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Human
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Priority

HUMAN RIGHTS PRIORITY

2008 აგვისტოს ომით
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ქონებრივი
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პინეიროს პრინციპების ხელმისაწვდომობა და
ბანხორციელება საქართველოში

კვლევის შედეგები

**Material Condition
of the Victims of the War of August 2008
Access to the Pinheiro Principles
and Implementation Thereof in Georgia**

Survey Results

2010

Tbilisi, Georgia

**MATERIAL CONDITIONS OF THE VICTIMS OF THE WAR OF
AUGUST 2008**

**ACCESS TO THE PINHEIRO PRINCIPLES AND
IMPLEMENTATION THEREOF IN GEORGIA**

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Project of Human Rights Priority (HRP)

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Survey Results

Goal of the Survey

The Russian-Georgian war of August 2008 inflicted material damage to the whole country in general and the civilian population within the conflict zone in particular. Among those hardest hit by the war were the residents of the former Autonomous District of South Ossetia as well as of Gori and Kareli Regions and Kodori Gorge. After the end of hostilities, a large number of the population returned to the villages that had escaped occupation. However, they found to their dismay that most of their properties (including crops) had been destroyed and homes – burnt down as a result of the war. Besides, most of the farmlands, which had been the main source of their income before the war in August 2008, were now within the territory uncontrolled by Georgia.

Following the return of the population to the so-called frontier villages, the organization Human Rights Priority has conducted monitoring to study the condition of their rights and provide free legal advice to the population.

This survey conducted in the form of monitoring covered six of the so-called frontier villages: Tkviavi, Karbi, Mereti, Gugutiantkari, Koshka and Ergneti.

During the monitoring we attempted to identify the problems of people in such frontier villages, with a particular emphasis on their material condition and human rights – *to see to extent, to which human right to property restitution in the so called frontier villages is safeguarded.*

To our mind, achieving a legal resolution of the right to property restitution and related disputes is of decisive importance for a lasting peace. Especially when we are talking about the war and/or conflict affected population during liquidation of the war results.

In the course of voluntary return, *return entails certain provisions of property restitution to provide support to the returnees.* After the IDPs flocked back to their homes in November 2008, the *implementation of their material rights* became the subject of our interest in the above villages of Gori Region. We considered it necessary to study and analyze the damage and loss inflicted to the population in the aftermath of this war and evaluate what is compliance of legal norms and the available needs to safeguard the proprietary right of a human being.

Besides, the survey was aimed at identifying the *legal gaps and formulating subsequent recommendations* in order *for the Government* towards to take adequate actions. Therefore, this

Report contains a brief analysis of the laws dealing with the national safeguards for the rights of the victims of the war.

Our guiding principle in conducting the survey was to evaluate the property of the war affected population and restitution of an encroached right to property. The survey succeeded to answer the question wrestled with the society: whether the claim for restitution and satisfaction of claim were “*arbitrary*” or “*unlawful*” for the victims of the war.

It is fitting to cGELfy for the concerned community that an *act is arbitrary* if it has no legal and normative basis. The *act is unlawful* if it obviously contradicts any given law that may contain the standards of national as well as international law.

We’d like to repeatedly define the term “*restitution*”. In this term we mean a remedy by equity (i.e. restitution justice) enabling victims or a group of persons to revert to the condition he/they had before they he was/they were inflicted damage or loss.

We hope that this survey will help all the concerned parties, local and international communities in making sure that the efforts made to protect the rights of the victims of war are as fully effective as possible.

Our goal is to make the results of the survey and proposed recommendations accessible for the general public, as we hope that the publication will also help the victims get a better understanding of their rights and fight for their protection, as we believe that “*there is no peace without justice.*”

Survey method

The method of this survey is a quantitative survey in the so-called frontier villages: Tkviavi, Karbi, Mereti, Gugutiantkari, Koshka and Ergneti. The instrument of survey – the questionnaire was developed specifically for conducting the survey. It is based on the Pinheiro Restitution Principles. Out of the selected villages we surveyed 400 persons. The results were respectively apportioned to the villages¹ (according to their population) and, therefore, it is statistically reliable to discuss the general situation and trends.

The experience obtained and the facts received in the process of strategic legal procedures were also used in the survey analysis. The organization relies on its own results in terms of representation both in court and administrative authorities in the appeal process regarding cases of restitution of the rights to property after the war. Thus, assessment of performance of the

¹ Tkviavi – 77, Karbi – 85, Mereti – 108, Gugutiantkari – 41, Koshka – 38 and Ergneti – 54.

Pinheiro Principles was allowed based upon the actual information of the organization's lawyers and superseded the field quantitative material (for example, Principle 12, Principle 13), although due to the fact that the after-war property disputes are initiated only by our organization, and the said details are used in the analysis, thus, we consider it statistically safe and reliable, as well as fair for the particular communities.

On 11 August 2005, The United Nations Sub-Commission on the Promotion and Protection of Human Rights approved *Principles on Housing and Property Restitution for Refugees and Displaced Persons* – The Pinheiro Principles. These principles are the result of the seven-year process that the Sub-Commission started in 1998 by passing Resolution N1998/26 on Housing and Property Restitution in the context of the return of refugees and internally displaced persons. This was followed with the surveys conducted in 2002-2005 as well as with the principles enunciated by Special Rapporteur for Housing and Property Restitution Paolo Serjio Pinheiro.

Pinheiro Principles integrate instruments for legal, procedural, institutional and technical implementation of property restitution. The principles serve as a guideline for elaboration of a particular policy for practical translation of the right to property restitution and implementation of restitution laws, programs and policies based on international and national standards regarding human rights and issues of internally displaced persons.

Our goal was to gather as much information as possible on property damage inflicted to the population as a result of the war of 2008 and sort of measure the right to property restitution – its practical implementation within the context of actual damage and restitution availability.

Pinheiro Principles comprise of 23 principles. These principles are extremely wide and general in character. Pinheiro Principles are designed to reach many goals, lays down particular rights to property restitution, reinforces the order of related rights, identifies in detail the legal, procedural and institutional remedies necessary for realization of the rights of restitution and finally defines the role of international organizations. Although the principles are universal, they are used on different stages of displacement – during displacement, after return, etc.

The questionnaire developed to study the property and legal status of the people having returned to the so-called frontier villages integrate **9 out of 23** principles, which are most relevant to and best suit the interest of our survey, namely: property restitution, non-discrimination, adequate living conditions, community involvement, awareness and accountability of the state, as well as national mechanisms and domestic law matters.

THE RIGHT TO PROPERTY RESTITUTIONⁱ

(PINHEIRO) PRINCIPLE #2

Property – Loss - Revenue

‘The right to property restitution is a distinct right and is prejudiced neither by the actual return nor non-return of refugees and displaced persons’ⁱⁱ

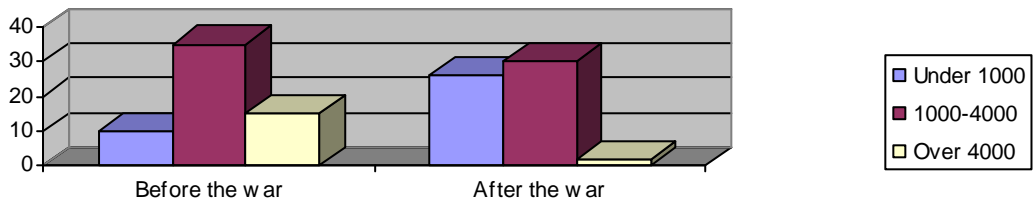
Pre-War Property Condition of the Population

The amount of annual revenues of the residents of the so-called frontier villages of Gori Region before the war is as follows (according to villages):

Karbi Village

The survey covered **85** persons out of the residents of Karbi Village. The survey found that the main source of income before the war of 2008 was cultivation of agrarian land – **85%** of those surveyed, regular job – **8%**, temporary employment – **8%**, pension – **36%**, government allowance – **9%**, humanitarian aid from international organizations – **1.5%**, farming – **21%**. (It should be mentioned that some of the respondents concurrently engaged in a number of different activities, e.g. cultivating farm land and holding a job at the same time).

The annual income before the war of 2008 amounted to under **1000** GEL – for **16%**, from **1000-4000** GEL – **59%**, and over **4000** GEL – **25%** of those surveyed (see Table N1).



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Table #1 Annual income of Karbi Village of Gori Region.

Ergneti Village

The survey covered **54** persons out of the residents of Ergneti Village. The survey found that the main source of income before the war of 2008 was cultivation of agrarian land – **95%** of those surveyed, pension – **25%**, regular job – **10%**, humanitarian aid from international organizations – **27.5%**, small business – **5%**, farming – **42.5%**. (It should be mentioned that some of the respondents concurrently engaged in a number of different activities).

The annual income before the war of 2008 amounted from **1000 to 4000** GEL – for **50%**, and over 4000 GEL – for **50%** of those surveyed (see Table N2).

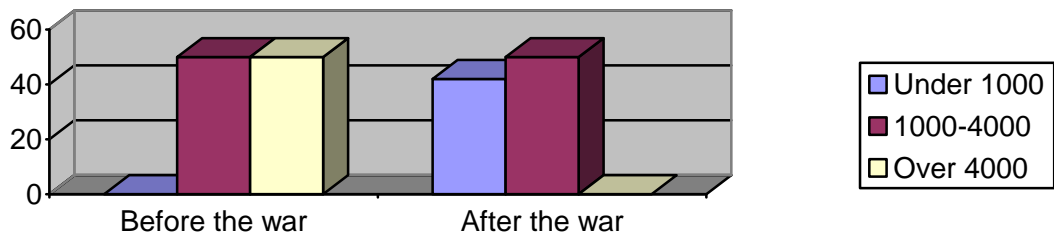


Table #2 Annual income of Ergneti Village of Gori Region.

Tkviavi Village

The survey covered **77** persons out of the residents of Tkviavi Village. The survey found that the main source of income before the war of 2008 was cultivation of agrarian land – **92%** of those surveyed, regular job – **13%**, temporary job – **5%**, government allowance – **3%**, pension – **47%**, small business – **8%**, farming – **20%**. (It should be mentioned that some of the respondents concurrently engaged in a number of different activities, e.g. cultivating farm land and holding a temporary job at the same time).

The annual income before the war amounted to under **1000** GEL – for **12%**, from **1000-4000** GEL – for **53%**, and over 4000 GEL – for **45%** of those surveyed (see Table N3).

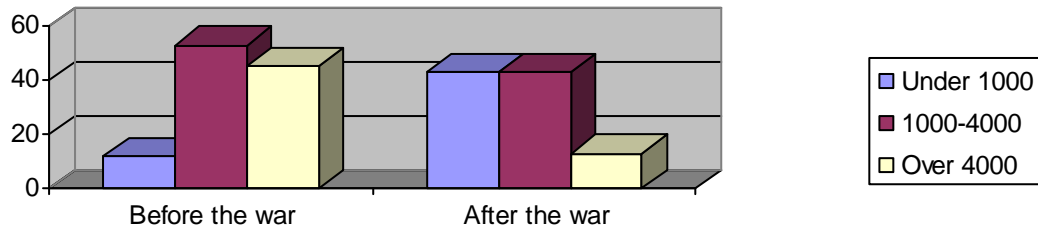


Table #3 Annual income of Tkviavi Village of Gori Region.

Mereti Village

The survey covered **108** persons out of the residents of Mereti Village. The survey found that the main source of income before the war of 2008 was cultivation of agrarian land – **98%** of those surveyed, regular job – **7.5%**, temporary employment – **3%**, government allowance – **1%**, pension – **12%**, small business – **2%**, farming – **21%**. (It should be mentioned that some of the respondents concurrently engaged in a number of different activities, e.g. cultivating farm land and holding a temporary job at the same time).

The annual income before the war amounted to under 1000 GEL – for **16%**, from 1000-4000 GEL – for **59%**, and over 4000 GEL – for **25%** of those surveyed (see Table N4).

