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Before: Judge Péter Kovács, President
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge María del Socorro Flores Liera

SITUATION IN GEORGIA

Public
with Public Annexes 1-5, 9 and
Confidential, *ex parte*, only available to the Prosecution Annexes 6-8

Public redacted version of ‘Prosecutor’s application pursuant to article 58 for warrants of arrest against Mikhail MINDZAEV, Gamlet GUCHMAZOV and David SANAKOEV’, 10 March 2022, ICC-01/15-34-Conf-Exp

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TABLE OF CONTENTS

| | |
|--|-----------|
| I. INTRODUCTION | 4 |
| II. CLASSIFICATION | 5 |
| III. CONCISE STATEMENT OF THE FACTS..... | 5 |
| IV. IDENTIFICATION OF THE PERSONS AGAINST WHOM THE WARRANTS OF ARREST ARE SOUGHT | 9 |
| V. SUMMARY OF THE FACTS AND EVIDENCE..... | 10 |
| A. THE CONTEXTUAL ELEMENTS FOR WAR CRIMES ARE SATISFIED..... | 10 |
| 1. Existence of an international armed conflict..... | 10 |
| 2. Nexus between the charged crimes and the armed conflict | 13 |
| 3. Awareness of the factual circumstances underlying the armed conflict | 13 |
| B. THE CRIMES OF UNLAWFUL CONFINEMENT, TORTURE, AND INHUMAN TREATMENT COMMITTED AT OR NEAR THE KPZ | 15 |
| 1. Detainees were subjected to unlawful confinement in violation of article 8(2)(a)(vii) | 15 |
| 2. During their unlawful confinement, Detainees were subject to torture, inhuman treatment and/ or outrages upon personal dignity | 18 |
| C. THE CRIME OF HOSTAGE TAKING | 27 |
| D. THE CRIME OF UNLAWFUL TRANSFER..... | 31 |
| 1. The Lawful Residents were transferred out of SO to UGT..... | 31 |
| 2. The Lawful Residents were transferred without adequate consent..... | 34 |
| 3. Other elements of the crime of unlawful transfer | 36 |
| VI. THE SUSPECTS BEAR INDIVIDUAL CRIMINAL RESPONSIBILITY UNDER ARTICLE 25(3) (A), (C) OR (D)..... | 36 |
| A. THE COMMON PURPOSE TO FORCIBLY TRANSFER THE DETAINEES AND USE THEM AS HOSTAGES..... | 37 |
| B. MINDZAEV’S INDIVIDUAL CRIMINAL RESPONSIBILITY | 39 |
| C. GUCHMAZOV’S INDIVIDUAL CRIMINAL RESPONSIBILITY | 41 |
| D. SANAKOEV’S INDIVIDUAL CRIMINAL RESPONSIBILITY..... | 43 |
| VII. LEGAL FRAMEWORK – JURISDICTION AND ADMISSIBILITY | 44 |
| A. JURISDICTION | 44 |
| B. ADMISSIBILITY | 45 |
| 1. Gravity..... | 45 |
| 2. Complementarity..... | 46 |
| VIII. NECESSITY OF THE ARRESTS | 47 |
| IX. REQUEST FOR WARRANTS OF ARREST..... | 48 |

I. INTRODUCTION

1. Pursuant to article 58(1) of the Statute, the Office of the Prosecutor requests Pre-Trial Chamber I to issue arrest warrants against **Mikhail MINDZAEV** (“MINDZAEV”), **Gamlet GUCHMAZOV** (“GUCHMAZOV”), and **David SANAKOEV** (“SANAKOEV”) (“Suspects”).
2. Since Pre-Trial Chamber I (“the Chamber”) authorized the opening of the investigation on 27 January 2016, the Prosecution has examined evidence of crimes during the period of 1 July to 10 October 2008 alleged to have been committed by each of the three parties to the conflict: the Georgian, Russian and *de facto* forces of South Ossetia (“SO”). This application focuses specifically on the unlawful confinement, hostage-taking, ill-treatment and subsequent unlawful transfer of ethnic Georgian civilians (or civilians perceived to be Georgian) perpetrated by forces of the *de facto* SO administration, including members of the Ministry of Internal Affairs (“MIA”), in the context of an occupation by the Armed Forces of the Russian Federation (“Russian forces”).
3. The evidence cited in this Application - which includes interviews with Prosecution witnesses, photographs, and publicly available documentation, including videos collected forensically, expert reports on satellite imagery - establishes reasonable grounds to believe that the Suspects bear individual criminal responsibility for crimes within the jurisdiction of the Court,¹ namely the following war crimes committed in and around the territory of South Ossetia, Georgia between 8 and 27 August 2008:
 - a. **Unlawful confinement** – article 8(2)(a)(vii)-2;
 - b. **Torture** – article 8(2)(a)(ii)-1;
 - c. **Inhuman treatment** – article 8(2)(a)(ii)-2;
 - d. **Outrages upon personal dignity** – article 8(2)(b)(xxi);
 - e. **Hostage taking** – article 8(2)(a)(viii); and
 - f. **Unlawful transfer** – article 8(2)(a)(vii)-1.

¹ Article 58(1)(a).

4. The arrest of the Suspects is necessary to ensure their appearance at trial, and/or to ensure that they do not obstruct or endanger the investigation or the court proceedings.
5. In accordance with Article 58(2), this Application includes a concise statement of the facts (**Part II**), identifies the Suspects (**Part III**), and summarises the facts and evidence establishing reasonable grounds to believe that crimes within the jurisdiction of the Court were committed (**Part IV**) in the context of and in association with an international armed conflict (“IAC”) in Georgia. The Application further sets out the applicable modes of liability (**Part V**), the basis for the admissibility of the case and the exercise of the Court’s jurisdiction (**Part VI**), and the reason why the arrest of the Suspects is necessary (**Part VII**).

II. CLASSIFICATION

6. Pursuant to Regulation 23*bis* of the Regulations of the Court, this Application is filed confidential and *ex parte* (only available to the Prosecution) in order to protect the identity of victims and witnesses. A public redacted version of this Application will be submitted shortly.

III. CONCISE STATEMENT OF THE FACTS

7. Following the dissolution of the Soviet Union, Georgia declared its independence in April 1991. However, several semi-autonomous regions of Georgia,² including SO, sought either independence from Georgia or integration with Russia.³
8. Armed clashes ensued between the Georgian security forces and separatist forces of SO, including conflicts in 1991-1992 and 2003. The 1991-1992 conflict was resolved by a “Sochi Agreement”,⁴ by which a tri-partite⁵ (Russia, Georgia, South Ossetia) peace-keeping force (known as the “Joint Peacekeeping Force”, or “JPKF”) was established.⁶

² Other semi-autonomous regions included Abkhazia and Ajaria. *See* Georgia Authorization Request, para. 20.

³ **P-0220**: GEO-OTP-0042-0230 at 0234, para. 36; **P-0333**: GEO-OTP-0050-0002 at 0009, para. 57.

⁴ *See* Agreement on Principles of Settlement of the Georgian - Ossetian Conflict: GEO-OTP-0006-1598; **P-0200**: GEO-OTP-0035-0039 at 0043-0044, paras. 29-33; **P-0242**: GEO-OTP-0038-0310 at 0313, paras. 20-22.

⁵ **P-0220**: GEO-OTP-0042-0230 at 0241-0242, paras. 91-95 and at 0243-0245, paras. 104-117; **P-0200**: GEO-OTP-0035-0039 at 0043, para. 30.

⁶ **P-0220**: GEO-OTP-0042-0230 at 0241-0242, paras. 91-95.

9. After the Sochi Agreement, much of SO was governed by the breakaway SO *de facto* administration. Several towns and villages in the territory of SO, clustered in three valleys (the Didi Liakhvi, Patara Liakhvi and Prone valleys), were populated by a majority of ethnic Georgians and were governed by a parallel Georgian-backed administration.⁷
10. By July 2008, tensions between Georgia and SO escalated significantly, with an increase in shooting incidents and explosions in early August targeting both local Georgian police and pro-Georgian political leaders in SO.⁸
11. On the night of 7 to 8 August 2008, and in the context of a build-up of Russian forces at the border (including a military exercise called “Caucasus 2008”), armed hostilities began.⁹ The Joint Peacekeeping Force, which had held up to that point,¹⁰ disintegrated.¹¹ Georgian and SO forces engaged in heavy fighting in the territory of SO, mainly concentrated in Tskhinvali and surrounding areas. The Armed Forces of the Russian Federation (“Russian Forces”) intervened on the side of SO and, after brief but intense fighting, pushed back the Georgian Defence Forces.¹² They took control of the main localities in SO on 10 August 2008. On 11 August, Georgia filed an application before the European Court of Human Rights under article 33 of the Convention.¹³
12. Russian forces advanced to undisputed Georgian territory (“UGT”), reaching and occupying the city of Gori by 12 August 2008.¹⁴ Russian forces proceeded to occupy a 20 km “buffer zone”, which was established within parts of UGT beyond the Administrative Boundary Line of SO (“ABL”).¹⁵ A ceasefire agreement was brokered on 12 August 2008, but Russian forces did not immediately withdraw as required.¹⁶ They

⁷ **P-0200**: GEO-OTP-0035-0039 at 0044, 0046, paras. 34-35, 46-48; **P-0144**: GEO-OTP-0024-0066 at 0069, para. 18. *See also* Administrative Maps: Annexes 3a and 3b.

⁸ **P-0129**: GEO-OTP-0021-0003 at 0007, paras. 35-37; **P-0143**: GEO-OTP-0022-0002 at 0009, paras. 44-45; **P-0144**: GEO-OTP-0024-0066 at 0083-0084, paras. 93-101.

⁹ **P-0485**: GEO-OTP-0047-6110 at 6119, para. 55; **P-0329**: GEO-OTP-0044-1150 at 1167, paras. 130-131; **P-0506**: GEO-OTP-0047-5997 at 6011, para. 110.

¹⁰ *See e.g.* [REDACTED], GEO-OTP-0047-2063.

¹¹ **P-0329**: GEO-OTP-0044-1150, at 1173, para. 161.

¹² *See* Section IV.A.1 below.

¹³ A judgment was issued on 21 January 2021, concluding that Georgian civilians had suffered humiliating acts as regards detention, including arbitrary detention. It further concluded that Georgians had by virtue of administrative practice been prevented from returning to South Ossetia. *See* the European Court of Human Rights (“ECtHR”) judgement (merits), Georgia v. Russia (II), GEO-OTP-0047-6804.

¹⁴ **P-0144**: GEO-OTP-0024-0066 at 0087, para. 114; **P-0200**: GEO-OTP-0035-0039 at 0065, paras. 189-191; International Independent Fact-Finding Mission on the Conflict in Georgia (“IIFMCG”) report, Volume II, GEO-OTP-0002-7801 at 8017.

¹⁵ **P-0266**: GEO-OTP-0051-1033 at 1065, para. 258; **P-0420**: GEO-OTP-0050-0139 at 0141-0142, para. 18; **P-0139**: GEO-OTP-0022-2002 at 2038, para. 233; Media article: GEO-OTP-0006-1146 at 1147.

¹⁶ [REDACTED] GEO-OTP-0052-2312 at 2319.

gradually started withdrawing from Gori on 22 August.¹⁷ In accordance with a subsequent agreement concluded on 8 September 2008, Russian forces withdrew behind the ABL by 10 October 2008 at the latest.¹⁸

13. As a consequence of the hostilities between the parties, the majority of the Georgian civilian population living in SO fled to UGT.¹⁹ Almost immediately after Georgian armed forces were driven out of SO, Russian forces and – primarily – SO forces began capturing Georgian civilians, mostly the elderly and sick who were unable or unwilling to abandon their homes and flee the fighting. They were not given a valid reason for their capture and detention, nor were they afforded any kind of procedural right.²⁰
14. Civilians of other ethnicities who had married into Georgian households were considered as Georgian²¹ and were also captured. This took place against the background of widespread looting and burning of houses belonging to ethnic Georgians, which ultimately resulted in the almost complete destruction of most of the Georgian administered villages in the vicinity of Tskhinvali.²² The evidence shows the intent of SO forces and authorities to remove ethnic Georgians from SO and destroy their property.²³ As Russian forces pushed their operations deeper into UGT, a number of ethnic Georgian civilians were also captured in UGT.²⁴ The evidence discussed below provides reasonable grounds to believe that they were subsequently used as hostages to compel the Georgian authorities to release SO convicts imprisoned in Georgia.²⁵
15. Forces associated with the Suspects transported the vast majority of the captured civilians (“Detainees”) to Tskhinvali, and unlawfully confined them at the Preliminary Detention

¹⁷ Map of deployments and positions of the Russian Land Forces as per 22 August, GEO-OTP-0002-1113 at 1114.

¹⁸ **P-0011**: GEO-OTP-0041-0159 at 0164, para. 22; **P-0139**: GEO-OTP-0022-2001 at 2038, para. 233. The historical context and events leading up to the outbreak of the conflict are more fully described in the Prosecution’s “Request for authorisation of an investigation pursuant to article 15” (“Article 15 Request”), para. 20-37. *See also* Map: Russian Land Forces and Deployments as per 22 August 2008, Annex 3c.

¹⁹ **P-0512**: GEO-OTP-0047-7348 at 7352, 0023, para. 32 b-e, **P-0526**: GEO-OTP-0047-9017 at 9020, para. 16.

²⁰ **P-0161**: GEO-OTP-0039-1003 at 1007-1012, paras. 29-75; **P-0201**: GEO-OTP-0046-0002 at 0009-0011, paras. 69-82; **P-0285**: GEO-OTP-0041-0991 at 0995-0999, paras. 47-58.

²¹ **P-0258**: GEO-OTP-0042-0646 at 0660-0661, paras. 82-89; **P-0208**: GEO-OTP-0037-0102 at 0111, para. 59; **P-0246**: GEO-OTP-0044-1085 at 1125-1126, para. 272; **P-0285**: GEO-OTP-0041-0991 at 0997-0999, paras. 47-58.

²² **P-0143**: GEO-OTP-0022-0002 at 0018, para. 95-97; **P-0144**: GEO-OTP-0024-0066 at 0091-0092, para. 137; **P-0171**: GEO-OTP-0028-0445 at 0471-0472, para. 189; **P-0333**: GEO-OTP-0050-0002 at 0035-0038, paras. 269-292.

²³ **P-0077**: GEO-OTP-0017-0572 at 0589, paras. 132-134; **P-0139**: GEO-OTP-0022-2002, at 2034-2035, para. 211.

²⁴ **P-0209**: GEO-OTP-0039-0007 at 0013-0014, 0030, paras. 40-49, 14; **P-0184**: GEO-OTP-0035-0539 at 0542, 0543-0545, paras. 17-20, 30-40; **P-0235**: GEO-OTP-0039-0457 at 0461-0463, paras. 29-42.

²⁵ *See infra*, Part IV.C.

Facility (in Russian: «камера предварительного заключения», transliterated “*kamera predvaritelnogo zaklyucheniya*”), commonly known as the “Isolator” or by its Russian acronym, the “KPZ”.

16. The KPZ was a pre-trial detention facility located in the basement of the MIA building in Tskhinvali that was previously used to detain suspects awaiting trial.²⁶ The MIA was located in the centre of Tskhinvali.²⁷ As further explained below, two of the Suspects were MIA officials—**MINDZAEV** was the Minister of Internal Affairs, and his subordinate **GUCHMAZOV** was the Head of the KPZ. They controlled the KPZ, the Detainees within it, and the conduct of all MIA staff with access to the Detainees.
17. The KPZ was designed to hold up to 36 occupants.²⁸ However, from 8 to 27 August 2008, at least 171 civilians were detained there in inhumane conditions, some for the entirety of this 19-day period.²⁹ In addition to the severe overcrowding, food, water and sanitary conditions were grossly inadequate for all persons held there. In addition, upon admission or during detention, 31 of the Detainees were subjected to beatings and physical mistreatment. 30 of the Detainees were subjected to forced labour, notably burying decomposing corpses of Georgian soldiers.³⁰ This work was unsanitary, degrading and traumatic.³¹
18. The Detainees were only released on the basis of the return to SO of SO civilians, including several convicts³² who had been imprisoned in Georgia prior to the war. This so-called “exchange” was primarily negotiated by the SO Human Rights Ombudsman under President of the Republic of South Ossetia, **SANAKOEV** and a high-ranking Russian military officer, Maj-Gen. Vyacheslav Borisov (“Maj-Gen. Borisov”, who is believed to have died).³³ The “exchange” was, however, predicated on threats by **SANAKOEV** and Maj-Gen. Borisov to maintain custody of the Detainees unless Georgia

²⁶ **P-0164**: GEO-OTP-0046-1445 at 1459, para. 98; **P-0218**: GEO-OTP-0042-0207 at 0112, para.38; **P-0220**: GEO-OTP-0042-0230 at 0279, para. 336. *See also* KPZ Plans, GEO-OTP-0047-5127, Annex 4a.

