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## Champions Of Justice: The Role Of Civil Society In The International Criminal Court's Preliminary Examination And Investigation Into The Situation In Georgia

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**CHAMPIONS OF JUSTICE: THE ROLE OF  
CIVIL SOCIETY IN THE  
INTERNATIONAL CRIMINAL COURT'S  
PRELIMINARY EXAMINATION AND  
INVESTIGATION INTO THE SITUATION  
IN GEORGIA**

*By B. Aloka Wanigasuriya\**

ABSTRACT

*In August 2008, an armed conflict erupted between Georgia and Russia in the pro-Russian breakaway region of South Ossetia. An estimated 850 lives were lost, and more than 100,000 civilians fled their homes during the conflict. On August 14, 2008, the Prosecutor of the International Criminal Court (ICC) announced the commencement of a preliminary examination into the situation in Georgia. Progress was slow. However, on January 27, 2016, Pre-Trial Chamber I granted authorization to the Prosecutor to open an investigation into the situation.*

*In Georgia, despite the presence of the necessary domestic legislative framework for prosecuting international crimes, national investigative and prosecutorial action pertaining to the alleged international crimes have come to a standstill. The initiation of the ICC's preliminary examination and investigation was heralded by Georgian civil society, who had predominantly taken up the task of seeking redress on behalf of victims. This article outlines the background of the conflict, the ICC's involvement in Georgia, the Georgian government actions and, most importantly, the role played by Georgian civil society in seeking justice for the alleged international crimes committed during the 2008 Russia-Georgia war. Finally, it sets out the present challenges and makes recommendations on how the ICC may better direct its efforts in Georgia.*

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INTRODUCTION

This article examines the role of civil society in the context of the International Criminal Court’s (ICC’s) preliminary examination and ongoing investigation into the situation in Georgia. The situation stems from the 2008 Russia-Georgia war, which took place between Georgia and the Russian Federation (Russia) and resulted in the alleged commission of international crimes. The ICC was quick to respond to the conflict, first initiating a preliminary examination into the situation and then an investigation. Its investigation into the situation is ongoing. The situation in Georgia and the ongoing ICC investigation are important to the entire international criminal justice project and the Court for several reasons. The Georgian situation is one of many firsts: the first instance where the ICC Prosecutor initiated an investigation into a situation arising outside of the African continent; the first instance of an investigation initiated into a situation in a post-Soviet country; and the first situation involving alleged crimes committed in the context of an international armed conflict.<sup>1</sup> Domestically in Georgia, despite the presence of the necessary domestic legislative framework for prosecuting international crimes, national investigative and prosecutorial action pertaining to the alleged international crimes have come to a standstill. Hence, the initiation of the ICC’s preliminary

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<sup>1</sup> Dr. Iryna Marchuk & Aloka Wanigasuriya, *Venturing East: The Involvement of the International Criminal Court in Post-Soviet Countries and its Impact on Domestic Processes*, 44 *FORDHAM INT’L L.J.* 735, 739 (2021).

examination and investigation was heralded by Georgian civil society who had predominantly taken up the task of seeking redress on behalf of victims of the Russia-Georgia war. Against this backdrop, Part I of this article sets out the background of the conflict and the ICC's preliminary examination and investigation. Part II outlines steps taken by the Georgian authorities. Part III discusses the role played by civil society in seeking justice for the alleged international crimes committed during the 2008 Russia-Georgia war. In conclusion, this article sets out the present challenges and makes recommendations on how the ICC may better direct its efforts in Georgia.

#### I. BACKGROUND OF THE CONFLICT AND THE ICC'S PRELIMINARY EXAMINATION AND INVESTIGATION

The 2008 Russia-Georgia war has ties to historical factors spanning back many decades. With the collapse of the Soviet Union (USSR) in the 1990s, pro-Russian South Ossetia and Abkhazia were reluctant to accept Georgian rule.<sup>2</sup> South Ossetia remained an autonomous region of Georgia until late 1990 when the Georgian government abolished its autonomy, which led to violent clashes between Ossetian and Georgian paramilitary forces.<sup>3</sup> The fighting continued despite Soviet military intervention in April 1991.<sup>4</sup> On April 9, 1991, Georgia proclaimed independence from the Soviet Union.<sup>5</sup> South Ossetians, however, held a referendum on January 19, 1992, with a majority of voters choosing to break away from Georgia and be incorporated into Russia, eventually leading the South Ossetian parliament to declare independence on May 29, 1992.<sup>6</sup> The claims of self-determination exacerbated the conflicts across South Ossetia and

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<sup>2</sup> Thomas D. Grant, *Frozen Conflicts and International Law*, 50 CORNELL INT'L L. J. 361, 383-90. (2017).

<sup>3</sup> Закон Республики Грузия от 11.12.1990 No. 63-I «Об упразднении Юго-Осетинской автономной области [Law of the Republic of Georgia No. 63-I on the Abolition of the Autonomous Oblast of South Ossetia] (Dec. 11, 1990).

<sup>4</sup> COUNCIL OF THE EUROPEAN UNION, INDEPENDENT INTERNATIONAL FACT-FINDING MISSION ON THE CONFLICT IN GEORGIA: REPORT (VOL. II), at 71 (Sept. 2009).

<sup>5</sup> *Id.* at 151.

<sup>6</sup> Grant, *supra* note 2, at 383.

Abkhazia, and raged on until a ceasefire brokered in 1994 subdued the fighting.<sup>7</sup>

Following the ceasefire, the conflict remained frozen<sup>8</sup> until 2003, when former Georgian president Mikheil Saakashvili came to power following the ‘Rose Revolution’. His campaign promises included North Atlantic Treaty Organization (NATO) membership for Georgia and restoring Georgian control over South Ossetia and Abkhazia.<sup>9</sup> Five years later, in 2008, Kosovo’s declaration of independence from Serbia strengthened South Ossetian and Abkhazian aspirations for independence. Moreover, in early 2008, Russia initiated closer ties with South Ossetia and Abkhazia, which further soured its relationship with Georgia.<sup>10</sup> Tensions between Russia and Georgia reached an all-time high resulting in a five-day armed conflict in the pro-Russian breakaway region of South Ossetia in August 2008. An EU-mediated Six Point Agreement between Georgia and Russia put an end to hostilities.<sup>11</sup> However, according to

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<sup>7</sup> On October 31, 1994, representatives from Georgia, Russia, South Ossetia, and North Ossetia signed an Agreement on Further Development of Georgian-Ossetian Peaceful Settlement Process and on Joint Control Commission. This came after Georgia and Russia signed the Agreement on Principles of Settlement of the Georgian-Ossetian Conflict (“Sochi Agreement”) on June 24, 1992. *Id.* at 384.

<sup>8</sup> The lack of active hostilities for a period of many years despite the lack of peace led to the conflict being classified as being “frozen”. Erin Mooney, *From Solidarity to Solutions: The Government Response to Internal Displacement in Georgia*, in FROM RESPONSIBILITY TO RESPONSE: ASSESSING NATIONAL APPROACHES TO INTERNAL DISPLACEMENT 179 (The Brookings Inst.-London Sch. of Econ., Project on Internal Displacement 2011).