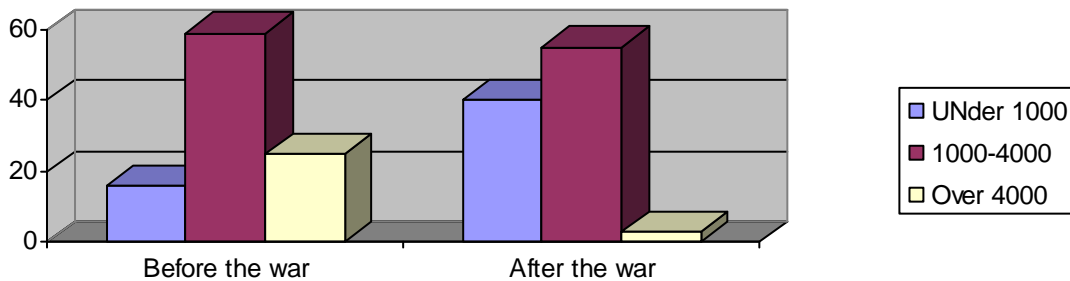


Table #4 Annual income of Mereti Village of Gori Region.

G^b

Gugutiantkari Village

The survey covered **41** persons out of the residents of Gugutiantkari Village. The survey found that the main source of income before the war of 2008 was cultivation of agrarian land – **90%** of those surveyed, regular job – **5%**, temporary employment – **15%**, government allowance – **5%**, pension – **45%**, farming – **60%**. (It should be mentioned that some of the respondents concurrently engaged in a number of different activities, e.g. cultivating farm land and holding a temporary job at the same time).

The annual income before the war amounted to under **1000 GEL** – for **10%**, from **1000-4000 GEL** – for **30%**, and over **4000 GEL** – for **50%** of those surveyed. **10%** did not answer (see Table N5).

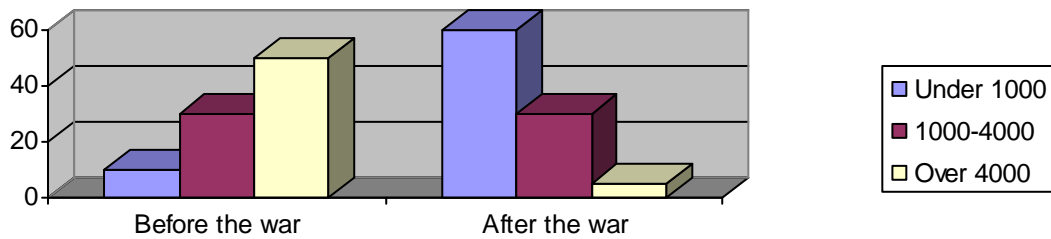


Table #5 Annual income of Gugutiantkari Village of Gori Region.

Koshki Village

The survey covered **38** persons out of the residents of Koshka Village. The survey found that the main source of income before the war of 2008 was cultivation of agrarian land – **100%** of those surveyed, regular job – **3%**, temporary employment – **10%**, government allowance – **7%**, pension – **27.5%**, farming – **38%**. (It should be mentioned that some of the respondents concurrently engaged in a number of different activities, e.g. cultivating farm land and holding a temporary job at the same time).

The annual income before the war amounted to under **1000 GEL** – for **10%**, from **1000-4000 GEL** – for **58%**, and over **4000 GEL** – for **10%** of those surveyed. **22%** did not answer (see Table N6).

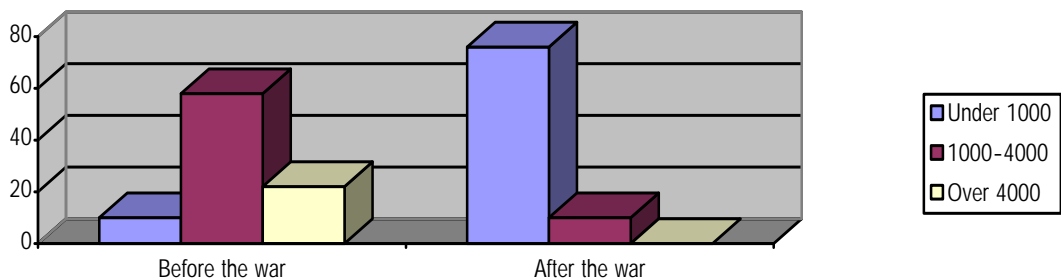


Table #6 Annual income of Koshki Village of Gori Region.

Pre-War Property Condition of the Population

The amount of **annual** revenues of the residents of the so-called frontier villages of Gori Region after the war of August 2008 is as follows (according to villages):

Karbi Village

The current annual turnover of those surveyed amounts to under **1000** GEL – for **44%**, from **1000-4000** GEL – for **50%**, and over **4000** GEL – for **6%**.

It is important to note that the number of families eligible to the public vulnerable family allowance program has increased by some **10%**.

Ergneti Village

The current annual turnover of those surveyed amounts to under **1000** GEL – for **42.5%**, from **1000-4000** GEL – for **50%**, and over **4000** GEL – for **0%**. **7.5%** of those surveyed did not answer the question.

32.5% is currently busy cultivating agrarian land. Pension as the main source of income was named by **52.5%** of those surveyed. The share of respondents dependent on government allowance accounts for **12.5%**.

Tkviavi Village

The current annual turnover of those surveyed amounts to under **1000** GEL – for **43%**, from **1000-4000** GEL – for **43%**, and over **4000** GEL – for **13%**. **1%** of those surveyed did not answer the question

It is noteworthy that pension as the main source of income was named by **61%** and government allowance – by **7%** of those surveyed in Tkviavi Village.

Mereti Village

The current annual turnover of those surveyed amounts to under **1000** GEL – for **40%**, from **1000-4000** GEL – for **55%**, and over **4000** GEL – for **3%**. **2%** of those surveyed did not answer the question.

It is noteworthy that pension as the main source of income was named by **34%**, government allowance – by **5%** and farming – by **2%** of those surveyed in Mereti Village.

Gugutiantkari Village

The current annual turnover of those surveyed amounts to under **1000** GEL – for **60%**, from **1000-4000** GEL – for **30%**, and over **4000** GEL – for **5%**. **5%** of those surveyed did not answer the question.

It is noteworthy that cultivation of land and farming as the main source of income were named by **25%** and **5%**, respectively, and government allowance – by **30%** of those surveyed in Gugutiantkari Village.

Koshki Village

The current annual turnover of those surveyed amounts to under **1000** GEL – for **76%**, from **1000-4000** GEL – for **10%**, and over **4000** GEL – for **0%**. **14%** of those surveyed did not answer the question.

It is noteworthy that cultivation of pension as the main source of income was named by **55%** of those surveyed in Koshki Village.

THE RIGHT TO NON-DISCRIMINATIONⁱⁱⁱ

(PINHEIRO) PRINCIPLE #3

Prohibition of de facto and de jure discrimination

Legal status of the population, in particular, the right to non-discrimination is as follows (according to villages):

Karbi Village

According to the survey conducted by the organization, **72%** of the respondents believe that the allowance paid by the state following the war of 2008 has been apportioned unfairly. **16%** of those surveyed found it hard to answer the question, while **12%** of the respondents believe that the allowance was apportioned fairly. (Table #7.)

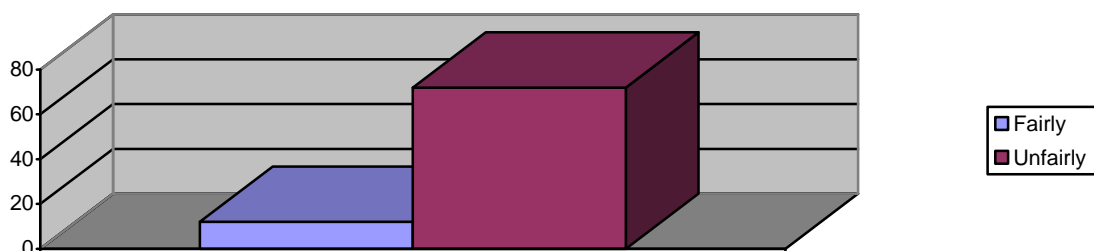


Table #7. Apportionment of the state allowance to Karbi Village after the war of 2008.

Ergneti Village

75% of the respondents believe that the allowance paid by the state following the war of 2008 has been apportioned unfairly. **20%** of those surveyed found it hard to answer the question, while **5%** of the respondents believe that the allowance was apportioned fairly. (Table #8.)

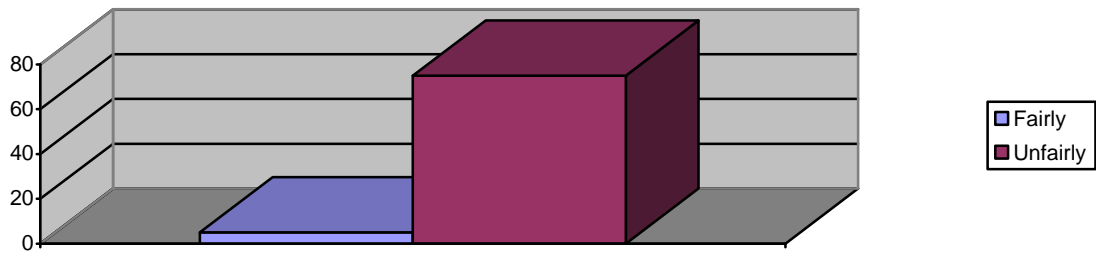


Table #8. Apportionment of the state allowance to Ergneti Village after the war of 2008.

Tkviavi Village

74% of the respondents believe that the allowance paid by the state following the war of 2008 has been apportioned unfairly. **19%** of those surveyed found it hard to answer the question, while **7%** of the respondents believe that the allowance was apportioned fairly. (Table #9.)

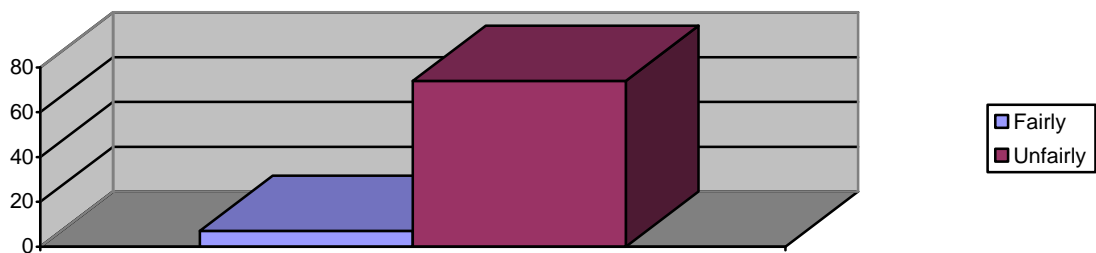


Table #9. Apportionment of the state allowance to Tkviavi Village after the war of 2008.

Mereti Village

60% of the respondents believe that the allowance paid by the state following the war of 2008 has been apportioned unfairly. **27%** of those surveyed found it hard to answer the question, while **13%** of the respondents believe that the allowance was apportioned fairly. (Table #10.)

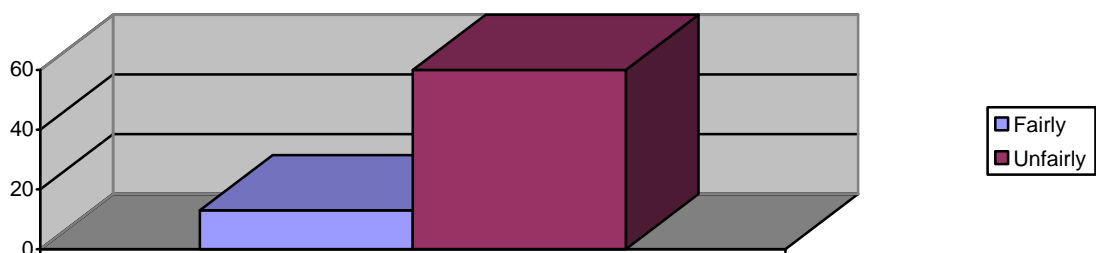


Table #10. Apportionment of the state allowance to Mereti Village after the war of 2008.