²⁷ **P-0253**: GEO-OTP-0050-0059 at 0065, para. 41; for geolocation see: GEO-OTP-0044-1142. *See also* Map: South Ossetia - City of Tskhinvali – Buildings and Bases, Annex 3d; Annex 5a - Ministry of Internal Affairs - GEO-OTP-0052-0787 at 0788; and

²⁸ KPZ floor plans: GEO-OTP-0047-5125 at 5127.

²⁹ Although 164 individuals are listed in the exchange protocols, other detainees were released outside the framework of the so-called exchanges. *See also* an image of the detainees in Annex 6g - Detainees in the KPZ - GEO-OTP-0051-1663.

³⁰ *See* photos in Annex 6a and 6b.

³¹ *See infra* section IV.B.1(c).

³² *See infra* section IV.D.

³³ Investigation Report: GEO-OTP-0052-2354.

capitulated to their demands. Once terms were agreed, the Detainees were transferred by SO forces from the custody of **MINDZAYEV** and **GUCHMAZOV** at the KPZ to UGT, without adequately obtaining the Detainees' consent. The consequences were devastating. Most of the victims who had previously lived in SO – some for their entire lives – have been unable to return to their homes and villages ever since. Consequently, they have lost their homes, their livelihoods and all of their worldly possessions.³⁴

19. The evidence relied upon by the Prosecution establishes reasonable grounds to believe that the Suspects listed below committed the crimes listed and more fully described in sections IV.B, IV.C and IV.D below and that all of these were connected to the international armed conflict (“IAC”) in existence at the time.

IV. IDENTIFICATION OF THE PERSONS AGAINST WHOM THE WARRANTS OF ARREST ARE SOUGHT³⁵

20. Lt.-Gen. **Mikhail Mayramovich MINDZAEV** (alternatively spelled **MINDZAYEV**) was born on 28 September 1955³⁶ in Vladikavkaz, North Ossetia,³⁷ in Russia. He is a Russian national and was a senior police officer with the Ministry of Internal Affairs of Russia.³⁸ Appointed in 2005,³⁹ **MINDZAEV** was the Minister of Internal Affairs of the *de facto* SO government⁴⁰ until at least 31 October 2008.⁴¹ He is believed to currently reside in Moscow, Russia.⁴² A photograph of **MINDZAEV** is attached as Annex 9a.
21. **Gamlet GUCHMAZOV** (alternatively spelled **Hamlet** and **KUCHMAZOV**) was born on 09 July 1976 in SO, Georgia. He holds Russian nationality and his last known passport number is 516192265 (valid from 23/05/2016 to 23/05/2021).⁴³ Given his place of birth,

³⁴ See *infra*, para. 96.

³⁵ Article 58(2)(a).

³⁶ Russian officials in the *de facto* administrations of South Ossetia and Abkhazia: GEO-OTP-0002-0359 at 0367-0368; **Mikhail MINDZAEV** – Hero of Russia, 27 July 2010: GEO-OTP-0040-0244 at 0245.

³⁷ *Ibid*; GEO-OTP-0047-8132 at 8137.

³⁸ [REDACTED]; Biography of Michael Mindzaev: GEO-OTP-0047-1184 at 1185; International Independent Fact-Finding Mission on the Conflict in Georgia (“IIFMCG”) report, Volume III, GEO-OTP-0031-0691 at 0773, 0841.

³⁹ **Mikhail MINDZAEV** – Hero of Russia: GEO-OTP-0040-0244 at 0245; RIA Novosti: GEO-OTP-0052-2106 at 2107.

⁴⁰ **P-0220**: GEO-OTP-0042-0230 at 0253, 0259, 0273, paras. 173, 215, 327; **P-0218**: GEO-OTP-0042-0207 at 0211, para. 34; **P-0144**: GEO-OTP-0024-0066 at 0079, 0094, paras. 69, 152; **P-0148**: GEO-OTP-0024-0144 at 0151, para. 45.

⁴¹ Media Article: GEO-OTP-0040-0412 at 0415.

⁴² Publication of the Ministry of Education and Science of North Ossetia: GEO-OTP-0051-0716 at 0718.

⁴³ *Ibid* at 0784 and 0786.

he may also be a *de jure* Georgian national. At all material times, he was the Head of the Preliminary Detention facility (KPZ) of the Ministry of Internal Affairs based in Tskhinvali. He is believed to currently reside in Tskhinvali, SO. A photograph of **GUCHMAZOV** is attached in Annex 9b.

22. **David Georgiyevich SANAKOEV**⁴⁴ was born on 14 December 1976⁴⁵ in Tskhinvali, SO, Georgia. He is referred to as holding SO nationality. He is believed to currently reside in SO and is a Deputy of the Parliament of SO.⁴⁶ At all material times, he was the SO Presidential Representative for Human Rights, also known as Ombudsman. A photograph of **SANAKOEV** is attached as Annex 9c. Given his place of birth, he may also be a *de jure* Georgian national.

V. SUMMARY OF THE FACTS AND EVIDENCE

A. The Contextual Elements for War Crimes are Satisfied

23. The evidence establishes the contextual elements of war crimes throughout the relevant period, including (1) the existence of an armed conflict, (2) a nexus between the alleged crimes and the armed conflict and (3) the accused's awareness of the factual circumstances that established the existence of an armed conflict.⁴⁷

1. Existence of an international armed conflict

24. An international armed conflict (or IAC) exists when there are armed hostilities between States through their respective armed forces or other actors acting on their behalf.⁴⁸ In this case, the IAC commenced (at the latest) on 8 August 2008,⁴⁹ and may broadly be divided into two phases: (i) an initial period of active hostilities between the Georgian

⁴⁴ State information agency RES article: GEO-OTP-0047-5151 at 5152; Statement of **David SANAKOEV** to the Russian Investigative Commission: GEO-OTP-0047-7194 at 7195.

⁴⁵ Statement of **David SANAKOEV** to the Russian Investigative Commission: GEO-OTP-0047-7194 at 7195.

⁴⁶ South Ossetia parliament page, list of deputies: GEO-OTP-0047-5745.

⁴⁷ *Ntaganda* TJ, para. 698; *Mbarushimana* Confirmation Decision, para. 93. *See also* Georgia Authorization Request, pp. 41-105.

⁴⁸ *Katanga* TJ, para. 1177; *Bemba* Confirmation Decision, para. 223; *Lubanga* TJ, para. 541.

⁴⁹ Russia 1 documentary "Save at all costs": GEO-OTP-0015-1600 at 00:01:42 to 00:02:06, English transcripts GEO-OTP-0041-0629 at 0632, lines 24-28: "At 7.00 a.m. on 8 August, we're speeding towards Tskhinval [...]. The Russian advance detachment is already crossing the border. There is an order – break through at any cost [...]." **P-0077**: GEO-OTP-0017-0572 at 0578, para. 50; Interview with General Khrulev: GEO-OTP-0041-0305 at 0306-0311.

forces, on the one hand, and Russian forces and SO forces, on the other; and (ii) a subsequent period in which Russian forces and SO forces occupied Georgian territory.

25. The forces opposed to Georgia during the active hostilities included the Russian 58th Army,⁵⁰ fighting alongside SO forces.⁵¹ The SO forces included military battalions armed with the help of Russian financial and logistical support,⁵² police units of the MIA,⁵³ and armed militia (*Opolchentsy*).⁵⁴ South Ossetian forces and Russian forces wore white armbands to signal that they were on the same side.⁵⁵ Prior to 2008, the South Ossetian forces had already been armed, trained, and financed by the Russian authorities, and took instructions from them.⁵⁶
26. The first phase of the IAC commenced at latest when Russian forces crossed the Roki tunnel into Georgia on 8 August 2008, and intervened on the side of SO.⁵⁷ They launched artillery and air force attacks on Georgian armed forces positioned in Tskhinvali and surrounding villages.⁵⁸ Over the next five days, Russian forces drove the Georgian Defence forces out of SO territory and pushed forward well beyond the ABL. Various targets in UGT were also bombed.⁵⁹ The active hostilities ended on 12 August 2008,⁶⁰ with a six-point agreement sponsored by the French President, and signed by Russian and Georgian authorities.⁶¹ However, Russian forces continued to occupy UGT until 10

⁵⁰ Interview with General Khrulev: GEO-OTP-0041-0305 at 0306-0310; Interview with General Makarov: GEO-OTP-0047-1787 at 1791, 1792

⁵¹ **P-0220**: GEO-OTP-0042-0230 at 0238, para. 67; **P-0333**: GEO-OTP-0050-0002 at 0010-0018, paras. 59-131; **P-0329**: GEO-OTP-0044-1150 at 1173, para. 162.

⁵² **P-0012**: GEO-OTP-0010-1816 at 1829, para. 100; **P-0329**: GEO-OTP-0044-1150 at 1162-1163, paras. 95, 97.

⁵³ **P-0485**: GEO-OTP-0047-6110 at 6129, para. 110; GEO-OTP-0050-0002 at 0018, para. 136.

⁵⁴ **P-0333**: GEO-OTP-0050-0002 at 0024-0029 paras 176-229; **P-0329**: GEO-OTP-0044-1150 at 1155, para 38-39; **P-0220**: GEO-OTP-0042-0230 at 0238-0240, paras. 61-84.

⁵⁵ **P-0152**: GEO-OTP-0028-0345 at 0357, para. 104; **P-0194**: GEO-OTP-0032-1209 at 1223, para. 115; **P-0329**: GEO-OTP-0044-1150 at 1173, para. 162; **P-0333**: GEO-OTP-0050-0002 at 0017, paras. 122, 124

⁵⁶ **P-0144**: GEO-OTP-0024-0066 at 0072, paras. 33, 35; **P-0200**: GEO-OTP-0035-0039 at 0071, para. 237; **P-0218**: GEO-OTP-0042-0207 at 0211, 0214, paras. 33, 54

⁵⁷ Echo Moscow Interview of President Medvedev of Russia, official website video: GEO-OTP-0015-1483 at 1487-1488; Interview with General Khrulev: GEO-OTP-0041-0305 at 0306-0315.

⁵⁸ **P-0336**: GEO-OTP-0045-0417 at 0430, paras. 82-83; **P-0200**, GEO-OTP-0035-0039 at 0063-0064, paras. 173-178; **P-0512**: GEO-OTP-0047-7348 at 7354, para. 37.

⁵⁹ **P-0440**: GEO-OTP-0047-7678 at 7682, para. 25; **P-0481**: GEO-OTP-0047-5965 at 5968-5969, paras. 19-20; **P-0513** : GEO-OTP-0047-7838 at 7845, para. 53; **P-0516** : GEO-OTP-0047-7858 at 7864, para. 39; AAAS expert report: GEO-OTP-0047-9230 at 9241.

⁶⁰ Press statement of the President of Russia: GEO-OTP-0002-8869; [REDACTED]; United Nations (“UN”) Security Council report: GEO-OTP-0002-7599 at 7602.

⁶¹ Principles on the Settlement of conflicts: GEO-OTP-0009-3668 at 3756-3758; **P-0536**: GEO-OTP-0052-2312 at 2318-2319.

October 2008,⁶² and continue to occupy SO until this day.⁶³ They continued sending troops, and established a military base in SO, after Russia pulled out of the buffer zone in October 2008.⁶⁴

27. Russian forces substituted the Georgian authorities in occupied territory, appointing zone commanders such as Maj.-Gen. Borisov in Gori,⁶⁵ controlling access to the territory,⁶⁶ negotiating prisoner exchanges,⁶⁷ repatriating the corpses of Georgian soldiers,⁶⁸ and implementing measures to prevent looting.⁶⁹ As put by one witness, Maj.-Gen. Borisov made all decisions “regarding civilian or military matters”.⁷⁰ The Russian administration in SO and in the buffer zone also took measures to permit the delivery of food to the civilian population,⁷¹ assist the elderly population⁷² and re-establish the infrastructure in and around Tskhinvali.⁷³

⁶² **P-0011**: GEO-OTP-0041-0159 at 0164, 0165, paras. 22, 28-29; **P-0139**: GEO-OTP-0022-2002 at 2038, para. 233; Map of deployments and Positions of the Russian Land Forces as per 22 August, GEO-OTP-0002-1113 at 1114; Transcript of NTV news broadcast, GEO-OTP-0047-0136 at 0137; [REDACTED].

⁶³ **P-0354**: GEO-OTP-0046-1589 at 1595, para. 47; **P-0485**: GEO-OTP-0047-6110 at 6121, para. 64; **P-0506**: GEO-OTP-0047-5997 at 6015-6016, paras. 146-150; T. de Waal report, “South Ossetia Today”: GEO-OTP-0051-0970 at 0977-0979.

⁶⁴ **P-0304**: GEO-OTP-0042-0735 at 0737, paras. 13-16; **P-0277**: GEO-OTP-0040-0322 at 0331, paras. 34-36; **P-0012**: GEO-OTP-0010-1816 at 1829, para. 95 and GEO-OTP-0010-1834 (Map annex).

⁶⁵ **P-0148**: GEO-OTP-0051-0943 at 0945, para. 13; Media article: GEO-OTP-0042-0487; **P-0282**: GEO-OTP-0043-1622 at 1627-1628, paras. 38-42; Intercepted call: GEO-OTP-0043-1827 (translation GEO-OTP-0047-1302 at 1303-1304), authenticated by **P-0148**: GEO-OTP-0051-0943 at 0954-0955, paras. 69-81.

⁶⁶ **P-0282**: GEO-OTP-0043-1622 at 1635-1636, paras. 110-111; **P-0501**: GEO-OTP-0047-5382 at 5391-5393, paras. 67-71, 73-75; **P-0512**: GEO-OTP-0047-7348 at 7354-7356, 7370-7371, paras. 42-43, 56-58, 151-153, 157.

⁶⁷ **P-0148**: GEO-OTP-0051-0943 at 0947, paras. 21-25; **P-0282**: GEO-OTP-0043-1622 at 1627-1629, 1632-1635, paras. 38-48, 51-109; **P-0354**: GEO-OTP-0046-1589 at 1594, 1599-1603, paras. 37-39, 73-92, 102-104; Protocol on the Exchange of Prisoners of War dated 19 August 2008: GEO-OTP-0002-2481 *and see* Annex 7.

⁶⁸ **P-0501**: GEO-OTP-0047-5382 at 5398, paras. 127-128; **P-0197**: GEO-OTP-0035-0123 at 0129-0131, paras. 47-60; Intercepted call: GEO-OTP-0043-1837 (translation GEO-OTP-0047-1375 at 1377-1378) authenticated by [REDACTED] GEO-OTP-0047-6110 at 6136, paras. 156-158; Intercepted call: GEO-OTP-0043-1835 (translation GEO-OTP-0047-1359 at 1361-1364) authenticated by [REDACTED] GEO-OTP-0047-5997 at 6015, para. 128.

⁶⁹ **P-0148**: GEO-OTP-0051-0943 at 0945, para. 13; Press Release of Human Rights Centre “Memorial” and Demos Centre: GEO-OTP-0001-0099 at 0104; **P-0139**: GEO-OTP-0022-2002 at 2046, para. 295; **P-0199**: GEO-OTP-0035-0011 at 0017, para. 40; Extract from the Operational Order of the Commander of North Caucasus Military District No4 (12.08.2008), GEO-OTP-0039-0913 at 0915.

