective remedy.²²

33. The Prosecution consulted with the Registry of the ECtHR to identify material in the case files which may be of relevance. In September 2014, the ECtHR provided the Prosecution with a list of publicly available documents as well as a selected number of individual applications.

34. Following a review process at the seat of the ECtHR, the Prosecution reviewed the content of 50 case files and subsequently obtained copies of over 320 documents, totalling over 9500 pages, as well as photographic images and video and audio footage.²³

35. The material obtained underwent a thorough review by the Prosecution to further assess its internal consistency and probity value for the purposes of filling in information gaps related, primarily, to the attribution of certain crimes. Case records were also cross-checked to identify locations of incidents, corroborate crime patterns, and complete victim profiles. The information provided in the case files reviewed is generally reliable as it consists mostly of credible individual accounts of events during the conflict and its aftermath by direct victims or eyewitnesses, supported in certain instances by audio-visual material.

D. Non-governmental organisations

1. International NGOs

²² See [Hudoc Search Page – Council of Europe](#).

²³ Annexes E.3.1 to E.3.15 include a selection of the most relevant information received from the ECtHR.

36. International NGOs, particularly Human Rights Watch (HRW) and Amnesty International (AI),²⁴ also conducted fact-finding missions and interviewed victims of the conflict. HRW conducted three missions to South Ossetia and undisputed Georgian territories, in August, September and November 2008.²⁵ AI carried out four visits to the conflict zone in and around South Ossetia, in North Ossetia in the Russian Federation, and in the Georgia's capital Tbilisi, between 15 and 30 August 2008.²⁶

37. HRW and AI reports are based on a large volume of interviews with victims and witnesses of abuses, analysis of satellite imagery, corroboration of relevant data from a wide-ranging array of sources, and photographic documentation. A detailed description of the methodology used in the reporting is also presented. The findings and conclusions contained in the reports on the same subjects corroborate each other and present a credible source of information for determining factual circumstances of alleged crimes.

2. Local NGOs

38. Local NGOs were engaged in documenting alleged crimes as well. In 2009, five Georgian NGOs published the report *In August Ruins* based on more than 1000 questionnaires, where IDPs described crimes against civilians in various villages of the region.²⁷ In addition, the report includes photo and video material relating to the commission of alleged crimes. Whilst the report relies on extensive field research and appears to be generally well documented, it does not address allegations against the Georgian military.

²⁴ Other International NGOs and human rights group networks that conducted field work in Georgia include the Norwegian and Austrian Helsinki committees for Human Rights, and the FLARE Network.

²⁵ Annex E.4.10: HRW, *Up in Flames*, GEO-OTP-0001-0336.

²⁶ Annex E.4.3: AI, *Civilians in the line of fire*, GEO-OTP-0001-0125.

²⁷ Annex E.5.1: *August Ruins*, GEO-OTP-0001-0999.

39. The Prosecution also considered information provided by Russian NGOs Human Rights Centre (HRC) “Memorial” and Demos Centre, following a fact-finding mission to Georgia that these organisations jointly conducted in October 2008. Their report focused on the situation in the “buffer zone” and is based on interviews with several eye witnesses as well as information from various sources, both of Russian and Georgian origin.²⁸

40. Furthermore, local NGOs participated in international observation missions deployed to the conflict area, or otherwise provided them with other forms of support, including contributing with research for mission reports.²⁹ For example, the final report of the Freedom Legality and Rights in Europe (FLARE) Network’s monitoring mission to Georgia was produced with the assistance of the Public Movement “Multinational Georgia”, which notably facilitated access to first-hand information in the field.³⁰

E. Article 15 communications received from direct victims

41. On 22 July 2013, the Prosecution received 93 individual communications from ethnic Georgians who allege to be victims of, and/or witness to, forcible displacement and inhumane treatment committed in South Ossetia or Gori and Kareli municipalities.³¹ The individual

²⁸ Annex E.5.2: Human Rights Centre “Memorial” and Demos Centre, “Humanitarian consequences of the armed conflict in the South Caucasus”, 31 October 2008, GEO-OTP-0001-1314.

²⁹ Annex E.5.4: The Georgian Human Rights Center – The Austrian Helsinki Association – The Norwegian Helsinki Committee – Caucasasia Centre for Human Rights and conflict studies, “Georgia – Russia War, August 2008”, 11 November 2008, GEO-OTP-0005-1103. See also, Annex E.4.17: Norwegian Helsinki Committee, “Unable or Unwilling, Georgia’s faulty investigation of crimes committed during and after the Russo-Georgian war of August 2008”, February 2011, GEO-OTP-0005-0738.

³⁰ Annex E.4.7: FLARE Network, “Civil Population’s condition in Georgia, including South Ossetia, during the conflict between Russian Federation and Georgia”, 2 September 2008, GEO-OTP-0005-0334.

³¹ The Government of Georgia referred to “Gori district” and “Kareli district” in its 10 May 2010 submission to the Prosecution while in its subsequent submissions of December 2011, November 2014 and March 2015 it replaced the term “Gori district” with “Gori municipality”, the latter being the new denomination of the area since a reform of the administrative division of Georgia in 2006. Other

communications appear to corroborate a number of reports from multiple sources relating to alleged forced displacement of ethnic Georgians.

F. Media

42. For this Application the Prosecution has also relied on media reports. The Prosecution systematically attempts to corroborate information from media reports with other sources. While the Office has sought to limit the use of media reports in support of this Application, it has done so only when relevant actors were directly quoted or interviewed by media outlets or to corroborate information from other sources. The Prosecution evaluated the reliability of all media sources used, taking into account factors and limitations affecting their reporting such as language barriers, security issues, reporters embedded into the armed forces of a party to the conflict, and cultural bias. The credibility of each media report was evaluated taking into account the immediacy of the source to the reported fact and the sources relied upon by the reporter.

sources, such as the OSCE, also referred to “Gori district” or “Kareli district” in their reports. See for example Annex E.2.38: OSCE-HRAM Report, GEO-OTP-0003-1921 at 1948.