Gugutiantkari Village

55% of the respondents believe that the allowance paid by the state following the war of 2008 has been apportioned unfairly. 35% of those surveyed found it hard to answer the question, while 10% of the respondents believe that the allowance was apportioned fairly. (Table #11.)

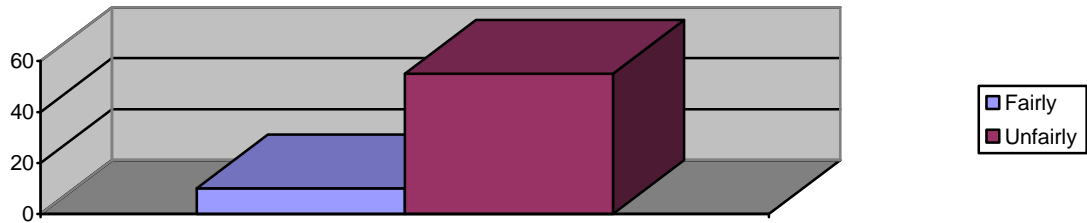


Table #11. Apportionment of the state allowance to Gugutiantkari Village after the war of 2008..

Koshki Village

90% of the respondents believe that the allowance paid by the state following the war of 2008 has been apportioned unfairly while 10% of those surveyed found it hard to answer the question. (Table #12.)

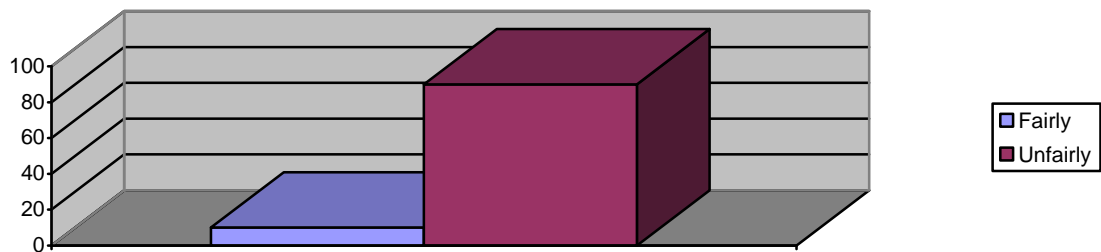


Table #11. Apportionment of the state allowance to Koshki Village after the war of 2008.

THE RIGHT TO ADEQUATE HOUSING ^{iv}

(PINHEIRO) PRINCIPLE #8

Living Conditions, Employment

Employment and living conditions of the residents of the so-called frontier villages of Gori Region are as follows (according to villages):

Karbi Village

Our questionnaire contained a question about the number of family members of the respondents. The survey found that the number of the family members of those surveyed in Karbi Village is **299**. We were interested to know their social condition as well. The survey found that **183** of **299** people are unemployed, **59** are pensioners, and only **57** are employed, which means that only one member is employed for **24%** of surveyed families and all the members are unemployed for **76%** of surveyed families.

Improvement in living conditions following the war of 2008 is checked by **3%** of the respondents, the existence of the same conditions – by **3%** of the respondents and deterioration in living conditions – by **83%** of the respondents. **11%** of those surveyed believe that their living conditions are unbearable. (Table #13.)

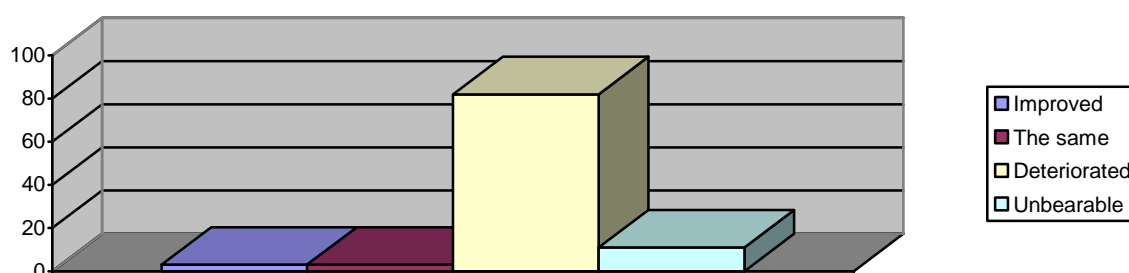


Table #13. Living conditions of Karbi Village before and after the war of 2008.

Ergneti Village

The survey found that the number of the family members of those surveyed in Ergneti Village is **189**, including **42** pensioners, and only **6** people are employed, which means that only one

member is employed for **3%** of surveyed families and all the members are unemployed for **44%** of surveyed families.

Improvement in living conditions following the war of 2008 is checked by **7.5%** of the respondents, the existence of the same conditions – by **0%** of the respondents and deterioration in living conditions – by **80%** of the respondents. **12.5%** of those surveyed believe that their living conditions are unbearable. (Table #14.)

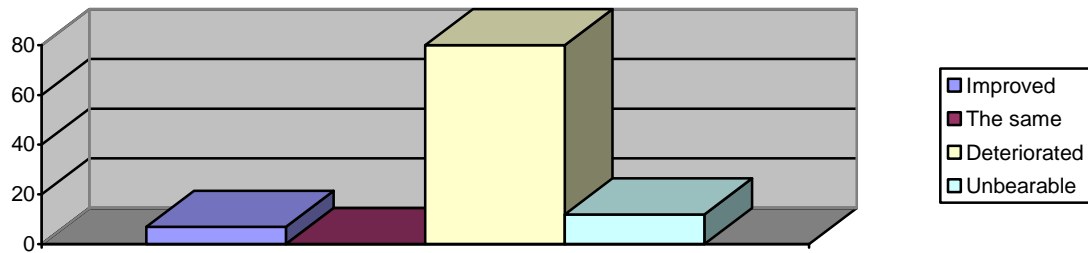


Table #14. Living conditions of Ergneti Village before and after the war of 2008.

Tkviavi Village

The survey found that the number of the family members of those surveyed in Tkviavi Village is **258**, including **65** pensioners, and only **19** people are employed, which means that only one member is employed for **7.4%** of surveyed families and all the members are unemployed for **67.8%** of surveyed families.

Deterioration in living conditions following the war of 2008 is checked by **91%** of the respondents, the existence of the same conditions – by **7%** of the respondents and **2%** of those surveyed believe that their living conditions are unbearable. (Table #15.)

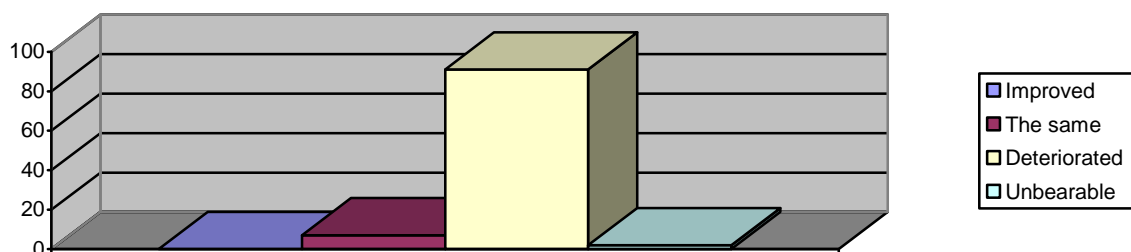


Table #15. Living conditions of Tkviavi Village before and after the war of 2008.

Mereti Village

The survey found that the number of the family members of those surveyed in Mereti Village is **421**, including **74** pensioners, and only **35** people are employed, which means that only one member is employed for **10%** of surveyed families and all the members are unemployed for **90%** of surveyed families.

Deterioration in living conditions following the war of 2008 is checked by **90%** of the respondents, improvement in living conditions – by **2%** of the respondents and **8%** of those surveyed believe that their living conditions are unbearable. (Table #16.)

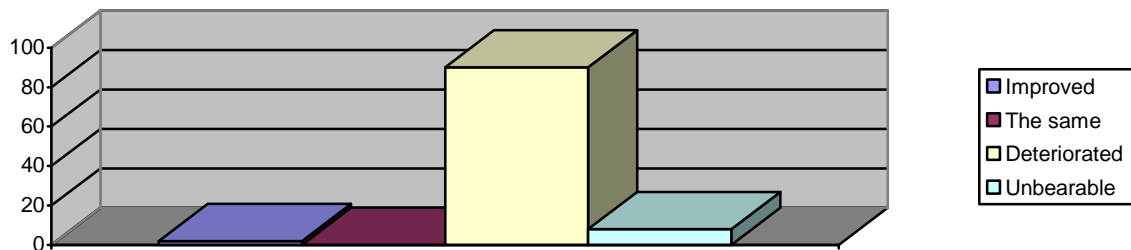


Table #16. Living conditions of Mereti Village before and after the war of 2008.

Gugutiantkari Village

The survey found that the number of the family members of those surveyed in Gugutiantkari Village is **89**, including **20** pensioners, and only **2** people are employed, which means that only one member is employed for **3%** of surveyed families and all the members are unemployed for **90%** of surveyed families.

Improvement in living conditions following the war of 2008 is checked by **1%** of the respondents, deterioration in living conditions – by **65%** of the respondents and **30%** of those surveyed believe that their living conditions are unbearable. (Table #17.)

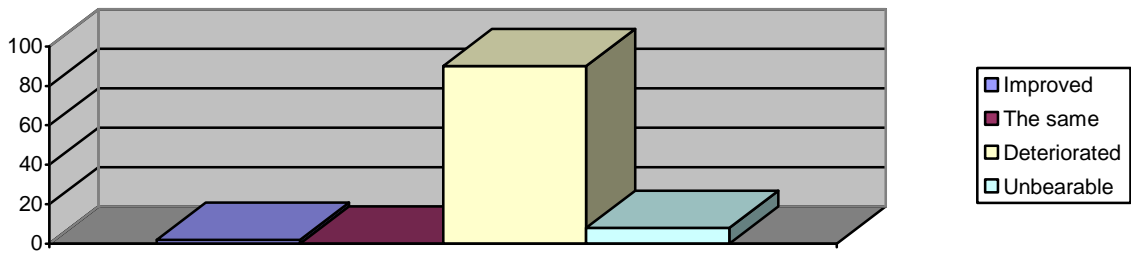


Table #17. Living conditions of Gugutiantkarii Village before and after the war of 2008.

Koshka Village

The survey found that the number of the family members of those surveyed in Koshka Village is **142**, including **27** pensioners, and only **24** people are employed, which means that only one member is employed for **21%** of surveyed families and all the members are unemployed for **79%** of surveyed families.

Deterioration in living conditions following the war of 2008 is checked by **86%** of the respondents and **14%** of those surveyed believe that their living conditions are unbearable. (Table #18.)

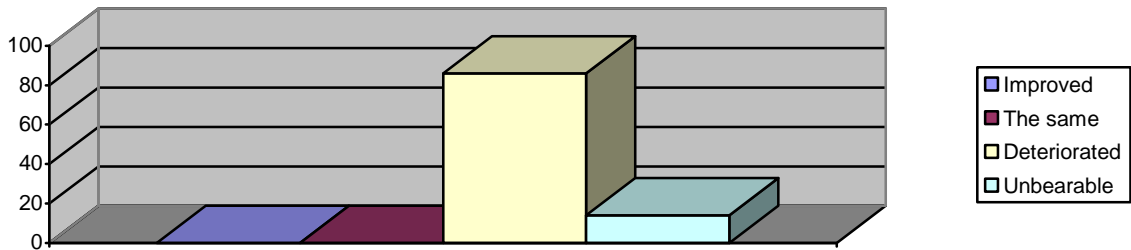


Table #18. Living conditions of Koshka Village before and after the war of 2008.

**NATIONAL PROCEDURES, INSTITUTIONS,
MECHANISMS ^v**

(PINHEIRO) PRINCIPLE #12

Effective, Competent Court and Administrative Procedures

In case of violation of the rights of the war-affected persons, restitution thereof is assigned to competent administrative authorities. Among them are: Ministry of Internally Displaced Persons from Occupied Territories and Resettlement of Refugees, local self-government authorities of Georgia and the Government of Georgia.

None of the administrative authorities allowed any claim for compensation of the material damage of the war-affected persons, although local self-government authorities and the Government of Georgia convened many oral discussions when we were able to better explain and substantiate categorical lawfulness of the claim for the state's compensation of damage incurred by the war.