⁷⁰ **P-0073**: GEO-OTP-0047-6284 at 6296-6297, GEO-OTP-0047-6460 at 6475; GEO-OTP-0047-6482 at 6492-6495; **P-0354**: GEO-OTP-0046-1589 at 1595, para. 49; **P-0485**: GEO-OTP-0047-6110 at 6124, paras. 84-85.

⁷¹ **P-0148**: GEO-OTP-0024-0144 at 0161, para. 95; **P-0354**: GEO-OTP-0046-1589 at 1597, para. 64; **P-0512**: GEO-OTP-0047-7348 at 7359, paras. 77-79.

⁷² **P-0199**: GEO-OTP-0035-0011 at 0017, para. 39-40. *See also* Information Bulletin of the Federal Operations Headquarters: GEO-OTP-0047-1930 at 1933 on the delivery of humanitarian assistance.

⁷³ Federal Operations Headquarters Newsletter: GEO-OTP-0047-1930 at 1934.

2. Nexus between the charged crimes and the armed conflict

28. The alleged crimes “took place in the context of and [were] associated with [the] armed conflict”,⁷⁴ as demonstrated by factors such as: the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of, or in the context of, the perpetrator’s official duties.⁷⁵
29. Specifically, the Suspects were involved in detaining, holding hostage, mistreating and assisting in the unlawful transfer of the Detainees as part of their official duties. The victims were civilian non-combatants of actual or perceived Georgian ethnicity and thus regarded as allied to the enemy of the perpetrators. They were captured and mistreated, held hostage and unlawfully transferred during the period of the IAC. The purported “exchange” was a deliberate measure to serve the goals of the Russian and SO party to the conflict which included securing the return of a Russian service member and South Ossetian convicts, in addition to expulsion of ethnic Georgians from SO and establishing control over the Georgian enclaves.

3. Awareness of the factual circumstances underlying the armed conflict

30. The Suspects knew of the factual circumstances establishing the existence of the armed conflict, including the subsequent occupation by Russian forces, since they were present in Tskhinvali during the relevant period, which was the scene of intense fighting and a heavy artillery bombardment.⁷⁶ The conflict made global media headlines and was the main news story across all forms of media in Russia, Georgia and SO at the time.⁷⁷

⁷⁴ *Ntaganda* Jurisdiction AJ, para. 68.

⁷⁵ *Ntaganda* Jurisdiction AJ, para. 68. Afghanistan Authorization AJ, paras. 69-70 (quoting the *Ntaganda* Jurisdiction AJ, and further recalling the observation in *Kunarac*, at paras. 58-60, that “What ultimately distinguishes a war crime from a purely domestic offence is that a war crime is shaped by or dependent upon the environment—the armed conflict—in which it is committed. It need not have been planned or supported by some form of policy. The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, *have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed*”, emphasis added).

⁷⁶ Part V describes the evidence available on the responsibility of each of the suspects and notes their presence in SO and/or UGT during the relevant period. Also see **P-0512**: GEO-OTP-0047-7348 at 7352-7354, paras. 32 c-d, 33, 39-40; **P-0526**: GEO-OTP-0047-9017 at 9020, paras. 18–19.

⁷⁷ See e.g., Times Online: GEO-OTP-0006-0192; Reuters: GEO-OTP-0022-2436; Human Rights Watch (“HRW”) article: GEO-OTP-0020-1631; Le Monde article: GEO-OTP-0046-0223; Al Jazeera article: GEO-OTP-0022-2406.

31. **MINDZAEV** blamed the Georgian government for the state of war.⁷⁸ He remained in Tskhinvali when the conflict broke out⁷⁹ and saw the effects of the armed conflict as Georgian detainees were brought to the KPZ.⁸⁰ During the occupation phase of the conflict, **MINDZAEV**'s duties brought him into contact with the Russian forces.⁸¹
32. **GUCHMAZOV** was aware that the conflict led to the detention of civilians in the KPZ.⁸² He was present during some of the prisoner interrogations, at times conducting the interrogations himself.⁸³ The detainees were also interrogated by members of the Russian Military Investigative Committee on 22 and 25 August 2008.⁸⁴ **GUCHMAZOV** knew of the presence of these Russian administrative officials in the building. He was also familiar with the context of the negotiations to exchange prisoners. [REDACTED].⁸⁵ He was present during the first release of Georgian detainees, who were subsequently transferred out of SO.⁸⁶
33. Likewise, **SANAKOEV** participated in the negotiations leading to the exchange of the Detainees for SO detainees (including convicts of Ossetian ethnicity), including in meetings involving Georgian officials and the Russian commander, Maj.-Gen. Borisov. This is evidenced by video footage,⁸⁷ his signature on exchange protocols,⁸⁸ [REDACTED].⁸⁹

⁷⁸ Media article: GEO-OTP-0047-1160 at 1162; State information agency RES: GEO-OTP-0047-1181 at 1182; Gazeta.ru article: GEO-OTP-0047-1171 at 1172-1174.

⁷⁹ [REDACTED].

⁸⁰ **P-0194**: GEO-OTP-0032-1209 at 1227-1228, paras. 145-157; **P-0213**: GEO-OTP-0038-0281 at 0297, para. 116 (see page 0288 for date of arrest and transfer to the KPZ); **P-0440**: GEO-OTP-0047-7678 at 7685, paras. 118, 120.

⁸¹ **P-0211**: GEO-OTP-0045-0348 at 0377-0379, paras. 291-314; **P-0418**: GEO-OTP-0050-0184 at 0203-0205, paras. 139-151; **P-0420**: GEO-OTP-0050-0139 at 0161-0162, 0170, paras. 160-165, 222; Media article: GEO-OTP-0047-0988 at 0989-0990; Media article: GEO-OTP-0047-1177 at 1178-1179; Audio / Video material: GEO-OTP-0040-0207 (Translation: GEO-OTP-0041-0802 at 0804).

⁸² **P-0459**: GEO-OTP-0047-7727 at 7744, paras. 132-139; **P-0209**: GEO-OTP-0039-0007 at 0017, paras. 61-62; **P-0194**: GEO-OTP-0032-1209 at 1236-1237, paras. 228, 234-238; **P-0211**: GEO-OTP-0045-0348 at 0370-0371, paras. 222-230; **P-0201**: GEO-OTP-0046-0002 at 0015, paras. 120-124; Media article: GEO-OTP-0051-0280 at 0280.

⁸³ [REDACTED].

⁸⁴ [REDACTED].

⁸⁵ **P-0209**: GEO-OTP-0039-0007 at 0017, para. 63; **P-0194**: GEO-OTP-0032-1209 at 1246, para. 322.

⁸⁶ [REDACTED] identifying **GUCHMAZOV** in a video of the release GEO-OTP-0044-1051 at various portions of the video between 00:00:04 and 00:00:15; [REDACTED] identifying **GUCHMAZOV** in a video of the release GEO-OTP-0044-1051 at various portions of the video between 00:00:05 and 00:00:14 *and see* [REDACTED].

⁸⁷ Audio / Video material: GEO-OTP-0044-1051 at 00:00:34 to 00:00:42.

⁸⁸ Exchange protocols of 21, 22, 24 and 27 August 2008: GEO-OTP-0040-0433, GEO-OTP-0041-0268, GEO-OTP-0041-0272, GEO-OTP-0041-0278; *and see* Annex 7.

⁸⁹ [REDACTED].

B. The Crimes of Unlawful Confinement, Torture, and Inhuman Treatment committed at or near the KPZ

34. The crimes committed against the Detainees at or near the KPZ may be grouped into four distinct categories of unlawful conduct: (i) the crime of unlawful confinement *per se*; (ii) the crimes of torture, inhuman treatment and outrages upon personal dignity relating to beatings; (iii) the crimes of inhuman treatment and outrages upon personal dignity relating to the forced burial of corpses; and (iv) the crimes of inhuman treatment and outrages upon personal dignity relating to the inhuman detention conditions.

1. Detainees were subjected to unlawful confinement in violation of article 8(2)(a)(vii)

(a) *Factual allegation of unlawful confinement*

35. Between 7 and 27 August 2008, at least 171 actual or perceived Georgian civilian Detainees were held in unlawful confinement by the *de facto* SO administration in the KPZ. These Detainees were protected persons under the Geneva Conventions (“GC”) of 1949, and the relevant factual circumstances were known to their captors. They were held at the KPZ in inhumane conditions for varying lengths of time, ranging from 1 to 19 days, with an average of 12 days.

36. The circumstances of the capture and transfer of Detainees to the KPZ demonstrate that individuals were seized without regard to any lawful procedure. Detainees were brought to the KPZ from Georgian administered villages in SO, but also from villages and locations in occupied UGT, mostly by local Ossetian militia groups (some known as “*Opolchentsy*”), Ossetian soldiers and policemen.⁹⁰ This detention was itself unlawful, either *ab initio* or as a result of the conditions or treatment in detention.

37. After capture, the Detainees were taken to the KPZ, located in the MIA building in Tskhinvali. The MIA building was two stories high in one part and three stories high in

⁹⁰ [REDACTED].

another.⁹¹ The main detention area of the KPZ⁹² consisted of eight cells, of different shapes and sizes varying between approximately 6m² and 16m².⁹³ There were also additional rooms used by the guards and for storage.⁹⁴ In front of the cells was a narrow corridor which led – through a large metal door – to an enclosed yard,⁹⁵ approximately 60m² in size and covered by metal bars and chicken wire⁹⁶ in which an additional cell⁹⁷ and two other rooms⁹⁸ were situated.

(i) The Detainees were ‘protected persons’ under the Fourth Geneva Convention

38. Persons are protected under the GV IV if they find themselves, “in case of a conflict or occupation” in the hands of a party to the conflict or occupying power of which they are not nationals.⁹⁹ In this case, the Detainees were civilian non-combatants, including women, a child and many elderly persons.¹⁰⁰ Their confinement by the SO authorities was directly linked to their actual or perceived Georgian ethnicity and affiliation with the Georgian government. The circumstances of their capture, as well as the conditions of detention and interaction with the KPZ guards and authorities as described below, demonstrate that the Detainees clearly had no allegiance to any other Party involved in the conflict but Georgia.¹⁰¹

⁹¹ A floor plan supplied by the Georgian authorities shows the layout, dimensions and a description of the various cells and other rooms in the KPZ, as well as a photograph of the exterior, see KPZ plans: GEO-OTP-0047-5125 at 5128-5129; **P-0194**: GEO-OTP-0032-1209 at 1234, para. 205; Video GEO-OTP-0044-1056 (transcription GEO-OTP-0047-0756 and translation GEO-OTP-0044-1056) and the descriptions of **P-0258**: GEO-OTP-0044-1345 at 1349, para. 29; Video GEO-OTP-0040-0206 and the descriptions of **P-0220**: GEO-OTP-0042-0230 at 0278-0279, para. 336.

⁹² **P-0362**: GEO-OTP-0048-0049 at 0063, paras. 140-145; **P-0184**: GEO-OTP-0035-0539 at 0553, paras. 95-99; **P-0209**: GEO-OTP-0039-0007 at 0016, para. 56-58.

⁹³ KPZ plans: GEO-OTP-0047-5125; **P-0213**: GEO-OTP-0038-0281 at 0289, para. 57.

⁹⁴ KPZ plans: GEO-OTP-0047-5125; **P-0218**: GEO-OTP-0042-0207 at 0212, para. 43; **P-0194**: GEO-OTP-0032-1209 at 1232, paras. 191, 195.

⁹⁵ **P-0184**: GEO-OTP-0035-0539 at 0553, para. 99.

⁹⁶ **P-0222**: GEO-OTP-0039-0286 at 0297, 0303, paras. 85, 129; [REDACTED]: GEO-OTP-0051-1663, GEO-OTP-0051-1664 and GEO-OTP-0051-1665; *see also* Annex 6g - Detainees in the KPZ - GEO-OTP-0051-1663.

⁹⁷ KPZ plans: GEO-OTP-0047-5125 at 5128-5129; *Contra* **P-0359**, who recalls that there were two additional cells off the yard: GEO-OTP-0048-0017 at 0029-0030, paras. 123, 133.

⁹⁸ Described in the plans as a sentry post and a medical point, see KPZ plans: GEO-OTP-0047-5127 at 5128-5129.

⁹⁹ Fourth Geneva Convention, art. 4. *But see further Tadic* AJ, paras. 165-166 (recalling that the proper legal approach hinges “on substantial relations more than on formal bonds” and that “ethnicity may become the grounds for allegiance” rather than the strict requirement of nationality); *Katanga* Confirmation Decision, paras. 289-292.

¹⁰⁰ *See, e.g.*, Annex 6d - Elderly detainees - GEO-OTP-0044-1051.

¹⁰¹ For example, **P-0228**: GEO-OTP-0046-1679 at 1694, para. 89.

39. The Detainees in the KPZ were all ethnic Georgians, or perceived as ethnic Georgians.¹⁰² The majority held Georgian nationality.¹⁰³

(ii) The confinement of civilians at the KPZ was unlawful

40. There was no legal basis for the confinement of the Detainees. International Humanitarian Law (“IHL”) permits the confinement by an Occupying Power of civilians which are not its nationals in just two circumstances:¹⁰⁴ (i) where previously established by the criminal law of the occupied territory;¹⁰⁵ or (ii) where they are assigned residence or interned in strict conformity with the requirements of the Fourth Geneva Convention.¹⁰⁶ Neither of these conditions were established in this case. In particular, it is clear that the Detainees were not lawfully interned. Such measures are permitted only if “the Occupying Power considers it necessary, for imperative reasons of security”,¹⁰⁷ and such decisions must be taken “according to a regular procedure” including the right of appeal and periodic review.¹⁰⁸ Internees cannot be held incommunicado,¹⁰⁹ and must retain their full civil capacity.¹¹⁰ Their conditions of internment must satisfy specific requirements, including with regard to food, clothing, medical care, and personal property.¹¹¹ The Detainees were not afforded any of these rights.

41. The vast majority of the Detainees were elderly men and women, including many above the age of 70 at the time of their detention. Of the 171 Detainees, only 32 were 40 years old or younger, including one child. 47 of the Detainees were women.¹¹² None of the Detainees was armed or engaged in active hostilities¹¹³ when captured. Some of the

¹⁰² [REDACTED].

¹⁰³ [REDACTED].

¹⁰⁴ This is *lex specialis* to the power of the parties to the conflict to take such measures of control and security as may be necessary as a result of the war: Fourth Geneva Convention, art. 27.

¹⁰⁵ Fourth Geneva Convention, arts. 64, 68, 71-73.

¹⁰⁶ Fourth Geneva Convention, arts. 78-79. See also arts. 41-43, 68. Even if civilian internment is voluntarily requested, in accordance with article 42 of the Fourth Geneva Convention, the same strict requirements apply.

¹⁰⁷ Fourth Geneva Convention, arts. 78-79. See also art. 42 (“the security of the Detaining Power makes it absolutely necessary”).

¹⁰⁸ Fourth Geneva Convention, arts. 78-79. See also art. 43. Internment must end as soon as it is no longer necessary, and best endeavours should be made to ensure that the internee can return if they wish to their last place of residence: arts. 132, 134-135.

¹⁰⁹ Fourth Geneva Convention, arts. 105-116.

¹¹⁰ Fourth Geneva Convention, art. 80.

¹¹¹ Fourth Geneva Convention, arts. 81-104, 117-131.

¹¹² Annex 8 – List of detainees.

¹¹³ See Fourth Geneva Convention, article 5.

younger male Detainees were interrogated by KPZ officials in relation to their civilian status. They stated that their interrogators tried to elicit false admissions – that they were reservists – through intimidation and torture.¹¹⁴ Apart from those interrogations, however, the KPZ authorities did not take any steps to distinguish between Detainees who might conceivably have posed a threat to security and those who clearly did not. In any event, after the end of active hostilities on the territory of SO on 10 August – and certainly after the ceasefire agreement was signed on 12 August – even any hypothetical threat posed by the Detainees ended, and continued confinement on this basis could no longer be justified.