<sup>9</sup> *FACTBOX: Facts about the 2008 war in Georgia*, REUTERS (Aug. 4, 2009, 6:14 AM), <https://www.reuters.com/article/us-georgia-war-conflict-sb/factbox-facts-about-the-2008-war-in-georgia-idUSTRE5732TH20090804> (last visited Jan. 6, 2020.); Marchuk & Wanigasuriya, *supra* note 1, at 738.

<sup>10</sup> Grant, *supra* note 2, at 385.

<sup>11</sup> *Frozen conflicts in Georgia: is there a way out?*, EUROPEAN PARLIAMENT: BRIEFING (June 7, 2018, 4:47 PM), <https://www.europarl.europa.eu/news/en/agenda/briefing/2018-06-11/9/frozen-conflicts-in-georgia-is-there-a-way-out> (last visited Jan. 12, 2020.).

an EU fact-finding report, an estimated 850 people were killed, and more than 100,000 civilians fled their homes during the conflict.<sup>12</sup>

Following the 2008 Russia-Georgia war, allegations were made that international crimes had been committed during the conflict. The ICC's subsequent reaction was swift. Its Prosecutor announced the commencement of a preliminary examination into the situation on August 14, 2008.<sup>13</sup> However, its progress was slow. Seven years elapsed before the Prosecutor submitted her request for authorisation of an investigation into the situation in Georgia to Pre-Trial Chamber I on October 13, 2015.<sup>14</sup> However, following this, it only took four months before authorisation to investigate alleged war crimes and crimes against humanity committed in and around South Ossetia between July 1, 2008 and October 10, 2008 was granted by the Pre-Trial Chamber ("PTC") on January 27, 2016.<sup>15</sup>

The initiation of the ICC investigation was particularly heralded by members of civil society who had predominantly taken up the task of seeking redress for victims in Georgia. Civil society has long played an important role in terms of the ICC. Their role during the negotiation process for the Rome Statute, the ICC's constitutive instrument, has been viewed as a significant illustration of civil society's influence in the design of international institutions and the development of international law.<sup>16</sup> Since the Court's inception, civil

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<sup>12</sup> COUNCIL OF THE EUROPEAN UNION, INDEPENDENT INTERNATIONAL FACT-FINDING MISSION ON THE CONFLICT IN GEORGIA: REPORT (VOL. I), at 5 (Sept. 2009).

<sup>13</sup> *Georgia*, ICC, <https://www.icc-cpi.int/georgia> (last visited March 22, 2021).

<sup>14</sup> Situation in Georgia, Case No. ICC-01/15, Request for Authorisation of an Investigation Pursuant to Article 15 (Oct. 13, 2015), [https://www.icc-cpi.int/CourtRecords/CR2015\\_19375.PDF](https://www.icc-cpi.int/CourtRecords/CR2015_19375.PDF); Situation in Georgia, Case No. ICC 01/15, Corrected Version of "Request for authorisation of an investigation pursuant to article 15", Oct. 16, 2015, ICC-01/15-4-Corr (Nov. 17, 2017), [https://www.icc-cpi.int/CourtRecords/CR2015\\_21221.PDF](https://www.icc-cpi.int/CourtRecords/CR2015_21221.PDF).

<sup>15</sup> Situation in Georgia, Decision on the Prosecutor's request for authorization of an investigation, ¶ 7, ¶ 26 (Jan. 27, 2016), [https://www.icc-cpi.int/courtrecords/cr2016\\_00608.pdf](https://www.icc-cpi.int/courtrecords/cr2016_00608.pdf).

<sup>16</sup> Sarah Williams, *Civil Society Participation in Preliminary Examinations*, in 2 QUALITY CONTROL IN PRELIMINARY EXAMINATIONS 553 (Morten Bergsmo & Carsten Stahn eds., 2018).

society has continued to play a vital role in terms of the Court's ongoing activities in situation countries. Civil society actors have facilitated the international criminal justice process by submitting communications regarding alleged international crimes to the ICC,<sup>17</sup> assisting victims in making submissions to the Court,<sup>18</sup> taking part in ICC non-governmental organization ("NGO") roundtable sessions in order to highlight concerns and avenues for improvement,<sup>19</sup> and more. In Georgia, civil society has played an active role throughout the ICC's preliminary examination process and the current ICC investigation. To date, civil society continues to monitor the activities of the Court and the Georgian government, highlighting the expectations of affected communities, outlining areas requiring further attention, and most importantly, spearheading calls for justice for the international crimes allegedly committed during the 2008 Russia-Georgia war.

## II. GEORGIAN GOVERNMENT RESPONSE

When the Russia-Georgia conflict erupted in 2008, Georgian domestic legislation was already well equipped to conduct domestic prosecutions for any international crimes committed during the conflict. Georgia had already signed the Rome Statute on July 18, 1998 and deposited its instrument of ratification on September 5, 2003.<sup>20</sup> Subsequent to ratifying the Rome Statute, the country brought its

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<sup>17</sup> *Meet our Members: Civil Society's role in Georgia: Interview with Ms. Nino Tsagareshvili*, COALITION FOR THE ICC (Oct. 22, 2019), <http://www.coalitionfortheicc.org/news/20191022/civil-societys-role-georgia-interview-with-nino> (last visited Jan. 5, 2020).

<sup>18</sup> Situation in Georgia, Case No. ICC-01/15, Public With Public Annex A and Confidential Annex B. Report on the Victims' Representations Received Pursuant to Article 15(3) of the Rome Statute, ¶ 13 (Dec. 4, 2015), [https://www.icc-cpi.int/CourtRecords/CR2015\\_23215.PDF](https://www.icc-cpi.int/CourtRecords/CR2015_23215.PDF); Int'l P'ship for Human Rights, *Representations Submitted on Behalf of Victims of International Crimes in the Situation in Georgia Pursuant to Article 15(3) of the Rome Statute to the International Criminal Court*, Case No: ICC-01/15 (Nov. 12, 2015), <https://www.srji.org/upload/medialibrary/b51/icc-georgia-submission-without-annexes.pdf> (last visited Aug. 5, 2020).

<sup>19</sup> *Annual Round Table Meeting Held between ICC and NGOs*, HUMAN RIGHTS CENTER (June 21, 2017), <http://humanrights.ge/index.php?a=main&pid=19257&lang=eng> (last visited Jan. 6, 2020).

<sup>20</sup> *Georgia*, ICC, <https://www.icc-cpi.int/georgia> (last visited March 22, 2021).

domestic laws, the Criminal Code of Georgia (CCG), in line with the Statute so as to allow any possible national prosecutions of international crimes. For instance, the amendments to the Criminal Code of Georgia provided for the “surrender and extradition of offenders” suspected of committing international crimes to the ICC for prosecution.<sup>21</sup> Moreover, Section 14 of the CCG criminalizes a category of crimes named, “Crime against Humanity, Peace and Security and against International Humanitarian Law” (Articles 404-413), which includes: the crime of aggression (Articles 404-405); genocide (Article 407); crimes against humanity (Article 408); and war crimes (Articles 411-413).<sup>22</sup> However, following the Russia-Georgia conflict, it was yet to be seen if and how these laws would be utilized in practice in order to initiate domestic investigations and prosecutions for the alleged commission of international crimes.