The Government of Georgia is an administrative authority the competence of which covers the state budgeting and, respectively, preparing the expenditures part thereof and further performance thereof. The Government may also develop socio-economic target programs of the state and finance implementation thereof.

It the law provision^{vi} that the Government of Georgia liquidates the results of hostilities of 2008. Thus, a body of the executive authority has all leverages provided by the Law of Georgia on Structure, Authorities and Activity Procedure of the Government of Georgia. The Government is entitled to plan and ensure allocation of funds^{vii} from the State Fund to perform the state

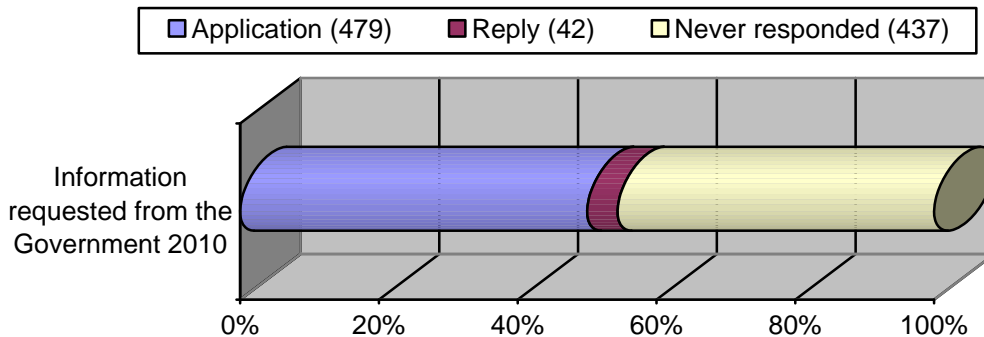
obligations, implement target programs, set up governmental commissions working over different and different matters.

Filing an Application and Appeal to Administrative Authority

To claim compensation of material damage in the manner prescribed by the Georgian laws, we apply to all administrative authorities, the competence of which covers settlement of the said issues. First, among them are local territorial authorities, municipalities, Attorney of the President of Georgia in Shida Kartli, as well as the Government of Georgia, Ministries of Georgia and the President of Georgia.

Our organization registered correspondence with the state authorities, as the result of which we received a statistics as to how frequently the government responds to letters and applications sent by us and our clients.

Throughout 2010 the organization received only 42 replies out of 479 letters sent to local self-governments and central authorities to obtain information.



The organization mainly requested from the state institutions to provide public information and, in most cases, failed to receive any answer.

It is already easy to envisage a status of a particular citizen behind of whom there isn't any rights protection organization.

✓ Claim to assess material damage

Assessment of material damage inflicted to the population as the result of war is a legal liability of the state. Under the Edict N591 passed by the Government of Georgia, a Governmental

Commission was set up to study and determine the damage incurred to the Georgian civil sector as a result of the military aggression of Russian Federation. We do not know what the aforesaid Commission determined as we received no reply on the letter addressed to the Government of Georgia claiming provision of public information regarding this matter. The organization filed a claim to evaluate the material damage on cases of all clients affected by the war. None of the aid claims has been allowed as yet.

✓ **Case discussion in administrative authority**

Neither administrative authority had oral hearing of any administrative appeal of the organization's client till May 7, 2010, although the organization used to continually request it on behalf of the client.

On May 7, 2010 the Government of Georgia considered a case of one of the affected persons. The family members received neither a status of refugees nor the state allowance or the sum equivalent to 10 000 USD provided under Edict N534 passed by the Government on July 24, 2009 which the aforesaid family should have received as the family waived a temporary residence offered by the state. Besides, two double-storey houses of the family remained on the occupied territory, a 1.5 ha land parcel and other property loosing of which caused material damage which was not compensated by the state.

On the same 7th day of May, 2010 the Government of Georgia considered a case of another our client the house and the entire property of whom were burnt during the wartime. The said affected person, as in other similar cases, received 15 000 USD from local self-government authorities. We applied to local self-government authority, Board of Gori Municipality and requested legal acts as public information under the basis of which the aforesaid amount was paid. The Board of Gori Municipality presented different legislative acts in response, in particular, decrees of the Government of Georgia, but none of them provided for such a figure. It is evident that a 15 000 USD-sum cannot be regarded as compensation for the material damage incurred by burning of a place of residence, as it is impossible that material damage in all such cases be the same. Furthermore, the said amount is obviously not enough to indemnify the loss inflicted to persons by destruction of their places of residence, furniture, household appliances and other family items.

On May 14, 2010 we heard explanations of an affected person in terms of our client's case in the Board of Gori Municipality. In this case separatists hijacked a car of the affected person during the wartime. The Head of Legal Division of Gori Municipality explained that 9 181 000 (nine million one hundred eighteen thousand) GEL transferred from the emergency fund of the Government of Georgia to the budget of Gori Municipality had been reasonably spent for

compensation of the damage. And if a sum is transferred from the central budget to the Municipality's budget, then compensation of damage will continue, respectively.

**THE RIGHT TO ACCESSIBILITY TO RESTITUTION
CLAIMS PROCEDURES ^{viii}
(PINHEIRO) PRINCIPLE #13**

Right to File a Claim, Removal of Restrictions

Our organization faced different difficulties when proceeding cases of persons affected by the war of 2008. The most overwhelming among them was the state due. Courts do not release the war-affected persons from payment of state dues due to which public justice is not available for them. Currently, we are proceeding 12 cases of the war-affected persons in national court, wherefrom 6 cases remained untried due to non-payment of the state due. Some of claimants lost every immovable and movable property as the result of the war and live in temporary places of residents intended for refugees, they are unemployed, and, despite the abovementioned, the court didn't exempt them from payment of the state fee.

Thousands of persons in Georgia enjoy the status of a vulnerable person, but the Georgian law^{ix} does not guarantee court availability to them, as under Subparagraph "f" of Article 46 of Civil Procedure Code of Georgia "the parties properly registered in vulnerable family database and receive living allowance which is confirmed by the respectful documents" are exempted from payment of the state due. Accordingly, the parties registered in the vulnerable family database but do not fall within the category of families receiving living allowance are not exempted from payment of the state due. Although, Article 5 of the Law of Georgia on the State Due released such category of claimants from payment of the state due till December 28, 2007.

Therefore, the government's liability is not being fulfilled not only in terms of accessibility of restitution of property of the war-affected civilian population, and also in terms of unavailability of a fair court for the society.

THE RIGHT TO ADEQUATE CONSULTATION AND PARTICIPATION IN DECISION-MAKING ^x

(PINHEIRO) PRINCIPLE #14

Involvement, Participation, Awareness

Involvement and awareness of the war-affected population is vitally important to measure judiciary procedure. The picture of involvement of the population is as follows according to villages:

Karbi Village

56% of the respondents have applied to the local self-government authorities, claiming compensation for the damages incurred to them as a result of the war. The claim had been allowed for **1.5%** of those surveyed. The claim of **4%** of the respondents was allowed in part, while the claim of **27%** of the respondents was dismissed. **16%** of the respondents have received no response whatsoever from the administrative authority.

21% of those surveyed received information on the government allowance from the community attorney, **6%** of the respondents – from the construction company performing restoration works, **4%** of those surveyed – from the head of the local government, **3%** of the respondents – from their neighbors, while **73%** of the respondents have received no information whatsoever. (Table #19.)

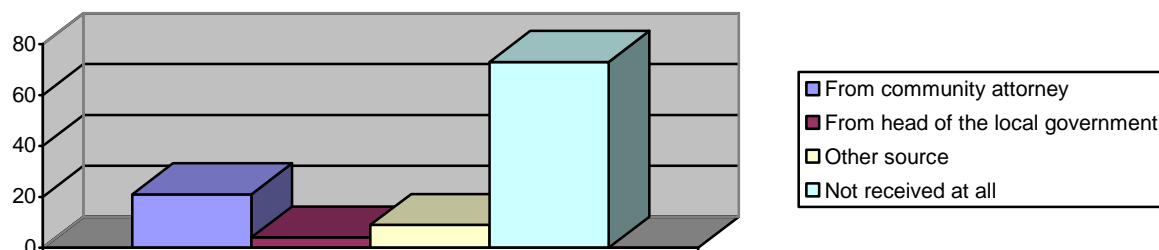


Table #19. Providing information on the state allowance to Karbi Village after the war of August 2008.

Ergneti Village

22% of the respondents have applied to the local self-government authorities, claiming compensation for the damages incurred to them as a result of the war. The claim had been allowed for 0% of those surveyed. The claim of 22.3% of the respondents was allowed in part, while the claim of 66.7% of the respondents was dismissed. 11% of the respondents have received no response whatsoever from the administrative authority.

9% of those surveyed received information on the government allowance from the community attorney, 47% of the respondents – from the head of the local government, governor, 5% of those surveyed – from the population, while 39% of the respondents have received no information whatsoever. (Table #20.)

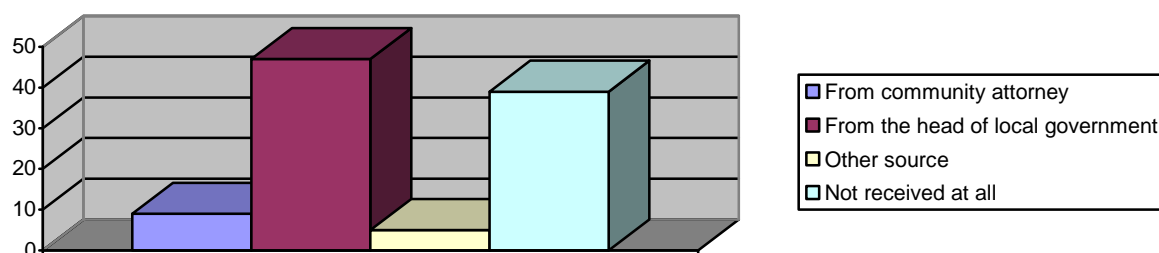


Table #20. Providing information on the state allowance to Ergneti Village after the war of August 2008.

Tkviavi Village

75% of the respondents have applied to the local self-government authorities, claiming compensation for the damages incurred to them as a result of the war. The claim of 13.5% of the respondents was allowed in part, while the claim of 65% of the respondents was dismissed. 21.5% of the respondents have received no response whatsoever from the administrative authority.

17% of those surveyed received information on the government allowance from the community attorney, 2% of those surveyed – from the governor, while 81% of the respondents have received no information whatsoever. (Table #21.)

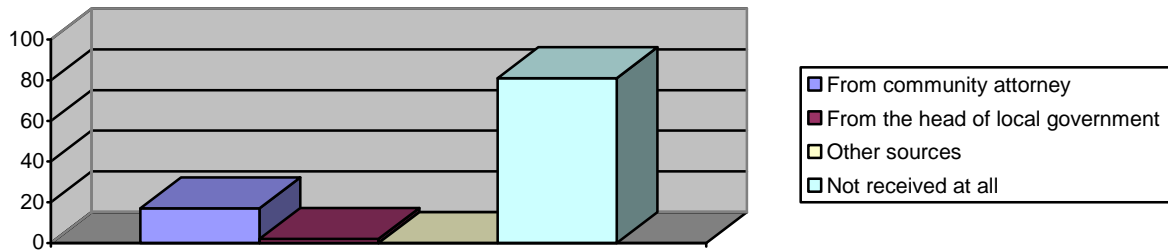


Table #21. Providing information on the state allowance to Tkviavi Village after the war of August 2008.

Mereti Village

47% of the respondents have applied to the local self-government authorities, claiming compensation for the damages incurred to them as a result of the war. The claim of 4.5% of the respondents was allowed immediately, the claim of 9% of the respondents was allowed in part, while the claim of 57% of those surveyed was dismissed. 29.5% of the respondents have received no response whatsoever from the administrative authority.

19% of those surveyed received information on the government allowance from the community attorney, 3% of those surveyed – from the governor, 3% of those surveyed – from the neighbor while 75% of the respondents have received no information whatsoever. (Table #22.)