42. Nor could the confinement of the Detainees have been justified as a means to protect their safety, even though this pretext was suggested to a few Detainees by their captors or KPZ guards.¹¹⁵ The evidence provides reasonable grounds to believe that the confinement of civilians at the KPZ was not genuinely intended to protect the safety of the Detainees. Many of the Detainees described an atmosphere of fear and coercion surrounding their capture, which was accompanied by physical violence, death threats, swearing and derogatory language directed against Georgians.¹¹⁶ [REDACTED].¹¹⁷ The treatment to which the Detainees were subjected, not only on arrival but also during detention at the KPZ and when taken out to work,¹¹⁸ is inconsistent with any genuine intention to ensure their safety.

2. During their unlawful confinement, Detainees were subject to torture, inhuman treatment and/ or outrages upon personal dignity

43. There are reasonable grounds to believe that 31 Detainees were subjected to beatings and at least 30 were subjected to unlawful labour while all 171 Detainees were subject to

¹¹⁴ [REDACTED].

¹¹⁵ **P-0259**: GEO-OTP-0041-0003 at 0020, 0028, paras. 119, 177; The claim that the detention was for the purpose of protecting the detainees' own safety was also alluded to by the SO Prosecutor, Taymuraz KHUGAYEV, addressing a group of KPZ detainees and stating: "you are hostages of the circumstances, but we are trying to resolve the problem... (by creating a secure corridor)", see GEO-OTP-0044-1056, at 00:00:24:10; Similarly, according to a 27 August 2008 Gazeta.ru article, **MINDZAEV** reportedly stated "[b]ut you see I will release them, and some grief-stricken person will capture them and shoot them, and who will be blamed for this? The Ministry of Interior, of course", see GEO-OTP-0047-0951 (English translation of GEO-OTP-0022-1238) at 0973; **P-0223**: GEO-OTP-0037-0600 at 0604-0606, paras 23-32; **P-0222**: GEO-OTP-0039-0286 at 0296-0297, paras. 81, 82.

¹¹⁶ **P-0246**: GEO-OTP-0044-1085 at 1103-1104, paras. 119-123; **P-0213**: GEO-OTP-0038-0281 at 0287, paras. 44-46; **P-0161**: GEO-OTP-0039-1003 at 1012-1013, paras. 64, 67-68; **P-0194**: GEO-OTP-0032-1209 at 1223-1224, 1226, paras.114-121 and 136-137.

¹¹⁷ [REDACTED].

¹¹⁸ While working outside of the KPZ, some Detainees were exposed to hatred and violence by the local Ossetian population. Whereas some guards intervened to protect the [REDACTED], others were indifferent to their safety and in certain instances even encouraged the violent aggressions [REDACTED].

inhumane conditions of detention. As demonstrated below, there are reasonable grounds to believe that the Detainees were thus subject to the war crimes of torture [article 8(2)(a)(ii)-1], inhuman treatment [article 8(2)(a)(ii)-2] and/ or outrages upon personal dignity [article 8(2)(b)(xxi)]. Furthermore, even if their detention were to be considered as lawful in principle, these conditions made it unlawful in practice.

*(a) **Beatings:** at least 31 male Detainees were tortured and/or subjected to inhuman treatment and/ or outrages upon personal dignity through beatings*

44. At least 31 Detainees¹¹⁹ were severely beaten during their imprisonment in the KPZ. There are reasonable grounds to believe that these beatings constitute the war crimes of torture, and/or inhuman treatment and/or outrages upon personal dignity.
45. Some of the beatings took place in the context of interrogations, while others were seemingly gratuitous. Many Detainees describe the guards as brutal and report that a certain group of Detainees – the younger males – were beaten regularly¹²⁰ between 8 and approximately 24 August.¹²¹
46. The perpetrators were SO guards, soldiers or policemen present/working at the KPZ.¹²² Since the acts described below happened within the KPZ, there are reasonable grounds to believe that these perpetrators fell within the hierarchical structure of the MIA,¹²³ and were thus subject to the control of **MINDZAEV**, and for KPZ guards, they also fell under the control of **GUCHMAZOV**.

(i) Torture [article 8(2)(a)(ii)-1]

47. There are reasonable grounds to believe that the crime of torture was committed in respect of at least 10 Detainees : [REDACTED].

¹¹⁹ **Witnesses:** [REDACTED], and **non-witness victims:** [REDACTED].

¹²⁰ [REDACTED].

¹²¹ [REDACTED].

¹²² **P-0161:** GEO-OTP-0039-1003 at 1018, para. 108; **P-0093:** GEO-OTP-0020-1150 at 1162, paras. 89-92; **P-0491:** GEO-OTP-0047-4533 at 4539-4540, paras. 42-46.

¹²³ **P-0211:** GEO-OTP-0045-0348 at 0377-0379, paras. 291-314; **P-0194:** GEO-OTP-0032-1209 at 1236-1237, paras. 226-238; **P-0418:** GEO-OTP-0050-0184 at 0194, paras. 71-75.

48. The beatings inflicted upon the selected Detainees varied in intensity and duration, but in many instances the physical violence meted out was severe. The physical attacks led to very painful, clearly visible injuries (for example bruises or bleeding wounds).¹²⁴
49. The repeated beatings also caused severe, lasting mental suffering to several of the Detainees long after their release, such as persistent, intrusive memories;¹²⁵ breathlessness, especially at night;¹²⁶ and headaches and chronic nightmares.¹²⁷
- a. The perpetrators acted with several specific unlawful purposes
50. The evidence establishes reasonable grounds to believe that beatings were inflicted on the selected Detainees for one or more prohibited purposes.
- i. Obtaining information or confession
51. At least [REDACTED] and [REDACTED] were interrogated and beaten on various occasions to obtain information or confessions.¹²⁸
- ii. Punishment
52. There are reasonable grounds to believe that severe beatings were also inflicted upon [REDACTED] and [REDACTED] for the purpose of punishment.¹²⁹ On two occasions, [REDACTED] was beaten, once because [REDACTED];¹³⁰ and once, because [REDACTED].¹³¹
- iii. Humiliation
53. Several of the Detainees report that upon first arrival at the KPZ, they were severely beaten outside the entrance or in the entrance hall of the KPZ. Several victims describe how the guards mocked them at the entrance, used “every swear word that exists” and

¹²⁴ [REDACTED].

¹²⁵ [REDACTED].

¹²⁶ [REDACTED].

¹²⁷ [REDACTED].

¹²⁸ [REDACTED]; War of Russia with Georgia video: GEO-OTP-0014-1147 (Original), GEO-OTP-0042-0408 (translated transcript); [REDACTED].

¹²⁹ In general, [REDACTED] believes that the guards beat Detainees because they thought that the Georgians invaded their territory and held the Detainees responsible. *See* [REDACTED].

¹³⁰ [REDACTED].

¹³¹ [REDACTED].

called them “pigs” or “Georgian pigs” while they beat them.¹³² Once, after swearing at them and calling them “Georgian pigs”, the guards tried to force some of the Detainees [REDACTED] to fight each other for their entertainment.¹³³

iv. Coercion

54. In addition, the guards beat some of the Detainees to force them to follow instructions.¹³⁴ For example, [REDACTED] was beaten because [REDACTED].¹³⁵

(ii) Inhuman treatment [article 8(2)(a)(ii)-2]

55. There are reasonable grounds to believe that the crime of inhuman treatment was committed in respect of at least 11 of the Detainees.¹³⁶

56. Additional male Detainees were beaten in the KPZ in further incidents that do not meet the threshold of the crime of torture, since no specific purpose is evident, namely: [REDACTED] between [REDACTED];¹³⁷ [REDACTED] between [REDACTED];¹³⁸ and [REDACTED];¹³⁹ [REDACTED];¹⁴⁰ [REDACTED] on [REDACTED],¹⁴¹ [REDACTED] on [REDACTED];¹⁴² and [REDACTED] on [REDACTED].¹⁴³

(iii) Outrages upon personal dignity [article 8(2)(b)(xxi)]

57. In any event, there are reasonable grounds to believe that the crime of outrages upon personal dignity was committed in respect of all of the Detainees affected by the beatings and verbal abuse described above. The beatings humiliated, degraded or otherwise violated the dignity of the affected victims, and were intended to do so. The beatings were often accompanied by insults and degrading language and/or conduct.¹⁴⁴

¹³² [REDACTED].

¹³³ [REDACTED].

¹³⁴ [REDACTED].

¹³⁵ [REDACTED].

¹³⁶ **Witnesses:** [REDACTED].

¹³⁷ [REDACTED].

¹³⁸ [REDACTED].

¹³⁹ [REDACTED].

¹⁴⁰ [REDACTED].

¹⁴¹ [REDACTED].

¹⁴² [REDACTED].

¹⁴³ [REDACTED].

¹⁴⁴ *See supra*, para. 53.

(b) **Unlawful labour:** *at least 30 male Detainees¹⁴⁵ were subject to inhuman treatment and/or outrages upon personal dignity*

58. Most Detainees who were fit to work were compelled to perform labour during their confinement, including cleaning the MIA building, cleaning the streets of Tskhinvali and repairing the houses of SO *de facto* officials.¹⁴⁶ More significantly, there are reasonable grounds to believe that the perpetrators forced at least 30 male Detainees to collect and/or bury corpses of soldiers. These were decomposing and mutilated corpses – sometimes naked – and most of the Detainees selected for labour were provided with no protective equipment.¹⁴⁷

59. The Fourth Geneva Convention limits the circumstances in which protected persons in occupied territory may be compelled to work by the Occupying Power.¹⁴⁸ In particular, civilian internees may not in any circumstances be employed as workers “unless they so desire”.¹⁴⁹ Working conditions and compensation must accord with national laws and practices¹⁵⁰—including with regard to “wages, hours of labour, clothing and equipment, preliminary training, and compensation for occupational accidents and diseases”¹⁵¹—and in any event the work must not be “of a degrading or humiliating character”.¹⁵²

a. The labour was forced or lacked genuine consent

60. Most fit men among the Detainees were forced to work,¹⁵³ including to collect and bury dead soldiers.¹⁵⁴ The guards would yell every day: “You, Georgian pigs, come out to work”,¹⁵⁵ and applied various methods to select Detainees for the tasks.¹⁵⁶ While the

¹⁴⁵ **Witnesses:** [REDACTED]; and **non-witness victims:** [REDACTED].

¹⁴⁶ [REDACTED]; Video material shows how detainees were working in the streets, *see* Video pertaining to the August Ruins reports: GEO-OTP-0017-0290. P-0362 commented this video, *compare* [REDACTED] (referring to the video GEO-OTP-0017-0290 track 3), At 00:00:35:06.

¹⁴⁷ [REDACTED].

¹⁴⁸ Fourth Geneva Convention, art. 51. *See also* art. 40.

¹⁴⁹ Fourth Geneva Convention, art. 95.

¹⁵⁰ Fourth Geneva Convention, art. 95.

¹⁵¹ Fourth Geneva Convention, art. 40. *See also* arts. 51, 95.

¹⁵² Fourth Geneva Convention, arts. 95.

¹⁵³ [REDACTED].

¹⁵⁴ [REDACTED].

¹⁵⁵ [REDACTED].

¹⁵⁶ [REDACTED].

selected Detainees worked, armed guards supervised them at gunpoint, making sure they did not escape.¹⁵⁷

61. To the extent that any of the Detainees may have acquiesced to work assignments, this consent cannot be regarded as genuine, due to the inherently coercive nature of detention as such¹⁵⁸ (and the deplorable conditions in particular¹⁵⁹), and the beatings meted out to some of the Detainees who refused to comply with instructions.¹⁶⁰ On occasion, some of the Detainees were also held at gunpoint when being selected for work.¹⁶¹

b. The labour was inherently unlawful or, alternatively, the conditions of labour rendered it unlawful

62. The labour described above was degrading and humiliating. The bodies of the Georgian soldiers had been lying in the mid-summer sun for several days and were already swollen, decomposing, malodorous and full of worms.¹⁶² Sometimes when the Detainees touched them, the skin or body parts would come off.¹⁶³

63. In addition, the Detainees performed the burials in dangerous and unhealthy conditions. The corpses stank terribly and had worms stuck to their clothes.¹⁶⁴ During these work assignments, SO civilians attacked and insulted the Detainees on several occasions.¹⁶⁵ Whilst the guards often protected the Detainees from these attacks,¹⁶⁶ everyone could still approach them on the street and harass them.¹⁶⁷ Sometimes the guards allowed the local Ossetians to beat them.¹⁶⁸ Furthermore, with rare exceptions,¹⁶⁹ the Detainees were provided with no gloves or other protective equipment and had to handle the corpses with their bare hands.¹⁷⁰ This was compounded by the generally inadequate sanitary conditions

¹⁵⁷ [REDACTED]. (referring to the unified track: GEO-OTP-0017-0290 at 00:00:55:22), 222 (referring to the photo: GEO-OTP-0020-1178), 225, 226, 228 (referring to the photo: GEO-OTP-0020-1178); [REDACTED].

¹⁵⁸ [REDACTED].

¹⁵⁹ See *infra*, section IV.B.2(c).

¹⁶⁰ [REDACTED].

¹⁶¹ [REDACTED].

¹⁶² [REDACTED].

¹⁶³ [REDACTED].

¹⁶⁴ [REDACTED].

¹⁶⁵ [REDACTED].

¹⁶⁶ [REDACTED].

¹⁶⁷ [REDACTED].

¹⁶⁸ [REDACTED].

¹⁶⁹ [REDACTED].

¹⁷⁰ [REDACTED].

in detention which meant that Detainees could not properly wash themselves or their clothes after burying the corpses.¹⁷¹

c. The unlawful labour was sufficiently severe to constitute inhuman treatment, or otherwise constituted outrages upon personal dignity

64. Inhuman treatment requires the infliction of “severe” physical or mental pain or suffering,¹⁷² which is to be assessed on the facts taking into account the nature of the act, the context, its effects, and the personal circumstances of the victims.¹⁷³ The compelled unlawful labour in this case met that standard, having particular regard to the circumstances of the Detainees and the traumatic and degrading nature of the work they were required to undertake. In any event, however, the unlawful labour constituted such “humiliation, degradation, or other violation [of personal dignity]” that it would be generally recognized as an outrage upon personal dignity.¹⁷⁴

(c) ***Detention conditions: all 171 Detainees in the KPZ were subject to conditions of detention constituting inhuman treatment and/ or outrages upon personal dignity***

65. All Detainees at the KPZ were subject to wholly inadequate conditions of detention arising from (1) overcrowding and the deprivation of adequate sleeping, living and toilet facilities, food and water, and proper medical care; and (2) being subjected to an oppressive atmosphere of fear. Both these physical and mental components establish reasonable grounds to believe that these conditions of detention amounted to the commission of the crimes of inhuman treatment and/or outrages upon personal dignity.¹⁷⁵

a. Physical component: the Detainees were deprived of adequate space, hygiene, food, water and medical care

¹⁷¹ [REDACTED].

¹⁷² Elements of Crimes, art. 8(2)(a)(ii)-2, element 1.

¹⁷³ See e.g. *Krnjelac* TJ, para. 131; *Haradinaj* RJ, para. 417. See also *Katanga* Confirmation Decision, para. 363 (considering that detaining civilians for many hours in a room filled with dead bodies met the severity threshold).

¹⁷⁴ Elements of Crimes, art. 8(2)(b)(xxi), element 2.

¹⁷⁵ Compare *Limaj* TJ, paras. 231-239, 283-294, 300, 305; *Delalić* TJ, paras. 9-16, 24-25, 150-154, 552-558, 605, 1073-1119, 1242, 1253; *Hadžihasanović* TJ, paras. 8, 32-37, 1191-1251, 1299-1300, 1314-1319, 1326-1328, 1336-1338, 1341-1343, 1568, 1571, 1592, 1596-1605, 1612, 1627-1628, 1634, 1645, 1651, 1655, 1658-1661, 1670-1671, 1674-1675, 1681, 1687-1692, 1702-1705, 1714-1719, 1726-1727; *Blagojević & Jokić* TJ, paras. 264-289, 337-348, 605-610; *Simić* TJ, paras. 8, 70, 94-97, 737-777, 1115, 1123; *Aleksovski* TJ, paras. 27-29, 46-57, 84-87, 139-182, 211-226.