Initially, while it appeared as though the national authorities in both Georgia and Russia were conducting investigations into the alleged crimes committed during the Russia-Georgia war, by October 2015, this only held true for Russia, who was investigating the alleged attacks against Russian peacekeepers.<sup>23</sup> In Georgia, the national authorities initiated some investigative steps between August 2008 and November 2014.<sup>24</sup> For instance, in its 2015 application to the PTC seeking authorization of an investigation, the ICC’s Office of the Prosecutor (OTP) noted that the Chief Prosecutor of Georgia had reportedly interviewed over 7,000 witnesses and taken a number of other domestic investigative steps including the conduction of on-site investigations in over thirty affected areas, forensic medical and property analyses, and more.<sup>25</sup> However, attempts by international and domestic civil society organizations to obtain information regarding

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<sup>21</sup> Criminal Code of Georgia, Art. 6, LHG, 41(48) (1999).

<sup>22</sup> *Id.*

<sup>23</sup> Situation in Georgia, Corrected Version of “Request for authorisation of an investigation pursuant to article 15”, *supra* note 14, ¶¶ 41-42; Situation in Georgia, Decision on the Prosecutor’s request for authorization of an investigation, *supra* note 15, ¶¶ 47-50.

<sup>24</sup> Situation in Georgia, Decision on the Prosecutor’s request for authorization of an investigation, *supra* note 15, ¶ 41, ¶¶ 278-302.

<sup>25</sup> Situation in Georgia, Corrected Version of “Request for authorisation of an investigation pursuant to article 15”, *supra* note 14, ¶ 288.



the progress of domestic investigations in Georgia were often unsuccessful. For instance, according to the Norwegian Helsinki Committee, their letters to the Georgian Ministry of Justice seeking information regarding domestic investigations went unanswered.<sup>26</sup> Domestic civil society actors have similarly stated that it has been difficult to ascertain the progress and effectiveness of national investigations, and that the disclosure of information regarding such investigative activities by the Georgian authorities has been sparse.<sup>27</sup>

According to the OTP, a lull in national proceedings was observed in Georgia from the end of 2012 to mid-2014. Eventually, in a letter dated March 17, 2015, the Georgian government informed the OTP that national proceedings into cases related to the displacement of ethnic Georgians from South Ossetia had been suspended indefinitely.<sup>28</sup> Perhaps as further justification, in a statement made at the 16<sup>th</sup> Assembly of States Parties in 2017, the Georgian Deputy Minister for Justice, Mr. Gocha Lordkipanidze, stated that while his country had “carried out unprecedented [domestic] investigation[s] . . . despite continued efforts [their] ability to carry out additional necessary investigative measures in those territories . . . is hampered by the continued [Russian] occupation.”<sup>29</sup> The March 17, 2015 letter to the OTP signalled to the Court that domestic prosecutions in Georgia had come to a standstill and had a significant impact on the complementarity assessment that was being carried out by the OTP. The OTP eventually assessed that the admissibility threshold for the initiation of an ICC investigation would be met “due to State inaction”

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<sup>26</sup> NORWEGIAN HELSINKI COMMITTEE, UNABLE OR UNWILLING? GEORGIA’S FAULTY INVESTIGATION OF CRIMES COMMITTED DURING AND AFTER THE RUSSO-GEORGIAN WAR OF AUGUST 2008, at 15 (Feb. 2011).

<sup>27</sup> *Id.*

<sup>28</sup> Situation in Georgia, Decision on the Prosecutor’s request for authorization of an investigation, *supra* note 15, ¶¶ 41-42.

<sup>29</sup> Ministry of Justice of Georgia, Statement of the Deputy Minister of Justice of Georgia H.E. Mr. Gocha Lordkipanidze: General Debate of the 16<sup>th</sup> Assembly of States Parties to the Rome Statute of the International Criminal Court (Dec. 6, 2016), [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP16/ASP16-GEO.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ASP16-GEO.pdf).

in Georgia, thus paving the way for its request to the PTC seeking authorization for initiating an investigation into the situation.<sup>30</sup>

As for the claims of having undertaken unprecedented national investigations in Georgia, a 2019 report released by a combination of Georgian civil society organizations, which included data covering the majority of Internally Displaced Person (IDP) communities spread across Georgia and consisted of victims of the alleged international crimes, revealed that ninety-four percent of respondents had never been contacted by domestic investigative authorities.<sup>31</sup> An earlier report by the Norwegian Helsinki Committee, based on interviews with victims of serious crimes allegedly committed during the conflict and conducted at several villages in the Gori and Kareli regions, found that Georgian police had neither investigated certain crimes nor carried out forensic examinations.<sup>32</sup> According to this 2010 report, victims generally possessed limited faith in domestic investigations and doubted the chances of ever achieving accountability.<sup>33</sup>

As for the ICC and its actions in Georgia, as further elucidated in the following sections of this article, the affected populations' awareness of these interventions was also sparse. Amidst the lack of awareness found in victim populations regarding the ICC's mandate, it is reported that some senior Georgian government officials visited IDP camps in order to educate victims about the Court.<sup>34</sup> Despite its domestic investigative and prosecutorial activities having come to a standstill, Georgia has been receptive of the ICC and its activities. The country has been steadfast in confirming its commitment to the Court,

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<sup>30</sup> Situation in Georgia, Corrected Version of "Request for authorisation of an investigation pursuant to article 15," *supra* note 14, ¶ 42, ¶¶ 279-303.

<sup>31</sup> MARIAM ANTADZE ET. AL., 10 YEARS AFTER THE AUGUST WAR: VICTIMS OF THE SITUATION IN GEORGIA 34 (2019).

<sup>32</sup> NORWEGIAN HELSINKI COMMITTEE, *supra* note 26, at 17.

<sup>33</sup> *Id.* at 17-18.

<sup>34</sup> It is reported that, in May 2017, the Georgian deputy justice minister travelled personally to the Gori and Kareli IDP camps in order to educate victims regarding the Court. See Stephanie Maupas, *Wake Up to Suffering of Georgian Victims, NGOs Tell International Court*, JUSTICEINFO (Feb. 8, 2018) <https://www.justiceinfo.net/en/tribunals/icc/36377-wake-up-to-suffering-of-georgian-victims-say-human-rights-groups.html> (last visited Jan. 7, 2020).

repeatedly assuring the Court of its cooperation.<sup>35</sup> While the preliminary examination process was ongoing, Georgia provided the OTP with twelve submissions, which included eight submissions on the status of relevant national proceedings.<sup>36</sup> Moreover, following the initiation of the ICC investigation, high-level Georgian officials – including the Georgian prime minister at the time, Giorgi Kvirikashvili, and the Georgian minister of justice, Tea Tsulukiani – welcomed the Court’s decision, assuring the ICC of the Country’s active cooperation with the Court.<sup>37</sup> In line with this commitment, the ICC’s Registrar visited Georgia in mid-2017 in order to sign a cooperation agreement with the Government of Georgia which would facilitate the Court’s ongoing investigative activities in the country.<sup>38</sup> In recent years, further demonstrating Georgian cooperation with the Court, the Georgian government entered into an agreement with the ICC in January 2019, entitled “Agreement on the Enforcement of Sentences,” that would facilitate those convicted by the Court, serving their sentences in Georgia.<sup>39</sup>

Regardless of the above actions, due to the Georgian authorities’ inability to investigate and prosecute the alleged international crimes committed during the 2008 Russia-Georgia conflict, Georgian victims have been left in a precarious position. This has meant that victims must now rely on non-governmental actors (*i.e.*, civil society) for assistance and guidance on external avenues through which to obtain justice.