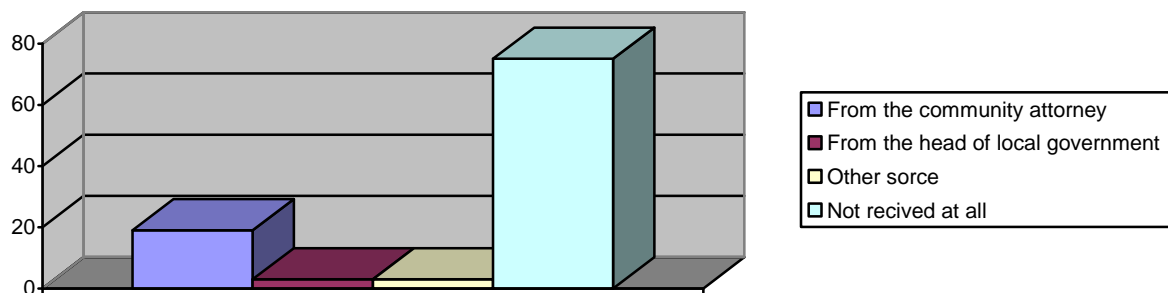


Table #22. Providing information on the state allowance to Mereti Village after the war of August 2008.

Gugutiantkari Village

80% of the respondents have applied to the local self-government authorities, claiming compensation for the damages incurred to them as a result of the war. The claim of 5% of the

respondents was allowed in part, while the claim of **50%** of the respondents was dismissed. **45%** of the respondents have received no response whatsoever from the administrative authority.

10% of those surveyed received information on the government allowance from the community attorney, **10%** of those surveyed – from the governor, while **80%** of the respondents have received no information whatsoever. (Table #23.)

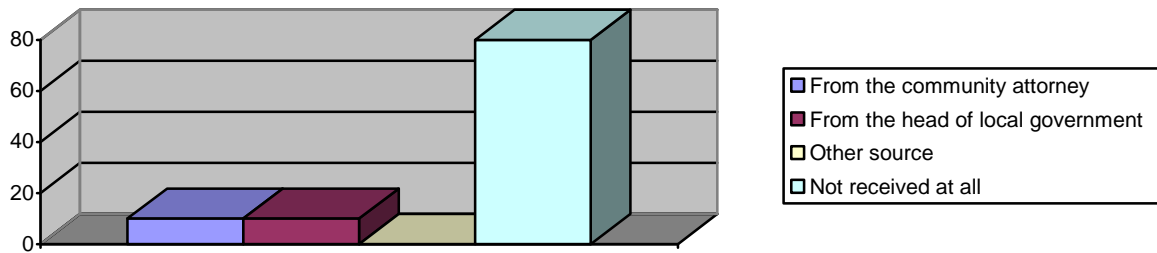


Table #23. Providing information on the state allowance to Gugutiantkari Village after the war of August 2008.

Koshki Village

62% of the respondents have applied to the local self-government authorities, claiming compensation for the damages incurred to them as a result of the war. The claim of **60%** of those surveyed was dismissed. **40%** of the respondents have received no response whatsoever from the administrative authority.

100% of those surveyed stated they had received no information whatsoever. (Table #24.)

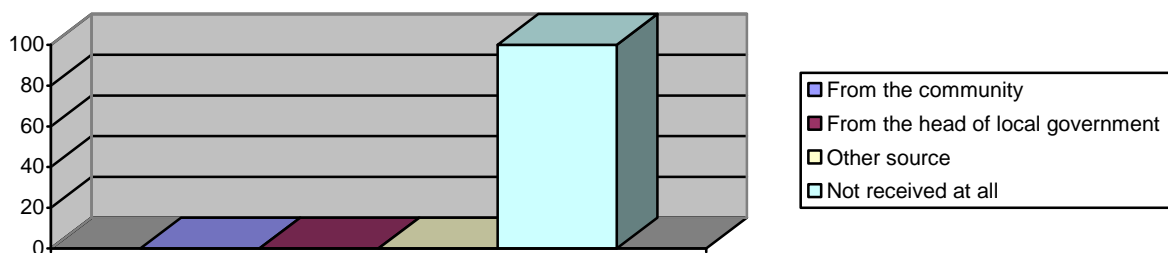


Table #24. Providing information on the state allowance to Koshki Village after the war of August 2008.

THE RIGHT TO DOCUMENTATION ACCESS ^{xi}

(PINHEIRO) PRINCIPLE #15

Government Accountability

Government accountability is directly related to implementation of the right to property of the population and liquidation of the war results. With this regard, information in villages was detected as follows:

Karbi Village

52% of those surveyed stated that the government representatives do not come to get an onsite assessment of their problems. **15%** of the respondents stated that the government representatives visit once a year. **15%** of those surveyed said the government representatives came twice a year. **7%** of the respondents said the government representatives visited once a month. **1.5%** of those surveyed stated the government representatives visited twice a month while **9.5%** of the respondents declined to answer the question.

33% of those surveyed applied to the government to obtain information on the government allowance payable to the victims of the war of 2008. **5%** of the respondents received the answer in delay, while **95%** of those surveyed found it difficult to answer the question.

It is noteworthy that **75%** of the respondents say the government does not respond to their problems. **6%** of those surveyed believe that the government responds to their problems while **19%** of those surveyed found it difficult to answer the question. (Table #25.)

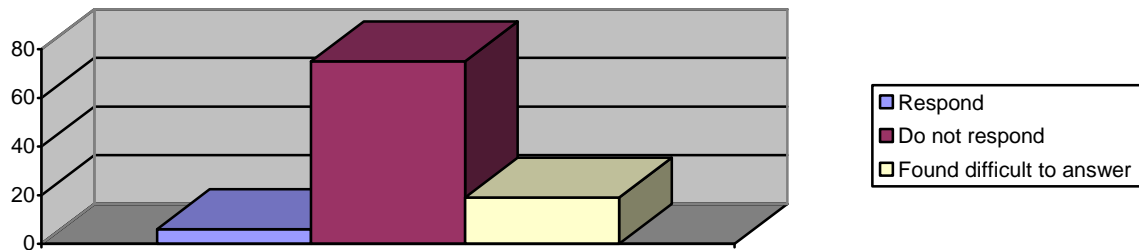


Table #25. Response of the governmental authorities to the problems of 2008-year war affected persons in Karbi Village.

5% of those surveyed reapplied to the government, **5%** of those surveyed applied to the superior administrative authority, **3%** of those surveyed - to the court, while **83%** of the respondents did not respond to the ignorance of their application.

Ergneti Village

37% of those surveyed stated that the government representatives do not come to get an onsite assessment of their problems. **37%** of the respondents stated that the government representatives visit once a year. **12.5%** of those surveyed said the government representatives came twice a year. **5%** of the respondents said the government representatives visited once a month while **8.5%** of the respondents declined to answer the question.

32.5% of those surveyed applied to the government to obtain information on the government allowance payable to the victims of the war of 2008. **10%** of the applicants received the answer in delay, while the applications of **90%** of the applicants were never answered.

It is noteworthy that **90%** of the respondents say the government does not respond to their problems. **10%** of those surveyed believe that the government responds to their problems.. (Table #26.)

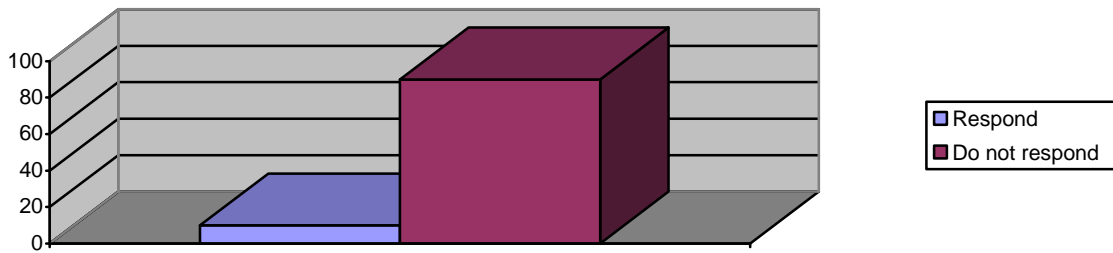


Table #26. Response of the governmental authorities to the problems of 2008-year war affected persons in Ergneti Village.

5% of those surveyed reapplied to the government while 95% of the respondents did not respond to the ignorance of their application.

Tkviavi Village

47% of those surveyed stated that the government representatives do not come to get an onsite assessment of their problems. 13% of the respondents stated that the government representatives visit once a year. 1% of those surveyed said the government representatives came twice a year while 39% of the respondents declined to answer the question.

56% of those surveyed applied to the government to obtain information on the government allowance payable to the victims of the war of 2008. 9% of the applicants received the answer in delay, while the applications of 91% of the applicants were not answered.

It is noteworthy that 32% of the respondents say the government does not respond to their problems. 5% of those surveyed believe that the government immediately responds to their problems, 40% of those surveyed believe that the government delays response to their problems, while 23% of the respondents declined to answer the question. (Table #27.)

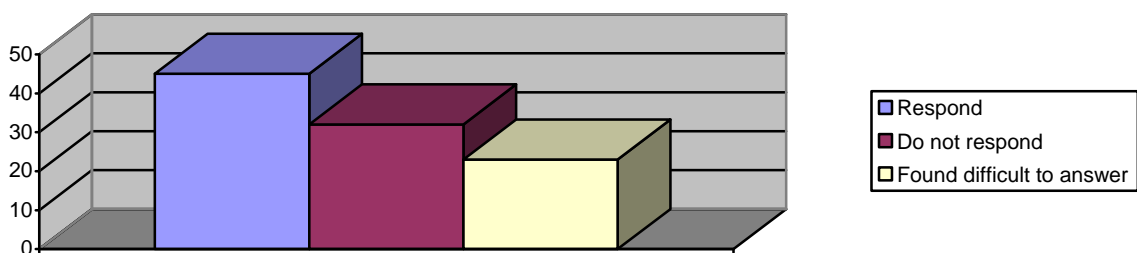


Table #27. Response of the governmental authorities to the problems of 2008-year war affected persons in Tkviavi Village.

18% of those surveyed reapplied to the government and **10%** of the respondents – to the superior administrative authority.

Mereti Village

73% of those surveyed stated that the government representatives do not come to get an onsite assessment of their problems. **12%** of the respondents stated that the government representatives visit once a year. **15%** of those surveyed said the government representatives came twice a year. **10%** of the respondents said the government representatives visited once a month.

40% of those surveyed applied to the government to obtain information on the government allowance payable to the victims of the war of 2008. **8%** of the applicants received the answer in delay, while the applications of **64%** of the applicants were never answered.

It is noteworthy that **30%** of the respondents say the government does not respond to their problems. **6%** of those surveyed believe that the government immediately responds to their problems. **54%** of those surveyed believe that the government delays response to their problems, while **10%** of the respondents declined to answer the question. (Table #28.)

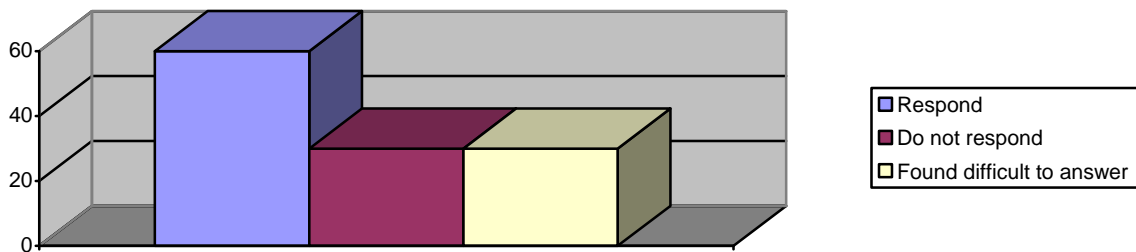


Table #28. Response of the governmental authorities to the problems of 2008-year war affected persons in Mereti Village.

18% of those surveyed reapplied to the government, **2%** of the respondents did not respond to the ignorance of their application, and **1%** of those surveyed applied to the court.