66. As described above, all Detainees endured very poor physical conditions of detention. The conditions were at their worst during the initial days of detention, when Detainees were confined to their cells and food and water provisions were manifestly inadequate.¹⁷⁶ While nutritional and medical conditions did improve somewhat after a visit of the Red Cross to the KPZ,¹⁷⁷ this only took place around 23-24 August—in the last days of their detention.¹⁷⁸
67. In particular, the KPZ was severely overcrowded with wholly inadequate living and sleeping space. At the height of the detention, at least 157 civilians were simultaneously held in the KPZ, which was designed to hold no more than 36 prisoners awaiting trial.¹⁷⁹ Due to the overcrowding, the kerosene-operated power generator and the intense mid-summer heat, conditions in the cells were unbearably stifling,¹⁸⁰ particularly for the many elderly and sick detainees.
68. The sanitary conditions were very poor throughout. During the initial period, the Detainees did not have access to a toilet at all, and had to use a bucket in the cell – usually filled with urine.¹⁸¹
69. The water the Detainees received for drinking was inadequate in terms of both quantity and quality. During the initial days (up until approximately 13 August), some of the Detainees received no water at all to drink from the guards,¹⁸² or only a very limited amount of dirty water.¹⁸³ Later, the situation improved a little,¹⁸⁴ and a fire engine would bring river water to the KPZ daily.¹⁸⁵

¹⁷⁶ **P-0246:** GEO-OTP-0044-1085 at 1112, para. 175. **P-0214:** GEO-OTP-0051-1091 at 1101, para. 82.

¹⁷⁷ **P-0161:** GEO-OTP-0039-1003 at 1016, para. 93. **P-0223:** GEO-OTP-0037-0600 at 0617-0618, paras. 93-94; **P-0213:** GEO-OTP-0038-0281 at 0293, para. 86.

¹⁷⁸ [REDACTED].

¹⁷⁹ See the statement of [REDACTED].

¹⁸⁰ [REDACTED].

¹⁸¹ [REDACTED].

¹⁸² [REDACTED].

¹⁸³ It must be noted that Tskhinvali suffered from a lack of drinking water. A report of the News agency RTR (Vesti) from 4 August 2008 mentions that due to a Georgian attack, Tskhinvali had no running water, see: RTR news report: GEO-OTP-0009-2922; **P-0207:** GEO-OTP-0047-7710 at 7716, paras. 24-29

¹⁸⁴ [REDACTED].

¹⁸⁵ [REDACTED].

70. Likewise, some of the Detainees received no food in the initial days until 13 August.¹⁸⁶ Thereafter, food portions improved somewhat, but remained inadequate.¹⁸⁷ At best, the food consisted of small portions of bread¹⁸⁸ and/or buckwheat.¹⁸⁹
71. There are no indications that the guards provided any medical support in the initial days, despite the poor health and immediate needs of many of the Detainees.¹⁹⁰ For example, two Detainees were badly injured in a car accident while being transported to the KPZ.¹⁹¹ After the cell doors were opened around 13 August, the medical situation improved somewhat; however, the Detainees continued to report poor, sporadic and inadequate medical care.¹⁹²
- b. Mental component: the Detainees were subject to an atmosphere of fear
72. In addition to the poor physical conditions of detention, the Detainees were subjected to an atmosphere of fear which contributed to the inhumane conditions. The inmates constantly feared beatings, rape or even death.
73. No valid reason was provided by the authorities to justify their capture and detention in the KPZ, or for how long they could expect to be detained.¹⁹³ The guards forced them into the KPZ at gunpoint.¹⁹⁴ One Detainee reports being blindfolded and having his hands tied.¹⁹⁵ Detainees were forced to walk over a Georgian flag and instructed to wipe their shoes on it.¹⁹⁶ Those who failed to step on the flag were assaulted.¹⁹⁷ Once inside the KPZ, the guards confiscated their valuables, identification papers and telephones under threat of further violence.¹⁹⁸
74. During the detention, the guards maintained this atmosphere, and frequently insulted and humiliated the Detainees.¹⁹⁹

¹⁸⁶ [REDACTED].

¹⁸⁷ [REDACTED].

¹⁸⁸ [REDACTED].

¹⁸⁹ [REDACTED].

¹⁹⁰ [REDACTED].

¹⁹¹ [REDACTED].

¹⁹² [REDACTED]. However, see testimony of W25 [presumably GUCHMAZOV] at ECtHR: GEO-OTP-0047-6804 at 7076 stating there was a doctor and three nurses at KPZ.

¹⁹³ [REDACTED].

¹⁹⁴ [REDACTED].

¹⁹⁵ [REDACTED].

¹⁹⁶ [REDACTED].

¹⁹⁷ [REDACTED].

¹⁹⁸ [REDACTED].

¹⁹⁹ [REDACTED].

75. The guards regularly threatened Detainees with explicit violence.²⁰⁰ Meanwhile, the Detainees knew that certain of the Detainees were beaten regularly in the upper floors.²⁰¹ Younger male Detainees received explicit death threats from the guards,²⁰² [REDACTED].²⁰³ There were also occasions when the guards threatened women with sexual violence.²⁰⁴

c. The detention conditions were sufficiently severe to constitute inhuman treatment, or otherwise constituted outrages upon personal dignity

76. The detention conditions met the severity threshold to be characterised as inhuman treatment²⁰⁵—for example, relying on the opinion of the UN Special Rapporteur for Torture, the *Delalić* Trial Chamber considered in principle that prolonged denial of food, sufficient hygiene, and medical assistance could all satisfy this requirement.²⁰⁶ In any event, the wholly inadequate conditions in the KPZ were such as to be generally recognized as amounting to an outrage upon personal dignity.

C. The Crime of Hostage Taking

77. As established above,²⁰⁷ between 7 and 27 August 2008, at least 171 Georgian civilian detainees were detained in the KPZ by the *de facto* SO administration. While it is not an element of the crime of hostage taking,²⁰⁸ this detention was in any event unlawful. Although the ultimate aim of South Ossetian authorities was the unlawful transfer of ethnic Georgians lawfully resident from the territory, SO officials and Russian military commanders leveraged their detention – together with the Georgian civilians captured in UGT for this specific purpose – by threatening to continue to detain them in order to compel Georgian authorities to release convicted criminals as a condition for their release.

²⁰⁰ [REDACTED].

²⁰¹ [REDACTED].

²⁰² [REDACTED].

²⁰³ [REDACTED].

²⁰⁴ [REDACTED].

²⁰⁵ See above para. 64.

²⁰⁶ *Delalić* TJ, para. 467.

²⁰⁷ See *supra* section IV.B.1.

²⁰⁸ See *Karadžić* TJ, paras. 468 (citing *Karadžić* AD, para. 21), 5943. While this decision was based on the prohibition of hostage taking in common article 3 of the Geneva Conventions, similar reasoning would seem to apply to hostage taking as a grave breach of the Geneva Conventions and article 8(2)(a)(viii) of the Statute. While some commentators initially took a narrower view, they subsequently acknowledged that this question is “disputed”—and considered the broader view more consistent with the terminology of element 1 of this crime. Compare e.g. Dörmann (2002), pp. 125-127, with Dörmann (2022), p. 395 (mn, 178).

This conduct amounts to the war crime of hostage taking in contravention of article 8(2)(a)(viii).

(a) *The first element: the perpetrator seized, detained or otherwise held hostage the Georgian civilians in KPZ*

78. As set out in Part IV.B.1 above, Georgian civilians were detained in the KPZ. While not required for the crime of hostage taking,²⁰⁹ this detention was itself unlawful, either *ab initio* or as a result of the conditions or treatment in detention.

(b) *The second element: threats to continue to detain the Georgian civilians in KPZ*

79. Some of the Suspects conveyed or assisted in conveying threats to continue to detain the Georgian civilians in the KPZ in order to compel Georgian authorities to release Russian and SO convicts who were serving prison terms in Georgia.

80. From around 12 or 13 August 2008, several rounds of negotiations about prisoner exchanges took place between the Russian and *de facto* SO side and the Georgian side.²¹⁰ The Russian and *de facto* SO sides were represented by Maj-Gen. Borisov and **SANAKOEV** respectively.²¹¹ **MINDZAEV** also played a role in establishing contact with the Georgian authorities for the purposes of the negotiations,²¹² including through Detainees.²¹³

81. For the Russian and *de facto* SO side, the main goal of the exchange negotiations was to release General Dumbadze (a personal friend of Maj-Gen. Borisov²¹⁴) and convicted Ossetian criminals (whose return was sought by the SO administration) who were serving

²⁰⁹ *Ibid.*

²¹⁰ **P-0148**, GEO-OTP-0024-0144 at 0158-0160, paras. 85-90; **P-0501**, GEO-OTP-0047-5382 at 5388-5390, paras. 45-58; **P-0354**: GEO-OTP-0046-1589 at 1602, para. 92.

²¹¹ Protocol on the Exchange of Prisoners of War dated 19 August 2008, GEO-OTP-0002-2481; Protocol on the Exchange of Detainees' dated 21-AUG-2008, GEO-OTP-0041-0263; Protocol on the Exchange of Detainees' dated 22-AUG-2008, GEO-OTP-0041-0268; Protocol on the Exchange of Detainees' dated 24-AUG-2008, GEO-OTP-0041-0272; Protocol on the Handover of Detainees to the Ossetian Side' dated 25-AUG-2008, GEO-OTP-0041-0275; Protocol on the Exchange of Detainees' dated 27-AUG-2008, GEO-OTP-0041-0278. **P-0354**: GEO-OTP-0046-1589 at 1599-1605, para. 73-113; **P-0512**: GEO-OTP-0047-7348 at 7363, para. 104.

²¹² **P-0209**: GEO-OTP-0039-0007 at 0019, para. 77; Non ICC statement of **P-0209**: GEO-OTP-0041-0697 at 0702; **P-0459**: GEO-OTP-0047-7727 at 7760, 7773, paras. 274-275, 401; **P-0238**: GEO-OTP-0041-0063 at 0076, para. 108; Translation of Rossiyskaya Gazeta article, 28 August 2008, GEO-OTP-0047-1121 at 1124.

²¹³ **P-0537**: GEO-OTP-0047-9678 at 9682, para. 32; **P-0542**: GEO-OTP-0047-9766 at 9770, para. 29.

²¹⁴ [REDACTED].

prison terms in Georgian prisons²¹⁵ for very grave crimes committed before the August 2008 war.²¹⁶ Even prior to August 2008, the SO side had consistently requested Georgia to release SO convicts.²¹⁷

82. The Georgian position was that exchanges should be limited to those detained during or after the war—in other words, a “like-for-like” exchange.²¹⁸ Georgia’s refusal to release the convicts,²¹⁹ and doubts as regards Dumbadze's release, led to Maj-Gen. Borisov threatening that he would stop the negotiations,²²⁰ and thus consequently prolong the detention of the Detainees.
83. **SANAKOEV** also threatened the Georgian side with continued detention of the Detainees. During a meeting on 21 August 2008, **SANAKOEV** insisted on Georgians releasing some convicted Ossetian criminals from jail, stating that he “can't go home empty handed”, that it would be “difficult to continue this process” if he came back without convicted Ossetians.²²¹
84. Eventually, the Georgian side agreed to release **DUMBADZE** and 13 SO convicts²²² because the lives of the Detainees were more important than the continued detention of the convicts.²²³ From 21 August 2008 to 27 August 2008, 166 Detainees were released by the SO / Russian side.²²⁴ At least nine SO convicts were exchanged on 27 August 2008 on the basis of Presidential pardons or plea agreements.²²⁵

²¹⁵ **P-0512**: GEO-OTP-0047-7348 at 7363, para. 109; **P-0209**: GEO-OTP-0047-9657 at 9666, para. 48; see also judgment of the Supreme Court of Georgia, GEO-OTP-0049-1720.

²¹⁶ **P-0354**: GEO-OTP-0046-1589 at 1601, paras. 88-90; **P-0527**: GEO-OTP-0047-8894 at 8908, para. 83; **P-0512**: GEO-OTP-0047-7348 at 7363, paras. 109-111.

²¹⁷ Media articles: GEO-OTP-0047-5148 and GEO-OTP-0047-5155.

²¹⁸ **P-0354**: GEO-OTP-0046-1589 at 1601, paras. 88-90.

²¹⁹ **P-0354**: GEO-OTP-0046-1589 at 1602, para. 92.

²²⁰ **P-0354**: GEO-OTP-0046-1589 at 1602, para. 92; **P-0512**: GEO-OTP-0047-7348 at 7364, para. 117.

²²¹ [REDACTED].

²²² **P-0512**: GEO-OTP-0047-7348 at 7365, para. 121; **P-0228**: GEO-OTP-0046-1679 at 1706, para. 167; Telephone Intercept of 23/08/2008-29/08/2008, GEO-OTP-0047-1375 at 1377-1378 (the same as: GEO-OTP-0043-1655, GEO-OTP-0043-1837).

²²³ **P-0512**: GEO-OTP-0047-7348 at 7365, para. 121.

²²⁴ See *supra*, para. 98.

²²⁵ **P-0516**: GEO-OTP-0047-7858 at 7870, para. 74; Davit Valeris Dze Gusuev: Presidential Decree to grant pardon to convicts No. 569, GEO-OTP-0047-4386; Oleg Ruslanis Dze Komarov: Presidential Decree to grant pardon to convicts No. 569, GEO-OTP-0047-4399; Vladimer Rudikas Dze Jioev: Presidential Decree to grant pardon to convicts No. 569, GEO-OTP-0047-4403; Ivane Albertis Dze Bestaev: Presidential Decree to grant pardon to convicts No. 569, GEO-OTP-0047-4393; Narika Albertis Dze Bibilov: Presidential Decree to grant pardon to convicts No. 569, GEO-OTP-0047-4397; Vladimer Ivanis Dze Alborov: Presidential Decree to grant pardon to convicts No. 569, GEO-OTP-0047-4407; Vitali Khazbis Dze Tadaev: Presidential Decree to grant pardon to convicts No. 569, GEO-OTP-0047-9968 at 9972; Svetlana Kazbegis Asuli Tibilova: Certificate: Notice No. 1/855, GEO-OTP-0047-4411; Judgment on behalf of Georgia / Case No. 1/855-08, GEO-OTP-0047-4413; and Valeri Bikoev: Judgment on behalf of Georgia / Case No. 1/3770-08, GEO-OTP-0047-9974.

(c) *The third element: the perpetrator(s) intended to compel the Georgian authorities to release SO convicts in their custody as an explicit or implicit condition for the release of the Detainees*

85. Together with Maj-Gen. Borisov, **SANAKOEV** used the Detainees as a bargaining tool to compel the Georgian side to release Dumbadze and the convicted criminals serving prison terms in Georgia.²²⁶ As mentioned above, Maj-Gen. Borisov had threatened to stop the negotiations until Dumbadze was released,²²⁷ demonstrating his intention to compel the Georgian authorities to comply with his demands. He also supported **SANAKOEV**'s demands for the release of SO convicts.²²⁸ Furthermore, **SANAKOEV** understood that a gradual release of the Detainees was necessary in order to compel the Georgian authorities to release all the convicts requested by SO.²²⁹ **SANAKOEV** made clear that the Ossetian side would not release the last of the Detainees until all Ossetians whose release had been requested were handed over.²³⁰
86. Despite the absence of grounds for detention, some of the Detainees heard from **MINDZAEV**,²³¹ **GUCHMAZOV**²³² and KPZ guards²³³ that they were held in order to be exchanged for Ossetians,²³⁴ while others were informed that they were “needed” for an exchange upon capture.²³⁵
87. By these means, the Georgian authorities were successfully compelled to release Dumbadze and several Ossetian convicts as a condition for the release of the Detainees.²³⁶

(d) *Other elements of the crime of hostage taking*

88. As explained above²³⁷, all of the Detainees were “protected persons” under the Geneva Conventions of 1949 and the perpetrators were aware of this factual circumstance.

²²⁶ [REDACTED].

²²⁷ **P-0512**: GEO-OTP-0047-7348 at 7364, para. 112.

²²⁸ **P-0073**: GEO-OTP-0047-6482 at 6501-6502.