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<sup>35</sup> Ministry of Justice of Georgia, *supra* note 29.

<sup>36</sup> Situation in Georgia, Case No. ICC-01/15-4-AnxJ-Corr, Corrected Version of Annex J to Request for Authorisation of an Investigation Pursuant to Article 15, ¶¶ 2-5, ¶ 8 (Nov. 18, 2015), [https://www.icc-cpi.int/RelatedRecords/CR2015\\_21302.PDF](https://www.icc-cpi.int/RelatedRecords/CR2015_21302.PDF).

<sup>37</sup> Coalition for the ICC, *Georgia: A Test Case for the ICC’s Future*, #GLOBALJUSTICE WEEKLY (Feb. 23, 2016), <https://cicglobaljustice.wordpress.com/2016/02/23/georgia-a-test-case-for-the-iccs-future/> (last visited Aug. 5, 2020.).

<sup>38</sup> *ICC signs cooperation agreement with Government of Georgia*, ICC (July 27, 2017), <https://www.icc-cpi.int/Pages/item.aspx?name=pr1327> (last visited Jan. 6, 2020.).

<sup>39</sup> *ICC and Government of Georgia conclude Agreement on the Enforcement of Sentences*, ICC (Jan. 24, 2019), <https://www.icc-cpi.int/Pages/item.aspx?name=pr1432> (last visited Jan. 17, 2020.).

## III. CIVIL SOCIETY RESPONSE

## A. Documenting alleged crimes, providing assistance to victims, and advocating for the initiation of an ICC investigation

In Georgia, from the outset, due to the lack of national prosecutions, much of the burden of seeking justice on behalf of victims of the conflict has been shouldered by civil society.<sup>40</sup> Georgian civil society has worked tirelessly to document the alleged international crimes, advocate on behalf of victims, and to provide legal and other assistance to victims. The extent of the undertaking shouldered by civil society is due to several factors, including the reluctance of national authorities to share information with civil society and the public and political unwillingness to deal with the conflict-related crimes.<sup>41</sup>

Following the aftermath of the war, several Georgian NGOs joined forces and were at the forefront of interviewing thousands of victims to document the alleged violations of international law committed during the 2008 Russia-Georgia war. They travelled to villages located within the conflict zone and the “buffer zone” in order to communicate directly with victims and to collect evidence of the alleged crimes.<sup>42</sup> They collected information both at IDP settlements, and later in villages, once Russian forces had left.<sup>43</sup> The obtained evidence was compiled into the August Ruins report.<sup>44</sup> This report was subsequently communicated to the ICC’s OTP in 2009 pursuant to Article 15 of the Rome Statute with the view of assisting the OTP in its preliminary examination activities.<sup>45</sup> The August Ruins report was the first step by Georgian civil society to document the alleged human rights violations and other international crimes committed during the August 2008 war. Subsequently, the international NGO the Norwegian Helsinki Committee also communicated four additional

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<sup>40</sup> Marchuk & Wanigasuriya, *supra* note 1, at 759.

<sup>41</sup> *Id.*

<sup>42</sup> GEORGIAN YOUNG LAWYERS’ ASSOCIATION ET AL., AUGUST RUINS vii (Tinatin Khidasheli ed., 2008).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Meet our members*, COALITION FOR THE ICC, *supra* note 17.

reports to the ICC regarding the conduction of domestic investigations in both Georgia and Russia.<sup>46</sup>

Seeking additional avenues through which to obtain justice for victims, Georgian civil society actors later utilized the collected material to assist victims when submitting applications to the European Court of Human Rights (ECtHR).<sup>47</sup> As a result, by 2011, the Georgian Young Lawyers' Association, Article 42 of the Constitution (now known as Rights Georgia), and the Norwegian Helsinki Committee were representing victims in over one hundred individual cases linked to the 2008 Russia-Georgia war at the ECtHR.<sup>48</sup> However, despite the high number of individual applications lodged at the ECtHR, progress has been slow. Some civil society actors have voiced the opinion that the Russia-Georgia conflict is perhaps "too big and serious to be confronted at the local or even regional level".<sup>49</sup> Hence, for some victims who are fatigued by the long wait they experienced at the ECtHR, a high degree of hope with regard to obtaining justice now lies with the ICC.

In terms of the information it has received regarding the 2008 Russia-Georgia war, the ICC's OTP has acknowledged the high quality of the submissions it has received from Georgian civil society.<sup>50</sup> However, in her request seeking the PTC's authorization to initiate an investigation, the Prosecutor relied on an evidentiary base comprised of public source documents, previous non-judicial investigations, and

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<sup>46</sup> Heather Yundt, *ICC Prosecutor Seeks Investigation of Russia-Georgia War*, INSTITUTE FOR WAR AND PEACE REPORTING (Nov. 3, 2015), <https://iwpr.net/global-voices/icc-prosecutor-seeks-investigation-russia> (last visited Jan. 30, 2019).

<sup>47</sup> *Id.*; Giorgi Janelidze, *Five Georgian NGOs Appealed to the Justices of the International Criminal Court*, HUMAN RIGHTS HOUSE FOUNDATION (Nov. 20, 2015), <https://humanrightshouse.org/articles/five-georgian-ngos-appealed-to-the-justices-of-the-international-criminal-court/> (last visited Jan. 7, 2020).

<sup>48</sup> NORWEGIAN HELSINKI COMMITTEE, *supra* note 26, at 16.

<sup>49</sup> Coalition for the ICC, *supra* note 37; Nika Jeiranashvili, *The Georgian Experience: A Story of How the ICC is Failing Victims in its First Case Outside Africa*, INT'L JUST. MONITOR (May 10, 2018), <https://www.ijmonitor.org/2018/05/the-georgian-experience-a-story-of-how-the-icc-is-failing-victims-in-its-first-case-outside-africa/> (last visited Aug. 5, 2020).