Gugutiantkari Village

50% of those surveyed stated that the government representatives do not come to get an onsite assessment of their problems. **25%** of the respondents stated that the government representatives

visit once a year. **15%** of those surveyed said the government representatives came twice a year. **10%** of the respondents said the government representatives visited once a month.

25% of those surveyed applied to the government to obtain information on the government allowance payable to the victims of the war of 2008. **20%** of the applicants received the answer in delay, while the applications of **80%** of the applicants were never answered.

It is noteworthy that **60%** of the respondents say the government does not respond to their problems. **15%** of those surveyed believe that the government responds to their problems in delay while **25%** of the respondents declined to answer the question. (Table #29.)

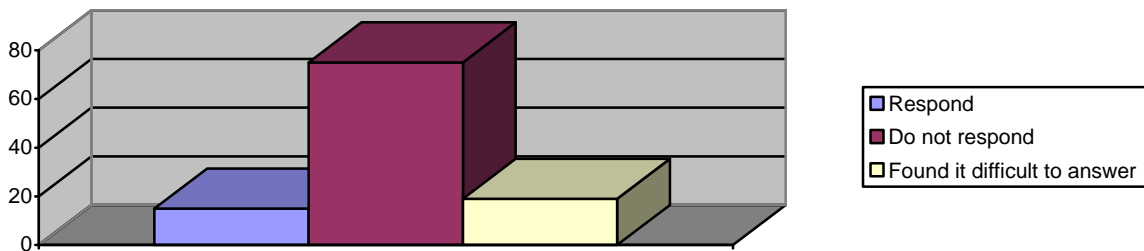


Table #29. Response of the governmental authorities to the problems of 2008-year war affected persons in Gugutiantkari Village.

25% of those surveyed reapplied to the government while **75%** of the respondents did not respond to the ignorance of their application.

Koshki Village

75% of those surveyed stated that the government representatives do not come to get an onsite assessment of their problems. **10%** of the respondents stated that the government representatives visit once a year. **7.5%** of those surveyed said the government representatives came twice a year. **7.5%** of the respondents said the government representatives visited once a month.

24% of those surveyed applied to the government to obtain information on the government allowance payable to the victims of the war of 2008. **28%** of the applicants received the answer in delay, while the applications of **72%** of the applicants were never answered.

It is noteworthy that **96%** of the respondents say the government does not respond to their problems. **4%** of those surveyed believe that the government responds to their problems in delay. (Table #30.)

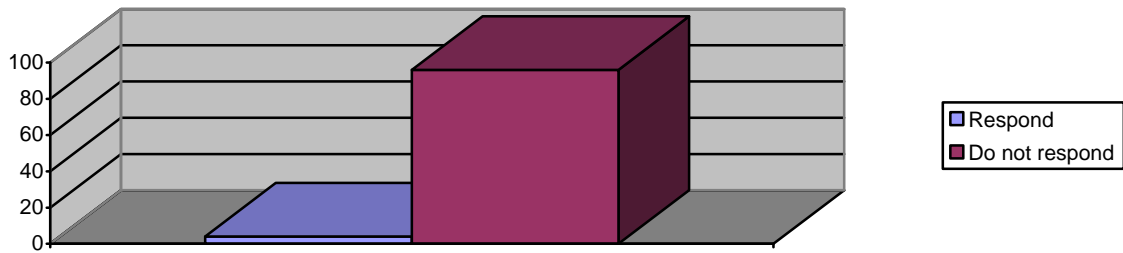


Table #30. Response of the governmental authorities to the problems of 2008-year war affected persons in Koshki Village.

10% of those surveyed reapplied to the government while **100%** of the respondents did not respond to the ignorance of their application.

LEGISLATIVE MEASURES ^{xii}

(PINHEIRO) PRINCIPLE #18

National Legislation on Restitution of Property

The Pinheiro Principles are adequately reflected in the Georgian legislation. Legislative analysis, we are providing, enables to talk not about recommendations approach in the process of restitution of rights to property of the war-affected population, but about the part absolutely compulsory for the state, which has not been fulfilled as yet.

In 2006 a draft law **On Restitution of Property and Compensation of Persons Affected by the Conflict on the Territory of Georgia within the Former Autonomous District of South Ossetia** was transferred to the Parliament of Georgia. This draft law was prepared in the Ministry of Justice and was approved by the EU Venice Commission in spring of 2006. Following a six-month work, the Law of Georgia **On Restitution of Property and Compensation of Persons Affected by the Conflict on the Territory of Georgia within the Former Autonomous**

District of South Ossetia took effect on January 1, 2007. By this Law the Government recognizes human rights and freedoms universally recognized by the Constitution of Georgia and international law, in particular, the state undertakes to restore everyone's right to property and adequate standards of living irrespective of his/her race, colour, sex, language, ethnic and social origin, religion, belief, political or other opinion, and bring the legal status of persons affected as the result of the conflict in 1989-1992 and its subsequent period.

Under Article 1 of the Law of Georgia **On Restitution of Property and Compensation**, the goal of the law is "*restitution of property of individuals affected on the territory of Georgia as the result of the conflict in the former Autonomous District of South Ossetia, or providing adequate immovable property (in return)*". Article 3 of the same Law directly reflects (Pinheiro) Principles of Restitution approved by the United Nations Sub-Commission on Protection of Human Rights:

1. Fairness and equality;
2. Rule of law;
3. Protecting, respecting and ensuring human dignity, universal human rights and freedoms;
4. The right to receive exhaustive information on matters related to him/her in public authorities;
5. The right to have access to effective legal remedies;
6. The accountability and responsibility of the state before its citizens and persons in its territory;
7. Guaranteeing free and voluntary return of displaced persons.

To guarantee the achievement of the goals contemplated by the Property Restitution and Compensation Law, the restitution and compensation commission is set up, under Article 6, for the term of 3 years. However, if within the tenure the commission fails to fully resolve the existing disputes, the commission makes a decision to prolong its tenure for a certain period of time. Under Article 7 of the same law, the goal of the commission is to ensure the following for the persons affected as a result of the conflict in the territory of Georgia:

- **Return of property;**
- **Providing adequate lodging (in return);**
- **Compensation of material damage.**

The right to restitution of property is also provided by the Law of Georgia **On Internally Displaced Persons – Refugees**, under Article 7 of which, if an internally displaced person returns to his place of residence:

“a) Executive authorities and local self-government authorities, including the Ministry of Refugees and Accommodation, exercise the rights and powers vested in them under the Constitution of Georgia, taking measures to make sure that the social-economic conditions necessary for secure life are created at the place of IDP’s permanent residence; personal property, including a residential house and homestead land is returned to the IDP, his lawful heir in the condition existing by then; compensation for the damage incurred, after its limited amount has been fixed, is paid by local self-government authorities in manner established by the government, and if an apartment unfit for living is restored, the citizen is given the guarantee to return there.”

The right to restitution of property is also provided by the Law of Georgia on Martial Law.

In particular, Article 13 of the law binds the state to reimburse the material damage incurred to the population during martial law:

“The citizens affected in connection with liquidation works performed during or for avoiding martial law shall be provided by the state with lodging, with the state paying them the damage incurred and assisting them in finding a job and rendering them other assistance.”

Under Paragraph 2 of Article 13 of the same law, *“the terms and conditions for providing an apartment, payment of damage and rendering any other assistance shall be determined by the President of Georgia in compliance with law.”*

Besides, on 8 September 2008, the Government of Georgia passed Edict N591, setting up the *Governmental Commission to Study and Determine the Damage Incurred to the Georgian Civil Sector as a result of the Military Aggression of Russian Federation*. Under the above edict, the commission comprised the following members: Prime Minister of Georgia (Chairman), the First Deputy Minister of Finance of Georgia, the Head of the Chancellery of the Government of Georgia, the First Deputy Minister of Justice of Georgia, the Minister of Justice of Georgia, the Minister of Finance of Georgia, the First Deputy Minister of Health and Social Affairs of Georgia, the Head of the Sustainable Development Department of the Ministry of Environment Protection and Natural Resources of Georgia, the Minister of Health, Labour and Social Affairs of Georgia, the First Deputy Minister of Economic Development of Georgia, the Minister of Refugees and Accommodation of Georgia, the Minister of Environment Protection and Natural Resources of Georgia, the Minister of Economic Development of Georgia, the First Deputy Minister of Education and Science of Georgia, the Deputy Minister of Agrarian Affairs of Georgia, the Deputy Minister of Health, Labour and Social Affairs of Georgia. In other words,

sixteen officials of the Government and seven ministries were assigned to coordinate the work of the commissions and working groups set up within the government agencies and reconcile the results of the work of various commissions and working groups.

It is logical that the Government Commission had been set up much earlier than the Government passed a variety of resolutions towards liquidation of the consequences of the war, since the damage could not have been paid unless it had been assessed first. Therefore, the Government Commission and the groups within it were to identify and determine the material damage incurred to all the representatives of the civil sector during the hostilities of 2008. On 24 April 2010 the Commission finished the work.

Proceeding from the above, we can conclude that the right of restitution is generally accepted under international as well as national laws. In other words, there is a legal basis for a person whose property was damaged as a result of the war in the territory of Georgia to claim and obtain property restitution.

THE RIGHT TO FULL AND EFFECTIVE COMPENSATION

xiii

(PINHEIRO) PRINCIPLE #21

Compensation

Material damage inflicted as the result of hostilities of 2008 is as follows (according to villages):

Karbi Village

2% of those surveyed have to live in a cottage because their homes were destroyed during the war of 2008. The homes of **10%** of the respondents were destroyed in full or in part, and the homes of **70%** of those surveyed have cracked walls. The glasses of the homes of **27%** of the respondents were smashed and the roof of the homes of **57%** of those surveyed got damaged during the military operations in 2008.

28% of those surveyed said that the damage incurred to them as a result of the war of 2008 had been assessed by the state. **64%** believed the state had not performed such assessment for them

and **8%** of the respondents did not know whether the damage incurred to them had been assessed or not (Table N31).

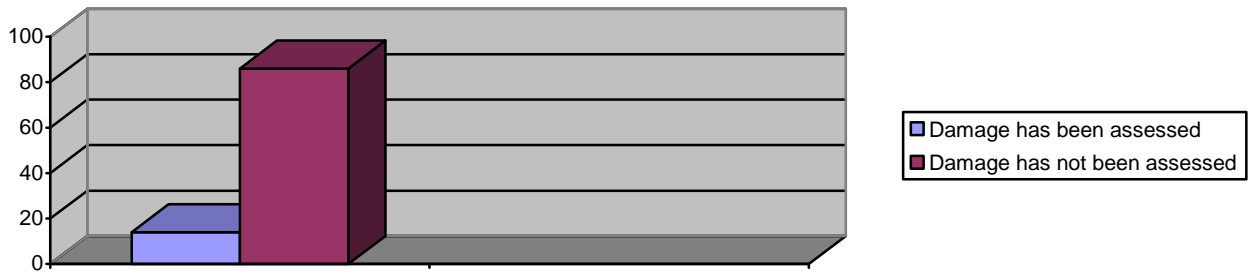


Table #31. Assessment of damage incurred as the result of war of August 2008 to Karbi Village.

28 respondents of those surveyed could not personally assess the amount of damage incurred to them as a result of the war of 2008. For the rest of the respondents, the damage incurred to them as a result of the war amounts to **683 500** (six hundred eighty three thousand five hundred) GEL.

Ergneti Village

The survey found that before the war **100%** of those surveyed possessed a residential house, a parcel of land as well as farm lands. At present, only **22.5%** of the respondents possess houses fit for living, the houses of **27.5%** of the respondents is repairable, but the houses of more than **50%** of the respondents are unfit for living. The farming lands owned by **7.5%** of those surveyed completely remain within the occupied territory, and the farming lands of **22.5%** of the respondents are partly within the occupied territory.

37.5% of those surveyed said that the damage incurred to them as a result of the war of 2008 had been assessed by the state. **50%** believed the state had not performed such assessment for them and **12.5%** of the respondents did not know whether the damage incurred to them had been assessed or not (Table N32).