²²⁹ **P-0354**: GEO-OTP-0052-1538 at 1542, para. 22.

²³⁰ [REDACTED].

²³¹ [REDACTED]; *See also* Korrespondent/Gazeta media article dated 27 August 2008: GEO-OTP-0041-0299 at 0301-0302; Rossiyskaya Gazeta media: GEO-OTP-0047-1121 at 1124.

²³² [REDACTED].

²³³ [REDACTED].

²³⁴ [REDACTED].

²³⁵ [REDACTED].

²³⁶ *See supra*, paras. 79-84.

²³⁷ *See supra*, para. 38.

Moreover, as described in Section III.A, the hostage taking was committed in the context of and was associated with an IAC, and the perpetrators were aware of the relevant factual circumstances.

D. The Crime of Unlawful Transfer

89. In addition to being used as hostages, the detention and subsequent “exchange” of some of the Detainees served another overarching purpose: the expulsion of ethnic Georgians from the territory of SO.

90. At least **110** of the Detainees transferred to UGT between 21 and 27 August 2008 were lawfully present on the *de facto* territory of SO prior to their capture (“Lawful Residents”),²³⁸ and were subsequently expelled from SO without adequate consent. There are therefore reasonable grounds to believe that at least **110** Lawful Residents were unlawfully transferred in contravention of international humanitarian law and articles 8(2)(a)(vii).

1. The Lawful Residents were transferred out of SO to UGT

91. The transfer of civilians from occupied territory without their consent, even if they have been interned or otherwise detained, is generally prohibited, “regardless of the motive” for the transfer.²³⁹ The only exception is where “the security of the population or imperative military reasons so demand”,²⁴⁰ and such evacuations must be temporary in nature and imply a duty of care for the evacuees as well as a right to return.²⁴¹ The danger to the security of the population cannot result from the conduct of the Occupying Power’s own forces,²⁴² and evacuation must not be a mere “pretext”.²⁴³

²³⁸ Others of the Detainees were temporarily visiting SO for work or other purposes, but generally resided in the UGT: see below para. 94.

²³⁹ Fourth Geneva Convention, art. 49.

²⁴⁰ Fourth Geneva Convention, art. 49. Even where an evacuation is justified, this should not be outside the bounds of the occupied territory unless “for material reasons it is impossible to avoid such displacement”. While article 8(2)(a)(vii)-1 of the Statute appears to be absolute in its prohibition of unlawful deportation or transfer, the Prosecution understands it to permit evacuations only to the same extent as permitted by international law, like the analogous crimes in articles 7(1)(d), 8(2)(b)(viii), and 8(2)(e)(viii): see Statute, art. 7(2)(d); Elements of Crimes, arts. 8(2)(b)(viii) (fn. 44), 8(2)(e)(viii) (Element 2). See also GCIV Commentary, p. 279 (“[t]he prohibition is absolute and allows of no exceptions, apart from those stipulated”).

²⁴¹ Fourth Geneva Convention, art. 49. See also *Krajišnik* TJ, para. 725; *Blagojević & Jokić* TJ, paras. 597, 599, 600-601; *Naletilić & Martinović* TJ, para. 526.

²⁴² See e.g. *Stakić* AJ, para. 287.

²⁴³ *Blagojević & Jokić* TJ, para. 597.

92. Nor may civilians be compulsorily “exchanged” in the sense of forcible transfer or deportation from occupied territory in order to secure the repatriation or return of other persons by the adverse party to the conflict.²⁴⁴ Such a practice would not only violate the clear prohibition of forcible transfer and deportation, as well as the prohibition on taking hostages,²⁴⁵ but would undermine the strict regulation of civilian internment,²⁴⁶ which is distinct from the internment of combatants (prisoners of war) where “exchanges” are more common.²⁴⁷ While *voluntary* repatriation of civilian internees may be lawful, great caution is required in establishing that consent is genuine—especially bearing in mind any coercive circumstances.²⁴⁸ In particular, this is not established *ipso facto* by the involvement of neutral third parties,²⁴⁹ nor the endorsement of any political or military leaders concerned.²⁵⁰
93. As mentioned earlier,²⁵¹ in the first days of the conflict, the majority of the ethnic Georgian civilian population of SO had fled to UGT ahead of the advancing Russian forces.²⁵² Remaining civilians (the Detainees) were confined at the KPZ in Tskhinvali, until they were transferred to UGT (Gori or Karaleti) by Russian and *de facto* SO authorities under the framework of so-called “exchanges” for Ossetian convicts.²⁵³

²⁴⁴ See also e.g. *Naletilić & Martinović* TJ, paras. 527, 529, 531. While those carrying out such compulsory transfers or deportations of civilians under their control may be subject to individual criminal responsibility under the Statute, this need not necessarily imply any accessorial liability for third parties acting strictly for humanitarian purposes, including in a receiving State.

²⁴⁵ Fourth Geneva Convention, art. 34.

²⁴⁶ Notably, while article 132 of the Fourth Geneva Convention encourages the parties to the conflict to endeavour to conclude agreements for the repatriation of certain classes of internees, and these may be part of an exchange, it was considered implicit by the drafters that this was *voluntary*: see GCIV Commentary, p. 513 (noting that it is “a matter for regret that the principle of voluntary transfer was not repeated here in regard to the repatriation of internees, as had been suggested by the International Committee of the Red Cross” but recalling that the question of voluntariness was settled by articles 45 and 49, governing the prohibition on unlawful transfer). In any event, this provision cannot justify such agreements where the persons concerned were not lawfully interned in the first place: *Karadžić* TJ, para. 2470. It is also well established that compulsory population transfers may not be used as a basis to resolve conflict: see e.g. ECOSOC Preliminary Report, para. 43; Special Rapporteur Report, paras. 64-66; PACE Report, paras. 51-52, 54.

²⁴⁷ See Third Geneva Convention, arts. 21-125.

²⁴⁸ See e.g. *Stakić* AJ, paras. 279, 281-282; *Krnojelac* AJ, para. 229. See also *Karadžić* TJ, para. 2471; *Gotovina* TJ, para. 1759; *Popović* TJ, paras. 920-922; *Krajišnik* TJ, para. 731.

²⁴⁹ See e.g. *Simić* AJ, para. 180; *Stakić* AJ, para. 286; *Karadžić* TJ, para. 490; *Krajišnik* TJ, para. 724; *Simić* TJ, para. 127; *Stakić* TJ, para. 683.

²⁵⁰ See e.g. *Karadžić* TJ, para. 490; *Gotovina* TJ, para. 1739; *Popović* TJ, para. 897; *Krajišnik* TJ, para. 724; *Simić* TJ, paras. 127-128; *Naletilić & Martinović* TJ, para. 523.

²⁵¹ See *supra* para. 13.

²⁵² **P-0143**: GEO-OTP-0022-0002 at 0011-0012 paras. 52-59; **P-0501**: GEO-OTP-0047-5382 at 5386, paras. 28-30; **P-0527**: GEO-OTP-0047-8894 at 8900-8901, paras. 37-44, 46.

²⁵³ Some of these were captured on video: 21 August transfer: **France 24 video** at GEO-OTP-0044-1051; 22 August transfer: **TV Alania video** at GEO-OTP-0051-0426; 27 August: witness **P-0266** explains that a Russian TV crew recorded this event, GEO-OTP-0051-1033 at 1062, para. 236.

Details of these transfers were recorded in documents signed by the parties and entitled “Protocol on the Exchange of Detainees”.²⁵⁴

94. Specifically, while about 164 civilians in total²⁵⁵ were transferred as part of four “exchanges”, 157 had been among the Detainees confined in the KPZ. Among these 157 Detainees, 110 had been lawfully residing in SO prior to the conflict (“Lawful Residents”), while the remaining 47 captured from UGT or temporarily working in SO.²⁵⁶ Accordingly, the present charge of unlawful transfer is limited to these Lawful Residents.
95. Displaced Georgians were effectively prevented from exercising their right of return by a number of factors: the creation of the *de facto* border known as the ABL;²⁵⁷ the refusal of SO authorities to permit the unconditional return of Georgian civilians;²⁵⁸ the lack of security for ethnic Georgians; and the wholesale destruction of ethnic Georgian homes—indeed entire villages.²⁵⁹
96. The Lawful Residents were not asked where they wanted to be released to, nor given any choice to return to their homes in SO. Some victims learned they were being exchanged for Ossetians²⁶⁰ or Russian soldiers and no questions were asked about their wish to return home.²⁶¹ Others were simply told they were being released and were put on the buses.

²⁵⁴ The relevant protocols are for the exchanges of: **21 August**: GEO-OTP-0040-0066 (translation at GEO-OTP-0041-0263); **22 August** - GEO-OTP-0040-0070 (translation at GEO-OTP-0041-0268); **24 August** - GEO-OTP-0040-0073 (translation at GEO-OTP-0041-0272); **27 August** - GEO-OTP-0040-0078 (translation at GEO-OTP-0041-0278).

²⁵⁵ This number is based on the number of Georgian civilians listed in the exchange protocol, and excludes the names of two POWs who were listed in the protocols (Georgian soldiers, P-0650 and P-0651).

²⁵⁶ These 47 Detainees had been captured by *de facto* South Ossetian forces either in UGT or in South Ossetia where they were temporarily located for work or other purposes.

²⁵⁷ **P-0485**: GEO-OTP-0047-6110 at 6131-6132, paras. 126-127; **P-0246**: GEO-OTP-0044-1085 at 1128, para. 290; **P-0258**: GEO-OTP-0042-0646 at 0669, para. 140; Media / press article, 7-Nov-2018: GEO-OTP-0051-0994.

²⁵⁸ Council of Europe, 16 December 2008: GEO-OTP-0001-0867 at 0001-0872, para. 11 (KOKOITY states that Georgians could return but their right to return was not automatic: they **must acquire** SO passports and **renounce** their Georgian citizenship).

²⁵⁹ AAAS High-Resolution Satellite Imagery and the Conflict in South Ossetia / Summary report: GEO-OTP-0001-0003; AAAS response to RFA OTP/GEO/AAAS-1/JCCD-stpt: GEO-OTP-0048-0743; Also *see* **P-0512**: GEO-OTP-0047-7348 at 7354, para. 38; **P-0506**: GEO-OTP-0047-5997 at 6012, para. 118; **P-0354**: GEO-OTP-0052-1538 at 1544, para. 33.

²⁶⁰ [REDACTED].

²⁶¹ [REDACTED].

2. The Lawful Residents were transferred without adequate consent

97. The evidence provides reasonable grounds to believe that the 110 Lawful Residents were transferred to UGT by force and were not given a genuine or unconditional choice to return to their places of residence in SO.
98. The evidence establishes that the Lawful Residents were transferred as follows:
- a. On 21 August 2008, 61 Detainees were transferred to Gori, of whom 58²⁶² were Lawful Residents;²⁶³
 - b. On 22 August, another 17 Georgian civilians were transferred to Gori,²⁶⁴ of whom 13 were Lawful Residents;
 - c. On 24 August, 7 Detainees were transferred to Karaleti and then onto Gori and Tbilisi, of whom 3 were Lawful Residents;²⁶⁵ and
 - d. On 27 August, 81 Detainees were exchanged for Ossetian prisoners,²⁶⁶ of whom 36 were Lawful Residents.²⁶⁷
99. In each of the four transfers, the Lawful Residents were driven out of SO, into UGT, and were not permitted to return to their homes. For example, on 21 August, the SO buses drove the 58 Lawful Residents to the Gori hospital,²⁶⁸ and after being examined,²⁶⁹ they were transported to Tbilisi.²⁷⁰ The same process took place with respect to the subsequent transfers on 22,²⁷¹ 24²⁷² and 27 August.²⁷³
100. The Lawful Residents—including 19 Prosecution witnesses²⁷⁴ who lived in SO before they were detained in the KPZ and subsequently transferred to UGT (Gori or

²⁶² [REDACTED].

²⁶³ The exchange Protocol dated 21 August 2008 lists 61 Georgians transferred that day. [REDACTED].

²⁶⁴ Exchange Protocol dated 22 August 2008: GEO-OTP-0040-0070 (translation at GEO-OTP-0041-0268); *see also* [REDACTED].

²⁶⁵ Exchange Protocol dated 24 August 2008 at GEO-OTP-0040-0073 (Translation at GEO-OTP-0041-0272). [REDACTED].

²⁶⁶ Exchange Protocol dated 27 August 2008: GEO-OTP-0040-0078 (translation at GEO-OTP-0041-0278). [REDACTED].

²⁶⁷ [REDACTED].

²⁶⁸ [REDACTED].

²⁶⁹ [REDACTED].

²⁷⁰ [REDACTED].

²⁷¹ Exchange Protocol dated 22 August 2008: GEO-OTP-0041-0268. *See also* [REDACTED].

²⁷² [REDACTED].

²⁷³ [REDACTED].

²⁷⁴ [REDACTED].

Karaleti)²⁷⁵—were not asked where they wanted to be released to, nor were they given the choice to return to their homes.²⁷⁶ A few witnesses reported offers made to stay in Tskhinvali,²⁷⁷ but this neither stopped their transfer to UGT, nor did it appear to be a genuine effort to reinstate the Georgian civilians to their places of residence. None of the victims appears to have taken these last minute offers seriously.²⁷⁸

101. Of the 110 Lawful Residents who were unlawfully transferred, 16 had been captured while attempting to flee SO during the active hostilities. However, the fact that they were trying to flee SO to avoid the fighting does not negate the unlawfulness of their transfer. These victims did not consent to leaving SO as such, but rather were first taken to and detained in the KPZ, then later (after the hostilities had ceased) transferred against their consent to UGT.²⁷⁹
102. The transfers were facilitated by the Occupying Power, in particular Maj.-Gen. Borisov and troops under his command,²⁸⁰ as well as SO forces and officials (including the MIA at the KPZ), and was documented in four different “Protocols for Exchange” signed by **SANAKOEV** and the Georgian Deputy Minister of Defence.²⁸¹ These contemporaneous records list names of detainees shared between Georgian representative, Mamuka Mujiri, and Maj.-Gen. Borisov the day before each “exchange”.²⁸² Each of the protocols between 21 and 27 August 2008 were signed by **SANAKOEV** on behalf of the SO authorities, and by Mujiri for the Georgian authorities.²⁸³
103. The SO authorities and the Russian occupying forces organised and executed the transfer of the Lawful Residents in several stages. The fact that the transfer was labelled as “exchanges”²⁸⁴ does not negate the unlawfulness of the transfer. Neither does the presence

²⁷⁵ [REDACTED].

²⁷⁶ [REDACTED].

²⁷⁷ [REDACTED].

²⁷⁸ [REDACTED].

²⁷⁹ [REDACTED].

²⁸⁰ Exchange Protocol dated 21 August 2008: GEO-OTP-0002-2473 (translation at GEO-OTP-0040-0433); **P-0282**: GEO-OTP-0043-1622 at 1632-1635, 1637-1638, 1640-1643, paras. 88-107, 118-124, 149, 157, 161, 164, 166, 169, 172, 178; **P-0354**: GEO-OTP-0046-1589 at 1594, 1599-1605, 1607, 1610, paras. 37, 73-92, 102, 108, 113, 125, 128-129, 144-146; **P-0223**: GEO-OTP-0037-0600 at 0619-0620, paras. 101-104.

²⁸¹ 21 August exchange: GEO-OTP-0041-0263; 22 August: GEO-OTP-0041-0268; 24 August: GEO-OTP-0041-0272; 27 August: GEO-OTP-0041-0278. The 21 August protocol also refers to Maj-Gen. Borisov as a signatory, but his signature is missing.

²⁸² [REDACTED].

²⁸³ [REDACTED].