<sup>50</sup> HUMAN RIGHTS WATCH, *PRESSURE POINT: THE ICC'S IMPACT ON NATIONAL JUSTICE* 74 (2018).

media sources, thus excluding the reports submitted to it by these Georgian sources.<sup>51</sup> As some international NGOs opine, the lack of communication between the Georgian government and civil society placed the latter in a disadvantageous position.<sup>52</sup> According to these commentators, the inability of Georgian civil society to furnish the OTP with information regarding domestic investigative activities has weakened its position with the Court.<sup>53</sup>

Regardless, Georgian civil society organizations continuously urged the ICC to initiate an investigation into the situation in Georgia. For example, on April 24, 2012, a network of Georgian and international NGOs submitted an open letter to the Prosecutor urging her to open an investigation into the crimes allegedly committed during the 2008 Russia-Georgia conflict.<sup>54</sup> Subsequently, following the Prosecutor's request to the PTC for authorization of an investigation, five Georgian civil society organizations submitted a written statement urging the PTC judges to authorize the Prosecutor's request.<sup>55</sup> Additionally, with a view to further assisting victims and facilitating the ICC process, following the Prosecutor's request for authorization of an investigation into the situation in Georgia, Georgian civil society organizations visited numerous conflict-affected villages such as Ergneti and Nikozi, assisting victims of the alleged crimes to submit representations to the PTC highlighting their views and expectations.<sup>56</sup> When the ICC investigation finally came to fruition, its initiation was celebrated by members of Georgian civil society. As the chair of the Georgian Young Lawyers Association, Ana Natsvlshvili, stated in a media release, "[years] after . . . the August 2008 war, perpetrators continue to live with impunity while victims of grave human rights and international humanitarian law violations are left without any redress,

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<sup>51</sup> Williams, *supra* note 16, at 559.

<sup>52</sup> HUMAN RIGHTS WATCH, *supra* note 50, at 77.

<sup>53</sup> *Id.*

<sup>54</sup> ICC OFFICE OF THE PROSECUTOR, REPORT ON PRELIMINARY EXAMINATION ACTIVITIES 32 (Nov. 22, 2012).

<sup>55</sup> Janelidze, *supra* note 47.

<sup>56</sup> Situation in Georgia, *supra* note 18, ¶ 13; Int'l P'ship for Human Rights, *supra* note 18.

the long-awaited opening of an ICC investigation and prospects for justice is welcome”.<sup>57</sup>

Georgian civil society hoped that the ICC would investigate a range of alleged crimes committed both in South Ossetia and Abkhazia leading to future prosecutions at the Court.<sup>58</sup> In order to remain engaged with the process and keep interest alive, in July 2019, eleven years after the conclusion of the armed conflict, the Georgian civil society organizations comprising the Georgian Coalition for International Criminal Court (GCICC)<sup>59</sup> launched a report titled ‘10 Years after the August War: Victims of the Situation in Georgia’.<sup>60</sup> The report includes an analysis of the ICC’s activities and involvement since the opening of its investigation into the situation in Georgia and the findings of in-depth sociological research conducted in 2018.<sup>61</sup> It is based on research covering the majority of victims’ settlements dotted throughout Georgia, encompassing over 2,400 families.<sup>62</sup> The report makes constructive recommendations both for Georgian government authorities as well as for the different organs of the ICC, including the OTP, Registry, Trust Fund for Victims, and the ICC’s country office in Georgia.<sup>63</sup> The report was compiled as an avenue through which to inform the public and the international community about the Georgian situation vis-à-vis the ICC, shed light on the plight of victims, and focus the world’s attention on the situation in Georgia.<sup>64</sup> Additionally, Georgian civil society organizations have been active participants at international fora including at ICC NGO roundtable meetings, ICC Assembly of States Parties sessions, and ICC

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<sup>57</sup> Coalition for the ICC, *supra* note 37.

<sup>58</sup> *Id.*

<sup>59</sup> The GCICC is comprised of six NGOs: (i) Georgian Young Lawyers’ Association (GYLA); (ii) Human Rights Center; (iii) Rights Georgia (previously known as Article 42 of the Constitution); (iv) Justice International; (v) The Georgian Centre for Psychosocial and Medical Rehabilitation of Torture Victims (GCRT); and (vi) International Center on Conflict and Negotiation (ICCN).

<sup>60</sup> ANTADZE ET. AL. *supra* note 31.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *10 Years after the August War: Victims of the Situation in Georgia*, GEORGIAN NATIONAL COALITION FOR THE ICC (July 23, 2019), <http://www.coalitionfortheicc.org/situation-in-georgia> (last visited Jan. 5, 2020).

side events, where they have been highlighting the need for accountability and increased ICC action, and areas for improvement.<sup>65</sup>

B. Advocating for informed and timely ICC action: bridging the communication gap between the ICC and the public

During the ICC's preliminary examination stage, the OTP received the cooperation of both Georgian and Russian authorities, who strove to advance their own individual accountability narratives. During this stage, the OTP was in regular contact with relevant actors including civil society and national authorities in Georgia and Russia in order to gather relevant information regarding the alleged crimes, to ascertain the genuineness of any national prosecutions, and to verify information.<sup>66</sup> However, NGOs such as Human Rights Watch have observed that, compared to high levels of OTP engagement in situations such as those in Guinea and Colombian, ICC engagement in Georgia has been comparably limited.<sup>67</sup>

At the initiation of the ICC investigation, civil society organisations stressed the importance of the Court, and especially the OTP, adopting a clear and timely court-wide strategy outlining the ICC's engagement in Georgia. Here, the importance of outreach activities and clear communication between the Court and relevant national actors was stressed as a vital component to be considered.

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<sup>65</sup> Simon Papuasvili, Statement on Behalf of the Georgian Coalition for War Crimes Documentation: 8<sup>th</sup> Assembly of States Parties to the Rome Statute of the International Criminal Court (2009), [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP8/Statements/ICC-ASP-ASP8-GenDeba-Georgian%20CoalitionWarCrimes-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP8/Statements/ICC-ASP-ASP8-GenDeba-Georgian%20CoalitionWarCrimes-ENG.pdf); *Annual Round Table Meeting Held between ICC and NGOs*, HUMAN RIGHTS CENTER, *supra* note 19; *Georgian NGOs held Meetings with the Representatives of International Criminal Court*, GEORGIAN YOUNG LAWYERS' ASSOCIATION (May 25, 2018), <https://gyla.ge/en/post/arasamtavrobo-organizaciebi-saqartvelodan-haagashi-siskhlis-samartlis-saertashoriso-sasamartlos-tsarmomadgenlebs-shekhvdnen#sthash.UiOdwJhT.dpbs> (last visited Jan. 6, 2020.).

<sup>66</sup> Situation in Georgia, Corrected Version of "Request for authorisation of an investigation pursuant to article 15", *supra* note 14, ¶ 38.

<sup>67</sup> Mark Kersten, *The ICC's Impact on National Justice Can the ICC Prosecutor Catalyze Domestic Cases?*, JUSTICE IN CONFLICT (Dec. 6, 2018), <https://justiceinconflict.org/2018/12/06/the-iccs-impact-on-national-justice-can-the-icc-prosecutor-catalyze-domestic-cases/> (last visited Feb. 12, 2019.).