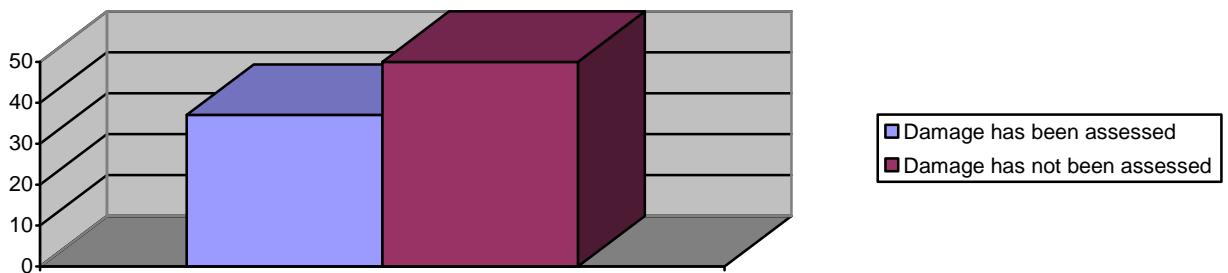


Table #32. Assessment of damage incurred as the result of war of August 2008 to Ergneti Village.

According to the respondents' assessment, the damage incurred to them as a result of the war amounts to **920 000** (nine hundred twenty thousand) GEL.

Tkviavi Village

The survey found that before the war **100%** of those surveyed possessed a residential house, a parcel of land, and **96%** of the respondents possessed farmlands. At present, only **91.5%** of the respondents possess houses fit for living, out of which **75%** homes were damaged during the war. At present, the homes of **8.5%** of the respondents are unfit for living.

40% of those surveyed said that the damage incurred to them as a result of the war of 2008 had been assessed by the state. **60%** believed the state had not performed such assessment for them (Table N33).

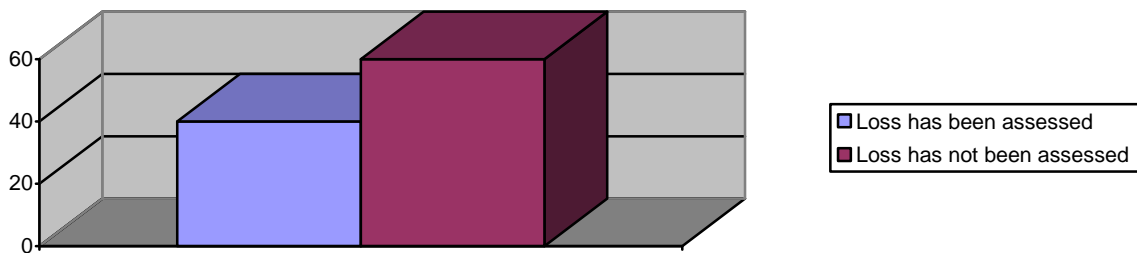


Table #33. Assessment of damage incurred as the result of war of August 2008 to Tkviavi Village.

According to the assessment made by **95%** of the respondents, the material damage incurred to them as a result of the war amounts to **1 240 000** (one million two hundred forty thousand) GEL. The remaining **5%** could not assess the damage incurred to them as a result of the war.

Mereti Village

The survey found that before the war **100%** of those surveyed possessed farmlands. At present, the farming lands owned by **24%** of those surveyed completely remain within the occupied territory, and the farming lands of **26%** of the respondents are partly within the occupied territory

25% of those surveyed said that the damage incurred to them as a result of the war of 2008 had been assessed by the state. **75%** believed the state had not performed such assessment for them (Table N34).

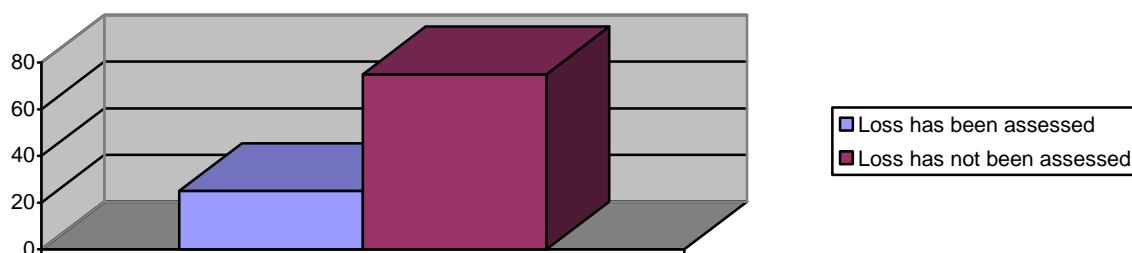


Table #34. Assessment of damage incurred as the result of war of August 2008 to Mereti Village.

According to the assessment made by **82%** of the respondents, the material damage incurred to them as a result of the war of 2008 amounts to **2 400 000** (two million four hundred thousand) GEL. The remaining **18%** could not assess the damage incurred to them as a result of the war.

Gugutiantkari Village

The survey found that before the war **100%** of those surveyed possessed residential houses and farmlands. At present, the farming lands owned by **40%** of those surveyed completely remain within the occupied territory, and the farming lands of **60%** of the respondents are partly within the occupied territory. **10%** of the residential homes remain completely within the occupied territory.

10% of those surveyed said that the damage incurred to them as a result of the war of 2008 had been assessed by the state. **90%** believed the state had not performed such assessment for them (Table N35).

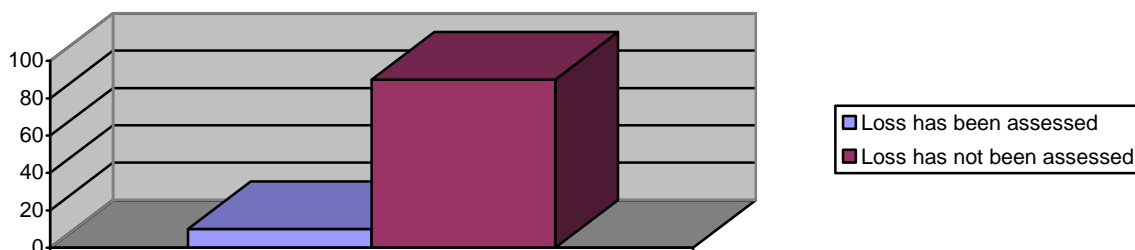


Table #35. Assessment of damage incurred as the result of war of August 2008 to Gugutiantkari Village.

According to the assessment made by **95%** of the respondents, the material damage incurred to them as a result of the war of 2008 amounts to **290 700** (two hundred ninety thousand seven hundred) GEL. The remaining **5%** could not assess the damage incurred to them as a result of the war.

Koshki Village

The survey found that before the war **100%** of those surveyed possessed residential houses and farmlands. At present, **3%** of the residential homes remain completely within the occupied territory. The farming lands owned by **10%** of those surveyed completely remain within the occupied territory, and the farming lands of **7%** of the respondents are partly within the occupied territory.

14% of those surveyed said that the damage incurred to them as a result of the war of 2008 had been assessed by the state. **86%** believed the state had not performed such assessment for them (Table N36).

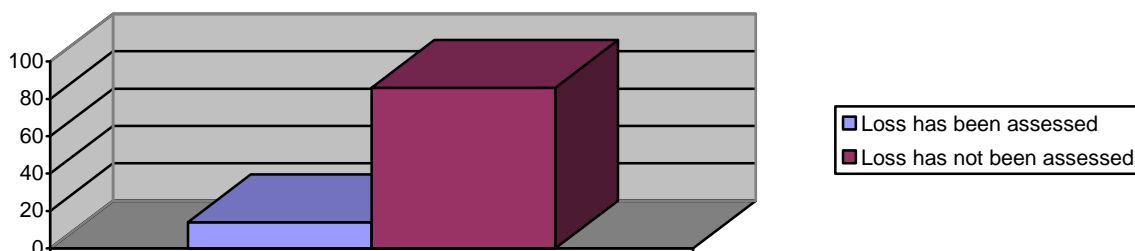


Table #36. Assessment of damage incurred as the result of war of August 2008 to Koshki Village.

According to the assessment made by **48%** of the respondents, the material damage incurred to them as a result of the war of 2008 amounts to **104 700** (one hundred four thousand) GEL. The remaining **52%** could not assess the damage incurred to them as a result of the war.

Compensation of Material Damage Incurred After the War of August 2008 according to villages

Karbi Village

81% of those surveyed are sure that the damage incurred to them as a result of the war of 2008 must be paid by the state. **19%** of the respondents are not sure of that.

7% of those surveyed have received material allowance in the total amount of **53 420** (fifty three thousand four hundred twenty) GEL. **26%** of the respondents got glasses installed to their homes, **33%** of those surveyed got the roof of their homes repaired and **42%** of the respondents state that they have received no allowance whatsoever from the state.

6% of the respondents believe that the government has fully paid them the damage incurred as a result of the war of 2008, and **52%** of those surveyed believe that the government has must partly paid them the damage incurred as a result of the war of 2008. And **42%** of the respondents claim the state has paid no compensation for the damage. (Table #37.)

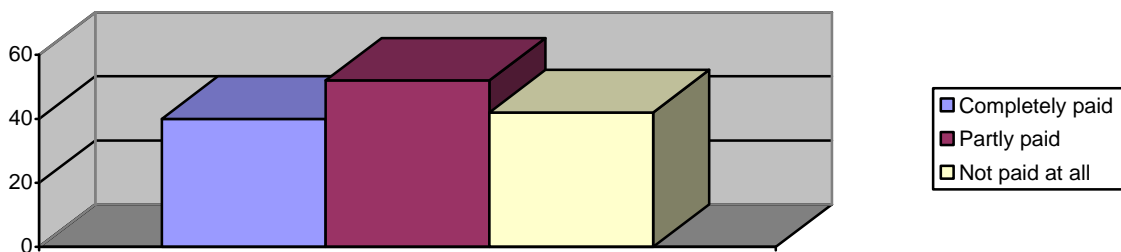


Table #37. Compensation of damage incurred by the war of August 2008 paid by the government to Karbi Village.

Ergneti Village

100% of those surveyed are sure that the damage incurred to them as a result of the war of 2008 must be paid by the state. **75%** of the respondents believe that the government has fully paid them the damage incurred as a result of the war of 2008, and **25%** of those surveyed believe that the government has partly paid them the damage.

57.5% of the respondents believe that their claims for damages have been considered in part, while **42.5%** of those surveyed think that their claims have been utterly ignored.

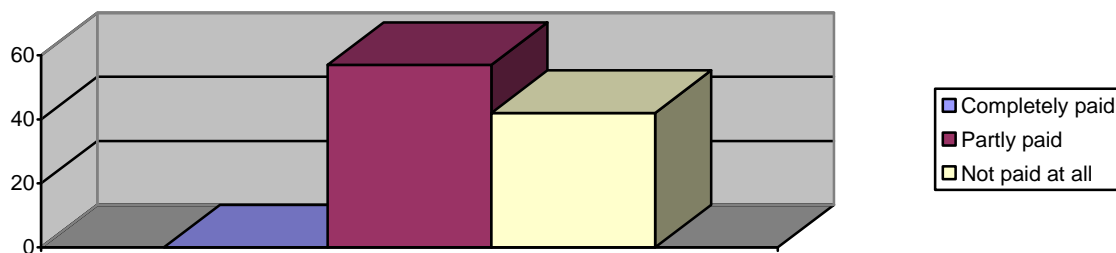


Table #38. Compensation of damage incurred by the war of August 2008 paid by the government to Ergneti Village.

Tkviavi Village

100% of those surveyed are sure that the damage incurred to them as a result of the war of 2008 must be paid by the state.

27% of those surveyed have received material allowance in the total amount of **195 000** (one hundred ninety five thousand) US dollars equivalent in GEL and **12 500** GEL. **25%** of the respondents received building materials. **48%** of the respondents state that they have received no assistance whatsoever from the state.

50% of the respondents believe that the government has partly paid them the damage incurred as a result of the war of 2008 while **50%** of the respondents claim the state has paid no compensation for the damage. (Table #39.)