²⁸⁴ See all protocols of exchange listed above. See also Council of Europe press release of 25 August 2008: GEO-OTP-0051-0455; Council of Europe report of 08 September 2008, GEO-OTP-0002-7736 at 7752-7753, para. 93-100

or the cooperation of the Georgian authorities²⁸⁵ or international humanitarian organizations²⁸⁶ in the transfers. The Detainees were given a number of reasons for their transfer, chiefly that they were being exchanged for Ossetian prisoners. Several detainees recall being told that they were exchanged for Ossetian soldiers,²⁸⁷ that they were “needed” for an exchange²⁸⁸ and that the more people the Ossetian side gives, the more it receives from Georgia.²⁸⁹

3. Other elements of the crime of unlawful transfer

104. As explained above,²⁹⁰ all of the Lawful Residents were “protected persons” under the Geneva Conventions of 1949 and the perpetrators were aware of this factual circumstance. Moreover, as described in Section III.A, the unlawful transfer was committed in the context of and was associated with an IAC, and the perpetrators were aware of the relevant factual circumstances.

VI. THE SUSPECTS BEAR INDIVIDUAL CRIMINAL RESPONSIBILITY UNDER ARTICLE 25(3) (A), (C) OR (D)

105. Based on the evidence presented in this Application, the Prosecution alleges that there are reasonable grounds to believe that **MINDZAEV**, **GUCHMAZOV**, and **SANAKOEV** are responsible for the crimes set out in Sections IV.B to D in connection with the IAC set out in Section IV.A.

106. **MINDZAEV** is responsible:

- a.** As an indirect perpetrator under article 25(3)(a) of the Statute for the crimes of: unlawful confinement under article 8(2)(a)(vii); torture and inhuman treatment under article 8(2)(a)(ii), outrages upon personal dignity 8(2)(b)(xxi) of ethnic Georgian civilians (Section IV.B), and unlawful transfer of civilians under articles 8(2)(a)(vii) (Section IV.D);

²⁸⁵ [REDACTED]; ICTY *Stakić* AJ, para. 286.

²⁸⁶ *Tolimir* TJ, para. 796. On the presence of international organizations, see GEO-OTP-0047-2467 at 2468; GEO-OTP-0002-7736 at 7745, para. 25.

²⁸⁷ [REDACTED].

²⁸⁸ [REDACTED].

²⁸⁹ [REDACTED].

²⁹⁰ See *supra*, para. 38.

- b. Alternatively, he is liable for the above crimes as an aider and abettor under article 25(3)(c) of the Statute;
- c. *In addition to the above crimes*, he also contributed to a common criminal purpose encompassing the crime of hostage taking (Section IV.C) under article 8(2)(a)(viii) and unlawful transfer of civilians under article 8(2)(a)(vii) (Section IV.D), pursuant to article 25(3)(d)(ii).

107. **GUCHMAZOV** is responsible:

- a. As a direct and/or indirect perpetrator under article 25(3)(a) of the Statute for the crimes of: unlawful confinement under article 8(2)(a)(vii); torture and inhuman treatment under article 8(2)(a)(ii), and outrages upon personal dignity 8(2)(b)(xxi) of ethnic Georgian civilians (Section IV.B);
- b. Alternatively, he is liable for the above crimes as an aider and abettor under article 25(3)(c) of the Statute;
- c. *In addition to the above crimes*, he also contributed to a common criminal purpose encompassing the crimes of hostage taking (Section IV.C) under article 8(2)(a)(viii) and unlawful transfer of civilians under articles 8(2)(a)(vii) (Section IV.D), pursuant to article 25(3)(d)(ii).

108. **SANAKOEV** is responsible:

- a. As a contributor to a common criminal purpose encompassing the crimes of hostage taking (Section IV.C) under article 8(2)(a)(viii) and unlawful transfer of civilians under articles 8(2)(a)(vii) (Section IV.D), pursuant to article 25(3)(d)(i)
- b. Alternatively, as an aider and abettor under article 25(3)(c) for the unlawful transfer of civilians under articles 8(2)(a)(vii) (Section IV.D), pursuant to article 25(3)(c) of the Statute.

A. The common purpose to forcibly transfer the Detainees and use them as hostages

109. By 15 August 2008 at the latest, a common criminal purpose existed which aimed at securing the release of SO convicts held by the Georgian authorities by threatening the continued detention of the Detainees in the KPZ, and then transferring them out of the

territory of SO into UGT as part of a so-called ‘exchange’ for the convicts. This entailed the commission of the crimes of hostage-taking and unlawful transfer.²⁹¹

110. This common purpose was sanctioned by the highest authority in SO, the *de facto* President, Eduard Kokoity,²⁹² and was also consistent with his declaration on 21 August that there would no more Georgian enclaves in South Ossetia.²⁹³ The common purpose renewed demands made in the past²⁹⁴ for the release of South Ossetian convicts serving sentences in Georgian prisons.
111. The group of persons involved or assisting in the common purpose included at least the three Suspects, the *de facto* President Kokoity, Maj-Gen. Vyacheslav Borisov, as well as other SO officials such as Prime Minister Boris Chochiev²⁹⁵ and Prosecutor General Taymuraz Khugayev.²⁹⁶
112. The common purpose came into being by 15-16 August at the latest, when Kokoity declared the destruction of Georgian villages and the barring from return of these villagers. At around the same time, **SANAKOEV** and Maj-Gen. Borisov submitted to the Georgian authorities a list of Ossetian criminals whose release they demanded in exchange for the Detainees.²⁹⁷

²⁹¹ To be clear, the common purpose does not involve prisoners of war, many of whom were released during earlier exchanges, including one on 19 August 2008.

²⁹² Interview of Komersant with Kokoity saying, when asked if Georgians could return to South Ossetia: “And where would they return to?”. President Kokoity also declared that “we have flattened everything there”, and if Georgians would be allowed to return, he commented that “we do not intend to let anybody in here anymore”, GEO-OTP-0005-0100 at 0102.

²⁹³ Regnum media article dated 22 August 2008: GEO-OTP-0028-0187.

²⁹⁴ State information agency RES article dated 7 February 2008: GEO-OTP-0047-5148; State information agency RES article dated 24 April 2008: GEO-OTP-0047-5155.

²⁹⁵ **SANAKOEV** mentioned to Georgian negotiators that the demands for South Ossetian convicts came directly from Chochiev and Barankevich, *see* [REDACTED]. Chochiev was also present when Detainees were released from the KPZ on 27 August and lectured some of them that Georgian authorities would mistreat them, *see* [REDACTED].

²⁹⁶ Khugayev was aware that Detainees were held in the MIA building, labelling them as “hostages” and that some of the Georgian detainees helped negotiate the return of some Ossetians, *see* Media article: GEO-OTP-0047-4427; Video footage shows him first at a site where Detainees are burying bodies, *see* Video: GEO-OTP-0044-1056, transcripts at GEO-OTP-0047-0756 at 0758, lns. 12-15.

²⁹⁷ [REDACTED].

B. MINDZAEV's Individual Criminal Responsibility

113. At all material times and until 31 October 2008,²⁹⁸ a senior Russian police officer—Lieutenant-General **Mikhail MINDZAEV**²⁹⁹—was the Minister of Internal Affairs of the SO *de facto* government (“the Minister”), in charge of the MIA.³⁰⁰ As Minister, **MINDZAEV** held a strategic cabinet position and was an influential member of the SO *de facto* government.³⁰¹ Together with the Ministry of Defence and Emergency Situations, the MIA was part of the so-called South Ossetian *silovye structure*³⁰² (“security apparatus”), and a member of the Security Council, a sub-section of the cabinet which also included the SO President, Kokoity.³⁰³
114. **MINDZAEV** controlled and organized the work of all MIA officials and law enforcement agencies,³⁰⁴ both in time of peace and war,³⁰⁵ including the Public Security Police.³⁰⁶ This extended to the KPZ and its guards.³⁰⁷ His *de jure* powers were reflected in his demonstrated authority. For example, **MINDZAEV** instructed individual KPZ

²⁹⁸ [REDACTED].

²⁹⁹ Intercepted communication dated 05 August 2008: GEO-OTP-0006-0714; NTV News Report dated 09 September 2008: GEO-OTP-0040-0206 at 00:43:17; **MINDZAEV** is identified by various Detainees in video GEO-OTP-0040-0207-R01, including [REDACTED].

³⁰⁰ Kavkazskiy Uzel media article dated 11 December 2006: GEO-OTP-0047-1517 at 1578; ALANIYA Inform dated 28 August 2008: GEO-OTP-0040-0210; Media Article, **MINDZAEV Mikhail**, dated 04 March 2015: GEO-OTP-0003-1442 at 1442-1443; Lenta.ru media profile of **MINDZAEV**: GEO-OTP-0040-0412 at 0413-0415; **P-0218**: GEO-OTP-0042-0207 at 0211, para. 34; **P-0144**: GEO-OTP-0024-0066 at 0079, 0094-0095, paras. 69, 152; **P-0220**: GEO-OTP-0042-0230, at 0252-0253, 0259, 0273, 0280, paras. 166, 171, 173, 215, 327, 337.

³⁰¹ Lenta.ru media profile of **MINDZAEV** dated 04 March 2015: GEO-OTP-0040-0412 at 0413; *Un sourced* audio-video dated 4 August 2008: GEO-OTP-0043-2198; **P-0220**: GEO-OTP-0042-0230 at 0254, paras. 179-182.

³⁰² South Ossetia State Information Agency press release dated 6 August 2008: GEO-OTP-0047-1955 at 1956; Gazeta media article: GEO-OTP-0047-1171 at 1173-1174; Open source report: GEO-OTP-0003-1202, at 1336.

³⁰³ South Ossetia State Information Agency press release dated 7 February 2008: GEO-OTP-0047-1958 at 1959; **P-0220**: GEO-OTP-0042-0230 at 0254, paras. 179-182.

³⁰⁴ SO Law on the Police, articles 1 and 6: GEO-OTP-0047-2409 at 2410, 2411; **P-0220**: GEO-OTP-0042-0230 at 0248, 0259, paras. 133, 218; **P-0218**: GEO-OTP-0042-0207 at 0211, 0218-0219, paras. 36, 90; **P-0144**: GEO-OTP-0024-0066 at 0079, para. 69; **P-0148**: GEO-OTP-0024-0144 at 0150-0151, para. 44; South Ossetia State Information Agency press release dated 3 July 2008: GEO-OTP-0051-0697 at 0698; Interfax media article dated 20 October 2008: GEO-OTP-0051-0721 at 0722.

³⁰⁵ South Ossetia State Information Agency press release dated 5, 19 and 31 July 2008: GEO-OTP-0051-0699 at 0700, GEO-OTP-0047-1938 at 1939, GEO-OTP-0047-1169 at 1170; Gazeta media article dated 24 July 2008: GEO-OTP-0047-1171 at 1173-1174; Alaniya News Agency dated 17 October 2008: GEO-OTP-0047-1441 at 1442; Rossiya TV broadcast dated 06 August 2008: GEO-OTP-0047-2880 at 2882.

³⁰⁶ SO Law on the Police, articles 1, 6, 7, 8 and 9: GEO-OTP-0047-2409 at 2410, 2411-2413.

³⁰⁷ SO Law on the Police, article 9: GEO-OTP-0047-2409 at 2412 (indicating that Public Security includes “remand facilities”); **P-0218**: GEO-OTP-0042-0207 at 0211-0212, paras. 37-39; **P-0220**: GEO-OTP-0042-0230 at 0279, indicating that the head of the KPZ (*Isolator*) belonged to the MIA; **P-0238**: GEO-OTP-0041-0063 at 0076-0077, paras. 105-108, 118; **P-0211**: GEO-OTP-0045-0348 at 0381, para. 338.

guards in the execution of their duties³⁰⁸, including the head of the KPZ, **GUCHMAZOV**.³⁰⁹

115. **MINDZAEV** is responsible for the alleged crimes based on his control over the the KPZ guards (who were MIA officials) who ensured the Detainees remained in confinement, controlled access to them and the conditions in which they were held, and were the physical perpetrators of many of the various acts of mistreatment.³¹⁰ Delegated by Kokoity to deal with the fate of Georgian civilians,³¹¹ it was **MINDZAEV** who permitted the use of the KPZ to detain them, and he recognized this fact publicly³¹² – even though falsely characterising it as an humanitarian measure.³¹³ **MINDZAEV** selectively used his power to release detainees,³¹⁴ and did not permit the release of the Detainees *en masse* until the so-called “exchange” was agreed with the Georgian authorities. His KPZ guards placed the Detainees on buses which saw them transferred directly into UGT, and for most victims not to their homes in SO.
116. **MINDZAEV** also permitted the poor conditions in the KPZ,³¹⁵ and the use of the Detainees for unlawful labour. This entailed the use of some of the Detainees—under armed escort—as cleaners in the MIA headquarters³¹⁶ (such as **MINDZAEV**’s own office³¹⁷) and other locations in Tskhinvali³¹⁸ (including the residences of senior MIA personnel³¹⁹), as well as collecting decomposing bodies from the streets to bury them.³²⁰ **MINDZAEV** merely stated, that “[t]hey are cleaning up after themselves”.³²¹
117. **MINDZAEV** intentionally and knowingly perpetrated or otherwise contributed to the alleged crimes. He encouraged the confinement of ethnic Georgian civilians,³²² and was

³⁰⁸ [REDACTED].

³⁰⁹ [REDACTED].

³¹⁰ [REDACTED].

³¹¹ Media article dated 27 August 2008: GEO-OTP-0047-2490; NBC News media article: GEO-OTP-0051-0318; Kartyya '97 media article: GEO-OTP-0043-1118 at 1121; Salidarnast media article: GEO-OTP-0037-0469. See above para. 113, for *silovye structurey* including the MIA.

³¹² [REDACTED].

³¹³ *See e.g.* [REDACTED].

³¹⁴ [REDACTED].

³¹⁵ [REDACTED].

³¹⁶ [REDACTED].

³¹⁷ [REDACTED].

³¹⁸ [REDACTED].

³¹⁹ [REDACTED].

³²⁰ [REDACTED].

³²¹ Media article dated 16 August 2008: GEO-OTP-0044-1266; Korrespondent/Gazeta media article dated 27 August 2008: GEO-OTP-0041-0299 at 0302.

³²² [REDACTED].

directly involved in verbally insulting, interrogating and mistreating some of the Detainees,³²³ As an example, when a group of Georgians civilians arrived at the MIA headquarters, **MINDZAEV** threatened that “Georgians had murdered children and elderly, so what are we going [to] do with you now?”,³²⁴ and ordered them to spit on the Georgian flag.³²⁵ He insulted detainees in the presence of KPZ guards³²⁶ and was present when KPZ guards were beating some of the Detainees.³²⁷ [REDACTED].³²⁸ He was aware of negotiations to “exchange” the Detainees and acknowledged to the media that transfers of the Georgian civilians from the KPZ were taking place.³²⁹ Despite knowing that the Detainees were not lawfully detained, he did not permit their release until **SANAKOEV**, together with Maj-Gen. Borisov, had succeeded in compelling the Georgian authorities to release Ossetian convicts.

C. GUCHMAZOV’s individual criminal responsibility

118. **GUCHMAZOV** was a police officer, although his exact rank is uncertain.³³⁰ The KPZ was run by **GUCHMAZOV**, who was ultimately answerable to **MINDZAEV** through the Public Security Police hierarchy.³³¹ **GUCHMAZOV** controlled the KPZ guards, and could subjugate their will through his authority over them. Around him, KPZ guards were submissive and servile.³³² Just like **MINDZAEV**, **GUCHMAZOV** had an office in the MIA building,³³³ and was seen frequently by the Detainees and interacted with them.³³⁴
119. **GUCHMAZOV** intentionally and knowingly committed or otherwise contributed to the alleged crimes. He directly perpetrated acts of torture/ inhuman treatment and outrages against personal dignity. This included the following acts:

³²³ [REDACTED].

³²⁴ [REDACTED].

³²⁵ [REDACTED].

³²⁶ [REDACTED].

³²⁷ [REDACTED].

³²⁸ [REDACTED].

³²⁹ Rossiyskaya Gazeta article dated 28 August 2008: GEO-OTP-0047-1121 at 1124.

³³⁰ In August 2008, **GUCHMAZOV** may have had the rank of Senior Lieutenant, see: **P-0418**: GEO-OTP-0050-0184 at 0200, para. 113; Captain, see: **P-0218**: GEO-OTP-0042-0207 at 0212, para. 37; **P-0418**: GEO-OTP-0050-0184 at 0200, para. 113; or Major, see: **P-0201**: GEO-OTP-0046-0002 at 0015, para. 120; **P-0218**: GEO-OTP-0042-0207 at 0212, para. 37.