However, from the very outset, concerns were voiced regarding the realities the Court may face when conducting its investigation. As Elizabeth Evenson, senior international justice counsel at Human Rights Watch has stated, “[t]he Georgia investigation is a reminder that the ICC is dealing with more and different kinds of cases than envisioned at its creation in 1998” and “the court and its member countries should face [the] reality about what the ICC will need in resources, in cooperation, and in political support to deliver on its mandate in this changed landscape.”<sup>68</sup> During the first year following the initiation of the ICC investigation into the situation in Georgia, the Court was repeatedly criticized for its limited engagement with victims and civil society on the ground. Perhaps most startlingly, during a joint visit undertaken by Georgian and international NGOs to the Tserovani IDP settlement in December 2016, it was discovered that most victims had never heard of the ICC or that it had initiated an investigation in 2015 into the war that rendered them IDPs.<sup>69</sup>

Moreover, being the first situation investigated outside of the African continent, certain civil society actors expressed the sentiment that the Court was unfamiliar with the region in which they were operating.<sup>70</sup> Additionally, having previously had limited reasons for interacting with the Court, Georgians were also unfamiliar with the ICC as a judicial institution.<sup>71</sup> Differentiating the ICC from other judicial institutions based in The Hague, such as the International Court of Justice (ICJ), and understanding the ICC’s mandate and the parameter’s within which the Court must operate, is undoubtedly a difficult task for non-experts. Inter-state proceedings linked to the same conflict have been initiated at the ICJ. However, many fail to distinguish between the two institutions. Even Georgian government officials and politicians have been criticised for conflating the ICC

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<sup>68</sup> *Georgia/Russia: ICC Judges OK Investigation*, HUMAN RIGHTS WATCH (Jan. 27, 2016) <https://www.hrw.org/node/286248/printable/print> (last visited Mar. 22, 2021).

<sup>69</sup> *Georgia must enable access to justice for victims of 2008 war*, HUMAN RIGHTS CENTER (Jan. 10, 2017), <http://www.hridc.org/index.php?a=news&nid=175&lang=en> (last visited Jan. 30, 2019).

<sup>70</sup> Jeiranashvili, *supra* note 49.

<sup>71</sup> Marchuk & Wanigasuriya, *supra* note 1, at 761.

investigation with proceedings initiated at the ICJ.<sup>72</sup> Confusion also seems to reign amongst victims regarding the difference between the ICC and the ECtHR. Given this background, civil society organizations have been particularly critical of the ICC for not conducting outreach activities in order to differentiate between the various parallel proceedings and especially to outline the differences between itself and the ICJ, which has led Georgians to believe that the ICC has been investigating an inter-state claim filed by Georgia against Russia.<sup>73</sup>

Given this stark gap in information and the Court's limited engagement with victim populations, civil society has played a key role in building bridges between the ICC and those affected by the 2008 Russia-Georgia war. NGOs such as the Human Rights Center, in partnership with other civil society organizations working under the framework of the GCICC, have visited IDP settlements and provided information to victims about the ICC process.<sup>74</sup> However, victims appear to be losing hope, believing that the ICC process will fail to yield any tangible results.<sup>75</sup> The time it has taken for the ICC to conduct its preliminary examination, and now its investigation, is seen as a hindrance, as is the bureaucracy surrounding the situation.<sup>76</sup>

In more positive news, the ICC's, and especially the OTP's, engagement efforts in Georgia have improved since the first year of initiating its investigation. A team of investigators has been established and several other activities have been initiated. The ICC and its organs, including the OTP, Public Information and Outreach Section, the Victims Participation and Reparations Section, and the Trust Fund for Victims, appear to have stepped up their activities in Georgia. Throughout 2019, representatives of the Court visited the country meeting with local civil society, providing interviews to journalists, arranging information sessions for affected communities and

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<sup>72</sup> ANTADZE ET. AL., *supra* note 31, at 39.

<sup>73</sup> *Id.*; Jeiranashvili, *supra* note 49.

<sup>74</sup> *Waiting on the ICC in Georgia*, JUSTICE HUB (Apr. 23, 2018), <https://justicehub.org/article/waiting-on-the-icc-in-georgia/> (last visited Jan. 23, 2020).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

conducting training sessions for local lawyers on victims' participation.<sup>77</sup>

In terms of the ongoing investigation, the head of the ICC's Georgian country office has stressed that it is progressing at full speed and that OTP staff are constantly being deployed to the field in furtherance of the investigation.<sup>78</sup> However, the confidential nature surrounding the OTP's investigative activities, while vital and an essential element of the investigation process, has inadvertently meant that the public has gained limited insight regarding the Court's investigative efforts and their progress. Given this, civil society activists have repeatedly called upon the Court to conduct vigorous outreach and public information activities.<sup>79</sup> In response, the OTP has repeatedly reiterated the extreme level of confidentiality that is crucial for the preservation of the integrity of the investigation.<sup>80</sup> While statements have been made by ICC officials outlining that the ongoing investigative activities are independent of public outreach and engagement activities,<sup>81</sup> this aspect needs to be communicated broadly in order to instil trust in the Court's activities and lessen the chances for the spread of misinformation regarding the Court. This is especially

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<sup>77</sup> In May 2019, representatives from the aforementioned organs of the Court visited the country meeting with local civil society, providing interviews to journalists, arranging information sessions for affected communities, and conducting training sessions for local lawyers on victims' participation. *Id.*; *ICC marks 17 July, Day of International Criminal Justice*, ICC (July 17, 2019), <https://www.icc-cpi.int/Pages/item.aspx?name=pr1471> (last visited Jan. 6, 2020).

<sup>78</sup> Vazha Tavberidze, *Int'l Criminal Court Opens Field Office in Georgia, Led by Head of Office Dr Kaupo Kand*, GEORGIA TODAY (Feb. 15, 2018), <http://gtarchive.georgiatoday.ge/news/9128/Int%E2%80%99l-Criminal-Court-Opens-Field-Office-in-Georgia,-Led-by-Head-of-Office-Dr-Kaupo-Kand> (last visited Mar. 22, 2021).

<sup>79</sup> Nika Jeiranashvili, *How the ICC Can Still Be Meaningful in Georgia*, JUSTICEINFO (May 28, 2019), <https://www.justiceinfo.net/en/justiceinfo-comment-and-debate/opinion/41542-how-the-icc-can-still-be-meaningful-in-georgia.html> (last visited Jan. 6, 2020).

<sup>80</sup> Jared Ferrie, *Georgians Want Answers from the ICC*, JUSTICEINFO (May 2, 2020), <https://www.justiceinfo.net/en/tribunals/icc/41298-georgians-want-answers-from-the-icc.html> (last visited Jan. 6, 2020).

<sup>81</sup> Tavberidze, *supra* note 78.

vital given that the Court has repeatedly been criticised for its lengthy investigation and lack of transparency.<sup>82</sup>

Georgian civil society has called for a more balanced approach in terms of informing victims and the Georgian public of the Court's activities. Pointing especially to the need for managing the expectations of victims, civil society members have stressed that being informed of the progress of the investigation, at least to the extent of the non-confidential aspects that would not jeopardize the investigation, would assist in ensuring the cooperation of victims and prepare the public for possible future events.<sup>83</sup> Moreover, civil society actors have pointed to the need for the Court to outline the obstacles it faces and may face during the conduction of its investigation and during any future prosecutorial processes.<sup>84</sup> Georgian civil society actors have especially stressed the importance of informing victims and the Georgian public about several issues that the ICC might encounter during its investigation.<sup>85</sup> These issues may include: The lack of Russian cooperation; not being able to gain access to Russian or pro-Russian held territories in order to collect evidence; and should the investigation lead to the issuing of arrest warrants, the reduced prospects of securing the arrest of alleged Russian accused and the possibility that only Georgian accused may be subject to prosecution. Especially given statements by senior political figures, such as the former Georgian minister of defense, that no proof exists of any international crimes having been committed by Georgians,<sup>86</sup> in order to minimize the chances of any future backlash by the Georgian public, it is vital that the ICC clearly communicate that it may investigate all parties to the conflict, including Georgians.

### C. Advocating the establishment of an ICC country office in Georgia

The December 2017 opening of the ICC country office in Tbilisi, Georgia was widely heralded as a step in the right direction.

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<sup>82</sup> ANTADZE ET. AL., *supra* note 31, at 14.

<sup>83</sup> Ferrie, *supra* note 80.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> Yundt, *supra* note 46.

Civil society activists have viewed the establishment of the Office as being a direct result of persistent calls by NGOs for such an initiative.<sup>87</sup> It was an ICC first in that it was the first ICC country office to be opened outside the African continent. In a surprising move, however, the appointed head of the country office was a foreign diplomat who spoke neither Georgian nor Ossetian, whose appointment was met with scepticism given his perceived unfamiliarity with the ICC and its processes.<sup>88</sup> When advocating for the opening of a new country office, the hope of Georgian civil society was that it would result in a boost in the outreach activities conducted by the Court in Georgia.<sup>89</sup> The head of the country office, Dr. Kaupo Kand, has emphasized the importance of carrying out outreach activities and engaging with various actors linked to the situation including victims, the general public, state institutions, academia, the diplomatic community, and international organizations.<sup>90</sup> However, the country office has been criticised for several failings. This criticism has revolved around insufficient staffing, lack of knowledge of the national context, the language barrier hindering communicating directly with affected communities, geographical remoteness from affected communities, and organizing local outreach events whilst failing to include civil society representatives.<sup>91</sup> Some civil society actors have viewed these factors as severely curtailing the effectiveness of the country office's operations and have persistently called upon the country office to pay heed to these concerns.<sup>92</sup>

#### D. Combatting misinformation and false news

In the Georgian context, combatting misinformation and false news regarding the ICC and its actions is another significant task that has been undertaken by civil society. In Georgia, the information

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<sup>87</sup> *Meet our members*, COALITION FOR THE ICC, *supra* note 17; HUMAN RIGHTS CENTER, *supra* note 69.

<sup>88</sup> Jeiranashvili, *supra* note 79.

<sup>89</sup> *Id.*

<sup>90</sup> Tavberidze, *supra* note 78.

<sup>91</sup> *Meet our members*, COALITION FOR THE ICC, *supra* note 17; Nika Jeiranashvili (@NikaJei), TWITTER (Dec. 21, 2019, 5:17 AM), <https://twitter.com/NikaJei/status/1208330713533210626> (last visited Jan. 5, 2020).

<sup>92</sup> Jeiranashvili, *supra* note 49; Jeiranashvili, *supra* note 79.

vacuum created due to the limited outreach activities conducted by the ICC has given rise to conspiracy theories regarding the Court's actions. For instance, during the 2018 Georgian presidential elections, this information vacuum created a political climate where the ICC investigation was elevated to the level of a campaign issue. Rumours circulated that the ICC investigation could be used as a means to target Georgian military personnel on politically motivated grounds.<sup>93</sup> These claims of bias had the potential to create great reputational losses for the Court. Recognizing the immensely volatile domestic political situation, Georgian civil society actors issued statements to the press and took to social media in order to defuse these claims and to emphasize the Court's neutrality in investigating crimes committed by all parties to the armed conflict.<sup>94</sup> Regardless of this, claims of bias have lingered and combatting this misinformation and countering fake news is a constant task. Recently, the ICC has been blamed for conducting a one-sided investigation targeting former Georgian state officials.<sup>95</sup> In December 2019, Facebook announced that it has removed a number of accounts and pages from two of its platforms, Facebook and Instagram, originating from Georgia and targeting domestic audiences, "for engaging in foreign and government interference", which consisted of "coordinated inauthentic behaviour on behalf of a government or foreign actor".<sup>96</sup> According to digital forensic researchers based in Georgia, some of the removed pages fueled confusion and division on one of the topics considered most sensitive for Georgians: the August 2008 Russia-Georgia war.<sup>97</sup> Georgian civil

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<sup>93</sup> Ferric, *supra* note 80.

<sup>94</sup> *Id.*

<sup>95</sup> Article 42 of Constitution et. al, *Civil Society Statement on International Justice Day*, GEORGIAN CENTER FOR PSYCHOSOCIAL AND MEDICAL REHABILITATION OF TORTURE VICTIMS (2018), <http://gcrf.ge/en/news/54> (last visited Jan. 17, 2020).

<sup>96</sup> The pages and accounts were not banned for the content they posted but due to them impersonating political parties, public figures, activist groups and media entities. See Nathaniel Gleicher, *Removing Coordinated Inauthentic Behavior From Georgia, Vietnam and the US*, FACEBOOK (Dec. 20, 2019) <https://about.fb.com/news/2019/12/removing-coordinated-inauthentic-behavior-from-georgia-vietnam-and-the-us/> (last visited Jan. 17, 2020.).

<sup>97</sup> Eto Buziashvili and Givi Gigitashvili, *Inauthentic pages linked to majority government taken down in Georgia*, DFRLAB, (Dec. 20, 2019), <https://medium.com/dfrlab/inauthentic-pages-linked-to-majority-government-taken-down-in-georgia-e31baebfa73a> (last visited Jan. 17, 2020.).

society organizations claim that fake reports and misleading information regarding the conflict and the ICC investigation into the situation are widespread across Georgian society.<sup>98</sup> Within the Georgian context, these situations elucidate the vital role played by civil society in bridging the gap between the ICC and public by stepping in to provide vital information about the Court's operations in order to assuage fears and doubts regarding the Court's processes. It further highlights the grave need for added dissemination of information regarding the ICC and its operational parameters to the public in international crime affected states such as Georgia. While Georgian civil society organizations do acknowledge that they are attempting to fill the information gap, they simultaneously admit that they cannot replace the Court's outreach functions.<sup>99</sup> Thus, they have been advocating for an approach where the ICC Prosecutor publicly responds to allegations of bias in order to ensure public trust and support.<sup>100</sup> However, combating misinformation regarding the ICC and facts surrounding the Russia-Georgia war on a broader scale, requires a more holistic approach involving joint action by the Court, the Georgian government and civil society.