³³¹ SO Law on the Police, article 9: GEO-OTP-0047-2409 at 2412-2413.

³³² [REDACTED].

³³³ [REDACTED].

³³⁴ [REDACTED].

- a. [REDACTED].³³⁵
- b. [REDACTED],³³⁶ [REDACTED]³³⁷
- c. [REDACTED].³³⁸
- d. [REDACTED].³³⁹

120. As Head of the KPZ, **GUCHMAZOV** perpetrated the crime of unlawful confinement of the Detainees held at the KPZ. **GUCHMAZOV**³⁴⁰ and the KPZ guards registered and searched civilians upon arrival,³⁴¹ confiscated their personal items,³⁴² and confined them in the KPZ.³⁴³ **GUCHMAZOV** had direct and immediate control over the deprivation of their freedom of movement. Only he and his deputy, Chiko, could order the guards to take detainees out for work.³⁴⁴ He likewise controlled and administered the daily life of the Detainees, including the unlawful labour they were forced to do,³⁴⁵ their access (or lack thereof) to health care,³⁴⁶ their interrogation,³⁴⁷ and their visitation rights.³⁴⁸
121. Under **MINDZAEV**, **GUCHMAZOV** facilitated the alleged crimes of unlawful transfer and hostage taking by helping to ensure that the Detainees remained in the KPZ, and thus could be used as hostages to compel the Georgian authorities to release convicts. When they were released, detainees mentioned that **GUCHMAZOV** was in charge of making lists and registering the names of the Detainees.³⁴⁹ He was also seen in charge and present, supervising the release.³⁵⁰

³³⁵ [REDACTED].

³³⁶ [REDACTED].

³³⁷ [REDACTED].

³³⁸ [REDACTED].

³³⁹ [REDACTED].

³⁴⁰ **P-0418**: GEO-OTP-0050-0184 at 0200, paras. 113-116.

³⁴¹ See, e.g., [REDACTED].

³⁴² See, e.g., [REDACTED].

³⁴³ [REDACTED].

³⁴⁴ [REDACTED].

³⁴⁵ See, e.g. [REDACTED].

³⁴⁶ [REDACTED].

³⁴⁷ [REDACTED].

³⁴⁸ [REDACTED]. SO press service release: GEO-OTP-0047-0993.

³⁴⁹ [REDACTED].

³⁵⁰ [REDACTED]. See also video GEO-OTP-0044-1051 at 00:00:14 to 00:00:17, an officer (presumably **GUCHMAZOV**) seen holding a list; a photo of this list is available at GEO-OTP-0043-0669.

D. SANAKOEV's Individual Criminal Responsibility

122. As SO Presidential Representative for Human Rights (also known as the Ombudsman) from 2005³⁵¹ until 2010,³⁵² **SANAKOEV** worked closely with other senior members of the SO government. He was answerable to Kokoity.³⁵³
123. **SANAKOEV** contributed to the common purpose to use the Detainees as hostages and then unlawfully transfer them to UGT, or otherwise facilitated these crimes. In August 2008, he took part in negotiations to obtain the release of persons held by the Georgian authorities in exchange for the release of the Detainees in the KPZ.³⁵⁴
124. Specifically, while Maj-Gen. Borisov was the principal Russian interlocutor with the Georgian authorities concerning prisoner exchange (both for POWs³⁵⁵ and other persons³⁵⁶ such as the Detainees confined in the KPZ³⁵⁷), **SANAKOEV** was his counterpart on behalf of the *de facto* SO authorities.³⁵⁸ When Borisov provided Georgian officials with a list of 7-10 Ossetian convicts (including notorious criminals)³⁵⁹ and demanded their release,³⁶⁰ he represented both his own interests and those represented by **SANAKOEV**.
125. **SANAKOEV** contributed to the common purpose by:
- a. formally representing the *de facto* SO authorities in the negotiations to compel the Georgian authorities to release the Detainees as part of a *quid pro quo*;³⁶¹

³⁵¹ Alania media interview with **SANAKOEV** dated 23 January 2009: GEO-OTP-0047-2452 at 2453.

³⁵² Alania media interview with **SANAKOEV** dated 23 January 2009: GEO-OTP-0047-2452 at 2453; NYT media article dated 14 August 2009: GEO-OTP-0001-0120; **P-0139**: GEO-OTP-0022-2002 at 2049-2050, paras. 315, 317; SO Information Agency RES dated 25 May 2010: GEO-OTP-0051-0235; SO Information Agency RES dated 25 July 2008: GEO-OTP-0047-1936 at 1937; Media article dated 25 May 2010: GEO-OTP-0051-0235.

³⁵³ [REDACTED]; Decree dated 17 August 2008: GEO-OTP-0047-0996 at 0998; Exchange protocols of 21, 22, 24 and 27 August 2008: GEO-OTP-0040-0433 at 0434, GEO-OTP-0041-0268 at 0269, GEO-OTP-0041-0272 at 0273, GEO-OTP-0041-0278 at 0279; State information agency RES article: GEO-OTP-0047-5158 at 5159.

³⁵⁴ GEO-OTP-0040-0078 at 0079 (GoG)/GEO-OTP-0002-2491 (ECHR) (Exchange Protocol dated 27 August 2008).

³⁵⁵ [REDACTED]; Intercepted communication dated btw 23 and 28 August 2008: GEO-OTP-0047-1375 at 1377, ln. 13-31; Exchange Protocol dated 19 August 2008: GEO-OTP-0040-0438 at 0439; Press release by the Central Body of the Ministry of Defence of the Russian Federation dated 13 August 2008: GEO-OTP-0047-1540 at 1541.

³⁵⁶ [REDACTED]; Le Monde media article dated 4 October 2008: GEO-OTP-0052-0002 at 0009.

³⁵⁷ [REDACTED].

³⁵⁸ [REDACTED].

³⁵⁹ [REDACTED].

³⁶⁰ [REDACTED].

³⁶¹ Decree dated 17 August 2008: GEO-OTP-0047-0996 at 0997-0998; Intercepted communication 23-28 August 2008: GEO-OTP-0047-1359 at 1361-1362, lns. 16-22, 59-65; These intercepted communications must be read together with GEO-OTP-0047-1375 and GEO-OTP-0047-1368.

- b. signing the protocols regarding the release of the Detainees,³⁶² and;
- c. attending the KPZ to ensure the release of the Detainees, overseeing their transfer and removal from SO. He took part in escorting those buses to the release location,³⁶³ and made the Detainees sign a document stating they were leaving voluntarily.³⁶⁴

126. As a result, at least seven presidential pardons were issued for Ossetian convicts to fulfill **SANAKOEV**'s demands.³⁶⁵

127. By his actions, **SANAKOEV** intentionally and knowingly contributed to the use of the Detainees as hostages, and their subsequent unlawful transfer from SO.

VII. LEGAL FRAMEWORK – JURISDICTION AND ADMISSIBILITY

A. Jurisdiction

128. On 13 October 2015, the Office requested authorisation from Pre-Trial Chamber I to initiate an investigation into the Situation in Georgia in relation to alleged crimes within the jurisdiction of the Court committed between 1 July 2008 and 10 October 2008, following its preliminary examination conducted into the Situation since August 2008. On 27 January 2016, Pre-Trial Chamber I authorised the Prosecutor to proceed with an investigation for the crimes within the ICC's jurisdiction, allegedly committed in and around South Ossetia, Georgia, between 1 July and 10 October 2008, as well as crimes sufficiently linked thereto.

³⁶² [REDACTED].

³⁶³ France24 audio-video dated 22 August 2008: GEO-OTP-0044-1051 at 00:01:10:00. [REDACTED].

³⁶⁴ [REDACTED].

³⁶⁵ See presidential pardons and court certificates for seven exchanged Ossetian detainees: Davit Valerianis Dze Gusoev (GEO-OTP-0047-4388); Ivan Albertis Dze Bestaev (GEO-OTP-0047-4390); Narik Albertis Dze Bibilov (GEO-OTP-0047-4395 and GEO-OTP-0047-4397); Oleg Ruslanis Dze Komarov (GEO-OTP-0047-4399 and GEO-OTP-0047-4401); Vladimer Rudikis Dze Jioev (GEO-OTP-0047-4403 and GEO-OTP-0047-4405); Vladimer Ivanes Dze Alborovi (GEO-OTP-0047-4407 and GEO-OTP-0047-4409); and Vitali Khazbis Dze Tadtsev (GEO-OTP-0047-9968 at 9972).

B. Admissibility

129. There is no requirement for this Chamber to determine admissibility before the issuance of a warrant of arrest for the Suspects pursuant to article 58(1) of the Statute.³⁶⁶ A Chamber may exercise its discretion and address admissibility at the warrant stage *proprio motu*, but should only do so “when it is appropriate in the circumstances of the case, bearing in mind the interests of the suspect.”³⁶⁷ These circumstances may include “instances where a case is based on the established jurisprudence of the Court, uncontested facts that render a case clearly inadmissible or an ostensible cause impelling the exercise of *proprio motu* review.”³⁶⁸ In this case, having reviewed all the available information, the Prosecutor is satisfied that the case is admissible and there are no such facts which could impell the exercise of *proprio motu* review.

1. Gravity

130. The present case is sufficiently grave so as to be admissible under article 17(1)(d) of the Statute. Enforcement and reaffirmation of the strict rules on civilian internment is essential, since any diminution of these protections is recognized as creating “a particularly great danger of offences against the human person”.³⁶⁹ This favours the hearing of such a case at this Court. Furthermore, in this particular instance, many of the victims were acutely vulnerable by nature of their age or health condition. In targeting only persons perceived to be ethnic Georgians, the crimes were discriminatory. Not only does the number of persons victimised in this case exceed those in some other cases, but the alleged crimes took place as part of a deliberate and organized plan to secure a perceived advantage (the release of Ossetian detainees from Georgian custody). Following the transfer of the Detainees, they were not permitted to return to their homes in the *de facto* territory of SO unless they renounced their Georgian citizenship and acquired a SO passport.³⁷⁰ The Suspects are among those most responsible for these alleged crimes. While it is true that the period of unlawful confinement was limited, the effects of that confinement—which led directly to the victims’ unlawful transfer out of

³⁶⁶ DRC Warrant of Arrest AJ, para. 1.

³⁶⁷ DRC Warrant of Arrest AJ, para. 52. See also *Mbarushimana* Warrant of Arrest Decision, para. 9.

³⁶⁸ DRC Warrant of Arrest AJ, para. 52.

³⁶⁹ GCIV Commentary, p. 207. See also *Prlić* AJ, para. 514 (recalling that civilian internment is one of the “most severe measures that may be inflicted on protected persons” under the Fourth Geneva Convention).

³⁷⁰ [REDACTED].

SO are long-lasting, and affect not only the victims' physical and mental condition but prevent their subsequent enjoyment of a wide number of other fundamental rights. Finally, the crimes charged are also representative of a wider pattern of criminality which included the widespread looting and destruction of Georgian villages and homes and the denial of the right of return of almost all of the Georgian population of the Tskhinvali region.

2. Complementarity

131. On 13 October 2015, pursuant to Article 15(3) of the Rome Statute in the accordance with the Prosecutor's *proprio motu* powers, the OTP requested authorisation from the PTC to initiate an investigation in the situation in Georgia in respect of war crimes and crimes against humanity allegedly committed in and around South Ossetia from 1 July to 10 October 2008. Since 14 August 2008, the OTP had been conducting a preliminary examination into the situation in Georgia. The OTP had been in regular contact with relevant actors in order to gather and verify information on alleged crimes committed and the existence and genuineness of relevant national proceedings.
132. While the Georgian authorities had carried out investigative activities in relation to the 2008 conflict, they informed the Prosecutor in a letter dated 17 March 2015 that their investigations had been indefinitely suspended as a result of the prevailing security situation.³⁷¹
133. The Russian authorities had also initiated an investigation of alleged crimes in relation to the 2008 conflict but not into the crimes detailed in this Request.³⁷² Following the OTP's request for the authorisation of the investigation on 13 October 2015 and its subsequent authorisation on 27 January 2016, the Russian authorities ceased all forms of contact with the OTP. The Russian Federation withdrew its signature to the Rome Statute by decree on 16 November 2016.³⁷³ As a result, the OTP currently does not possess any information

³⁷¹ Georgia Authorisation Decision, para. 41.

³⁷² See Georgia Authorization Request, para. 313 (recalling that the Russian Investigative Committee had initiated a total of three lines of enquiry in relation to allegations against Georgian armed forces – a line of inquiry related to the killing of Russian peacekeepers by Georgian armed forces; another related to charges of attempted murder and murder of civilians who were nationals of the Russian Federation residing in South Ossetia; and a third case under the charge of genocide for crimes allegedly committed by the Georgian military based on the information gathered during initial investigations in South Ossetia).

³⁷³ Media article: GEO-OTP-0053-2916.

as regards the status of any relevant national proceedings into the crimes alleged in this Request. It should also be noted that the Russian authorities have not addressed allegations against South Ossetian forces. The Russian Federation recognises South Ossetia as an independent State³⁷⁴ and considers that the *de facto* South Ossetian authorities have jurisdiction for the investigation of crimes committed in South Ossetia.³⁷⁵

VIII. NECESSITY OF THE ARRESTS

134. Pursuant to article 58(1)(b)(i) of the Statute, the arrest of **Mikhail MINDZAEV, Gamlet GUCHMAZOV and David SANAKOEV** is necessary to ensure their appearance before the Court. The deliberate and callous nature of the crimes, their use as an instrument of policy, and their commission under the auspices of authority in SO leads to the reasonable conclusion that the Suspects are unlikely to cooperate with a summons to appear.
135. Furthermore, it is highly unlikely that either the SO or Russian authorities, which are currently in control of the places where the Suspects are believed to be located, will cooperate in ensuring their appearance before the Court. The Russian Federation withdrew its signature from the Rome Statute on 16 November 2016, claiming that the ICC was “one-sided and inefficient”.³⁷⁶ A similar position was reiterated by the Ministry of Foreign Affairs on 16 June 2020, in a Report stating that “...the Russian Federation is not manipulating the International Criminal Court, and moreover, never engages with it, or finances it, or participates in its bodies or maintains any contact with it whatsoever.”³⁷⁷ During the course of the investigation, the OTP transmitted several communications to the competent authorities of the Russian Federation, including requests for assistance and letters to re-establish contact, seek an update on relevant domestic proceedings, and to request specific judicial cooperation, none of which received a response.
136. The South Ossetian authorities have maintained a similar line to the Russian Federation, claiming that they do not cooperate with the Court because all the Court’s actions are “strictly politicized”.³⁷⁸

³⁷⁴ Georgia Authorization Request, para. 311; Media article, GEO-OTP-0009-3107 at 3109; Media article, GEO-OTP-0001-0083 at 0083

³⁷⁵ Georgia Authorization Request, para. 311.

³⁷⁶ Media article, GEO-OTP-0053-2916.

³⁷⁷ Text of a Report in English by the Russian Ministry of Foreign Affairs website on 16 June 2020, GEO-OTP-0053-2910.

³⁷⁸ Media article, GEO-OTP-0052-2331 at 2332

IX. REQUEST FOR WARRANTS OF ARREST

137. For the reasons stated above, the Prosecution requests that the Chamber:

- a. Find that there are reasonable grounds to believe that **MINDZAEV**, **GUCHMAZOV** and **SANAKOEV** committed crimes within the jurisdiction of the Court;
- b. Issue an arrest warrant for **MINDZAEV**, **GUCHMAZOV** and **SANAKOEV** in respect of the listed crimes;
- c. Direct the Registry to prepare and, in prior consultation and coordination with the Prosecution, transmit the arrest warrant for **MINDZAEV**, **GUCHMAZOV** and **SANAKOEV** to the Russian Federation and the authorities of Georgia; and
- d. Receive this Application confidential and *ex parte* (only available to the Prosecution).



Karim A. A. Khan QC, Prosecutor

Dated this 10th day of March 2022

At The Hague, The Netherlands