#### CONCLUSION

According to the EU fact-finding report on the 2008 Russia-Georgia war, "there are no winners in [the] conflict. Everyone has lost, if not in terms of life and property alone, at least in the field of hopes and prospects for the future".<sup>101</sup> In Georgia, while the armed conflict may have come to an end, the country failed to resolve the political issues and other contributory factors that led to the war. Tensions are high and the political situation appears to have been exacerbated. 26,888 individuals were said to have been forced to abandon their homes due to the 2008 Russia-Georgia war, many of whom have been resettled in various municipalities of Georgia.<sup>102</sup> However, rampant

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<sup>98</sup> Article 42 of Constitution et. al., *supra* note 95.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> COUNCIL OF THE EUROPEAN UNION, *supra* note 12, at 32.

<sup>102</sup> ANTADZE ET. AL. *supra* note 31, at 46.

issues linger. For these and other victims of the conflict, aspirations for achieving justice remain in a state of limbo.

Simultaneously, for some, interest in striving for justice appears to be waning. As Human Rights Watch noted in 2018, in terms of domestic and international accountability mechanisms, including the ongoing ICC investigation, the demand for accountability for the alleged crimes committed during the 2008 conflict is weak in Georgia.<sup>103</sup> Moreover, due to the lack of awareness in the country about the ICC and its activities, victims' support groups are increasingly becoming more invested in submitting applications to the ECtHR. This was despite the ECtHR's delay in dealing with individual applications arising out of the Russia-Georgia war until the inter-state claim in *Georgia v. Russia (II)* (application no. 38263/08)<sup>104</sup> was finalized.<sup>105</sup> An explanation for this lean towards the ECtHR could lie in the perceived inexperience of the ICC in dealing with situations concerning Russia. Given that the Georgian and Ukrainian<sup>106</sup> situations are the first instances where the ICC has initiated preliminary examination and investigative activities with a link to Russia, the ECtHR is perceived by some Georgians as being the preferred avenue for justice due to a better track record of holding Russia accountable.<sup>107</sup> Additionally, some civil society actors opine that for the ICC's OTP,

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<sup>103</sup> HUMAN RIGHTS WATCH, *supra* note 50, at 73.

<sup>104</sup> The inter-state claim was lodged by Georgia against the Russian Federation and relates to the 2008 Georgia-Russia war and its aftermath. On 21 January 2021, the ECtHR's Grand Chamber delivered its judgment on the merits of the case but the impact of this on the individual applications are yet to be seen. *Georgia v. Russia (II)*, App. No. 38263/08, Judgment (Merits), Eur. Ct. H.R. (Jan. 21, 2021) [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-207757%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-207757%22]})

<sup>105</sup> European Court of Human Rights, Press Release: New inter-State application brought by Georgia against Russia (ECHR 287 (2018)) (Aug. 31, 2018); Geir Ulfstein & Isabella Risini, *Inter-State Applications Under the European Convention on Human Rights: Strengths and Challenges*, *EJIL:TALK! BLOG OF THE EUR. J. OF INT'L L.* (Jan. 24, 2020), <https://www.ejiltalk.org/inter-state-applications-under-the-european-convention-on-human-rights-strengths-and-challenges/> (last visited Mar. 22, 2021).

<sup>106</sup> The situation in Ukraine is currently at the preliminary examination stage at the ICC. *Ukraine*, ICC, <https://www.icc-cpi.int/ukraine> (last visited Mar. 22, 2021).

<sup>107</sup> ANTADZE ET. AL. *supra* note 31, at 14.

<sup>107</sup> Ferrie, *supra* note 80; HUMAN RIGHTS WATCH, *supra* note 50, at 77.



engagement with civil society is not a priority.<sup>108</sup> Due to this perception and due to the lack of information flowing from the OTP to civil society, NGO interest in the ICC has faded to some extent. This is unfortunate for the ICC given that Georgian NGOs have carried out a bridge building function between the Court and affected populations since the end of the war. Hence, this development means that the Court risks losing important allies. Moreover, this development is particularly unfortunate given that the ICC offers victims of the 2008 Russia-Georgia war an extra avenue through which to seek justice (in addition to institutions such as the ECtHR).

Should the ICC investigation result in prosecutions of those holding the highest level of responsibility for the alleged commission of international crimes arising from the 2008 Russia-Georgia war, it would send a clear message that impunity does not reign supreme. Such future ICC prosecutions (should they materialize) may offer the promise of acting as a galvanizing force for the re-initiation of domestic investigative and prosecutorial measures for any alleged international crimes committed by low level perpetrators in Georgia. However, from a realistic point of view, the Georgian authorities' past track record indicates that the chances of mounting the political will to initiate such action may be slim.

As outlined in the previous sections of this article, civil society organizations have continuously advocated for justice for those affected by the 2008 Russia-Georgia conflict, both at the national and international levels. However, despite an active and vocal civil society presence in Georgia, these organizations have faced countless obstacles. Especially at the national level, it is reported that during the previous government, civil society organizations could only exercise limited pressure for justice.<sup>109</sup> The former Georgian government dismissed calls for accountability by using nationalistic rhetoric, questioning NGO allegiances, demonizing the NGO sector, and calling those who dared to point out alleged crimes by Georgian servicemen "traitors."<sup>110</sup>

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<sup>108</sup> *Id.*

<sup>109</sup> HUMAN RIGHTS WATCH, *supra* note 50, at 74.

<sup>110</sup> *Id.* at 74-75.

As civil society actors have pointed out, the Georgian situation is “unique” in that it poses new challenges for the ICC related to “a lack of knowledge of the new region, inexperience of dealing with international conflict, and non-cooperation of a very powerful country involved in the conflict.”<sup>111</sup> Civil society too has much to learn from others who have previously interacted with the ICC. Given its unique role in often acting as the link between the Court and victims, supporting civil society and building good working relationships is vital for the ICC. According to some civil society activists, for the ICC, maintaining positive working relationships with civil society “will go a long way in making [its] investigation in Georgia meaningful to those most in need”.<sup>112</sup> Should the Court adopt a strategy of limited engagement with Georgian civil society, as discussed previously in this article, this could generate an information vacuum. Uninformed or misinformed victim populations are less likely to cooperate with the ICC in its potential future prosecutorial processes. While the Court should amp up its public outreach activities in Georgia, one should be realistic in terms of the reach and form of these activities. Resources and other constraints mean that the Court’s outreach activities on the ground in Georgia cannot be exhaustive. Therefore, through simultaneously developing good working relationships with civil society who have already forged close ties with victim populations, the Court could harness and utilize the communication avenues of some of their biggest allies in Georgia. This, in turn, could have the potential to boost the confidence the victim population has in the Court and highlight the ICC’s image as a judicial institution that is truly invested in the plight of victims striving to deliver justice to international crime affected populations.

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<sup>111</sup> Nika Jeiranashvili, *Georgia – A unique case for the ICC*, COALITION FOR THE ICC (Mar. 10, 2017), <http://www.coalitionfortheicc.org/news/20170310/georgia-unique-case-icc> (last visited Mar. 22, 2021).

<sup>112</sup> *Id.*