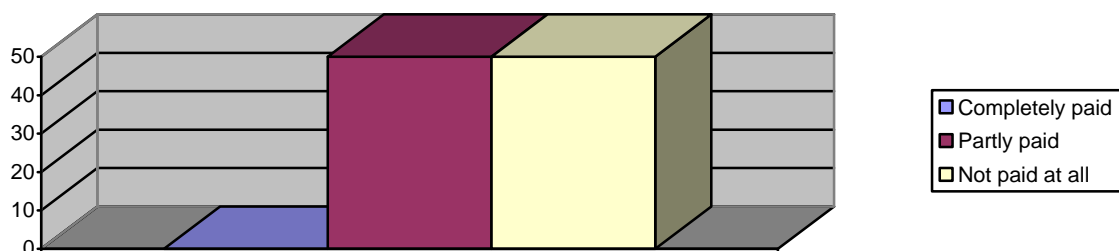


Table #39. Compensation of damage incurred by the war of August 2008 paid by the government to Tkviavi Village.

Mereti Village

100% of those surveyed are sure that the damage incurred to them as a result of the war of 2008 must be paid by the state.

2% of those surveyed have received material allowance in the total amount of **30 000** (thirty thousand) US dollars equivalent in GEL. **7%** of the respondents received building materials. **38%** of the respondents received food products while **53%** of the respondents claim they have received no assistance whatsoever from the state.

18% of the respondents believe that the government has partly paid them the damage incurred as a result of the war of 2008 while **82%** of the respondents claim the state has paid no compensation for the damage. (Table #40.)

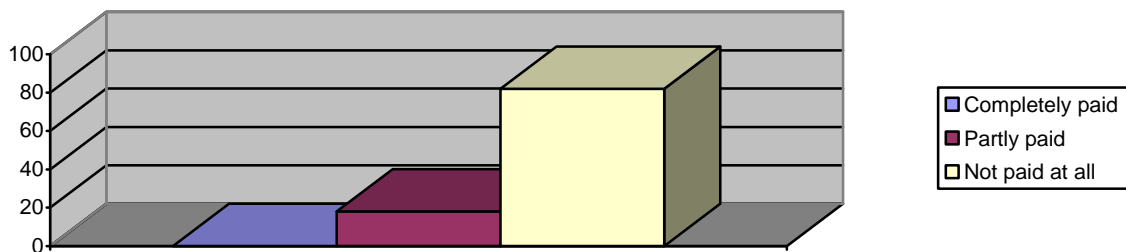


Table #40. Compensation of damage incurred by the war of August 2008 paid by the government to Mereti Village.

Gugutiantkari Village

90% of those surveyed are sure that the damage incurred to them as a result of the war of 2008 must be paid by the state. **10%** of the respondents are not sure of that

5% of those surveyed have received material allowance in the total amount of **10 000** (ten thousand) GEL. **7.5%** of the respondents received building materials. **10%** of the respondents received food products while **70%** of the respondents claim they have received no assistance whatsoever from the state.

20% of the respondents believe that the government has partly paid them the damage incurred as a result of the war of 2008 while **80%** of the respondents claim the state has paid no compensation for the damage. (Table #41.)

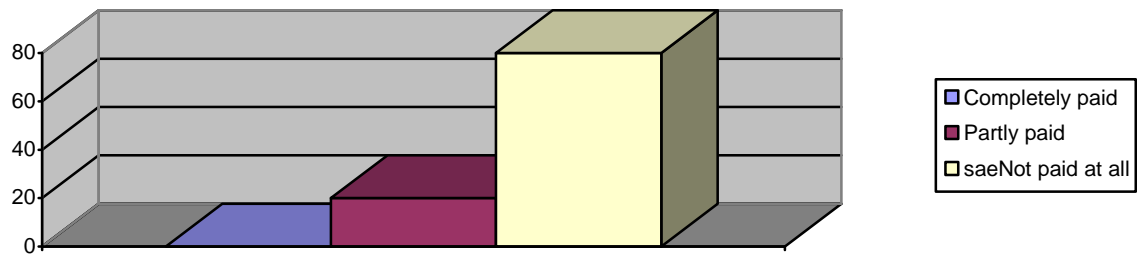


Table #41. Compensation of damage incurred by the war of August 2008 paid by the government to Gugutiantkari Village

Koshki Village

96% of those surveyed are sure that the damage incurred to them as a result of the war of 2008 must be paid by the state. **4%** of the respondents are not sure of that

7% of those surveyed have received assistance in the form of building materials. **24%** of the respondents received food products while **71%** of the respondents claim they have received no assistance whatsoever from the state.

10% of the respondents believe that the government has partly paid them the damage incurred as a result of the war of 2008 while **90%** of the respondents claim the state has paid no compensation for the damage. (Table #42.)

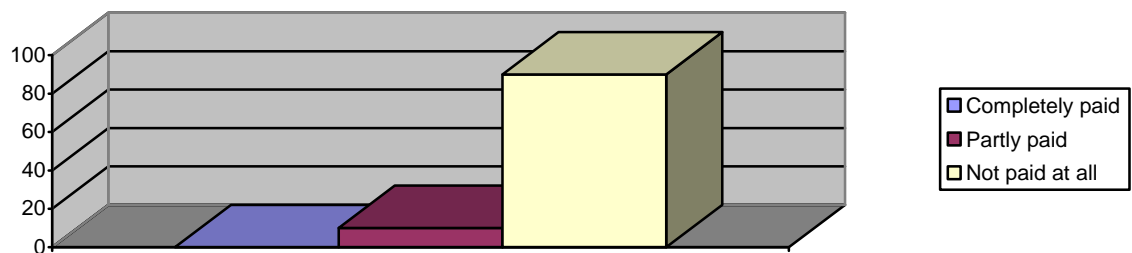


Table #41. Compensation of damage incurred by the war of August 2008 paid by the government to Koshki Village.

C O N C L U S I O N

Proceeding from the above findings, it is obvious that before the war of 2008 a much larger part of the population in the so-called frontier villages of Gori Region were engaged in cultivation of farmland and farming, far few families were registered in the vulnerable family database, or as dependent on pension and government allowance as the main source of income. Annual income of the population in the region before the war of 2008 was as follows: under 1000 GEL – 11%, under 4000 GEL – 51%; over 4000 GEL – 34 %, (4% found difficult to assess). And after the war of August 2008 the picture changed as follows: under 1000 GEL – 51%, under 4000 GEL – 40%; over 4000 GEL – 4 %, (5% found difficult to assess).

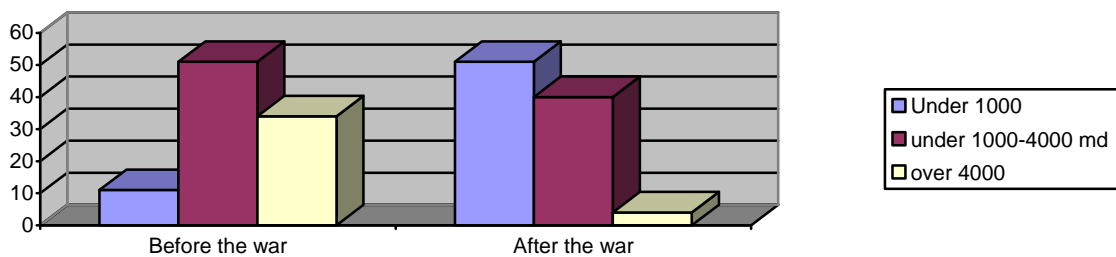


Table #43. Annual income of Gori Region Villages, Karbi, Ergneti, Tkviavi, Mereti, Gugutiantkati and Koshaka before and after the war of 2008.

There is a significant difference between the amounts of income of the respondents' families before and after the war of 2008 (Table N43). Majority of those surveyed said that their current annual income does not exceed 1000 GEL, which means that the monthly income of many families does not exceed 100 GEL. According to the estimates of National Statistics Agency of Georgia for August 2010, the average monthly subsistence level of a medium-size family in Georgia amounts to 224.7 GEL^{xiv}. Consequently, the monthly income of most of these families shortfalls more than twice the subsistence level fixed by the state.

The severe economic situation in the so-called frontier villages of Gori Region have been caused with an incomplete liquidation of the consequences of the war of August 2008 as well as with unemployment. Farmlands that used to be owned by the villages are now within the occupied territory. Most of the village residents had grown perennial fruit trees, by maintaining which they made their income. Many of them can no longer engage in such activity after the war.

The houses damaged as a result of the hostilities of August 2008 are still remaining. They have not been fully repaired or restored. Living in many of them is dangerous, as they may collapse – walls are cracked and deformed, in some cases there are no glasses in windows, water leaks through damaged or unduly installed roofs, damaging the ceilings and walls and worsening the living conditions of the dwellers. Majority of those surveyed believed that their living conditions have deteriorated since the war. (Table #44.) After the war of 2008 the living conditions in Gori Region villages changed as follows: improvement in living conditions were checked by 2% of the respondents, the existence of the same conditions – s they had before the war - by 2% of the respondents and deterioration in living conditions – by 82% of the respondents. 13% of those surveyed believe that their living conditions are unbearable. (1% of the respondents didn't make assessment).

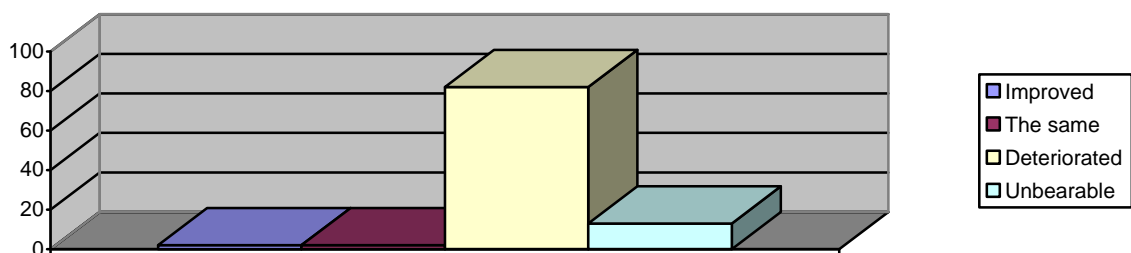


Table #44. Living conditions of Gori Region Villages, Karbi, Ergneti, Tkviavi, Mereti, Gugutiantkati and Koshaka before and after the war of 2008.

For most of the victims the process of damage assessment conducted by the state was not transparent (Table N45). 23% of those surveyed consider that the state assessed the damage incurred thereto; 74% of those surveyed consider that the state didn't assess the damage; 3% of the respondents are not sure whether assessment was conducted or not.

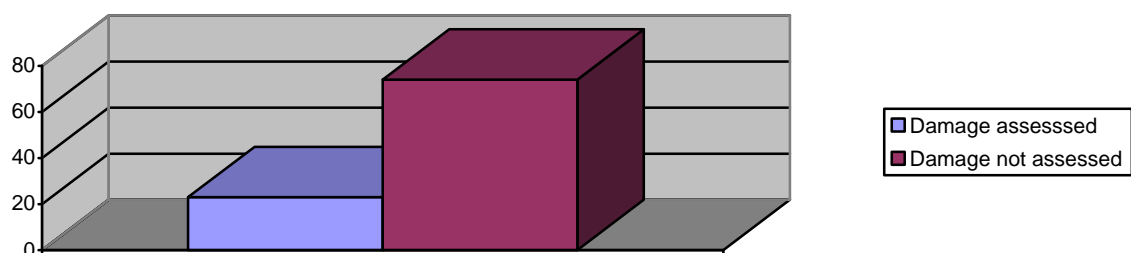


Table #45. Assessment of damage incurred to Gori Region Villages, Karbi, Ergneti, Tkviavi, Mereti, Gugutiantkati and Koshaka as the result of the war of 2008.

The victims were not involved in the process, as a result of which the consequences of hostilities were liquidated incompletely and the compensation for material damage incurred to them was incomplete and unfair. (Table #46.) 1% of the respondents consider that the state completely compensated the damage incurred by the war. 35% of the

respondents consider that the state indemnified the damage in part; and 64% consider that the damage inflicted by the war has not been compensated by the state at all.

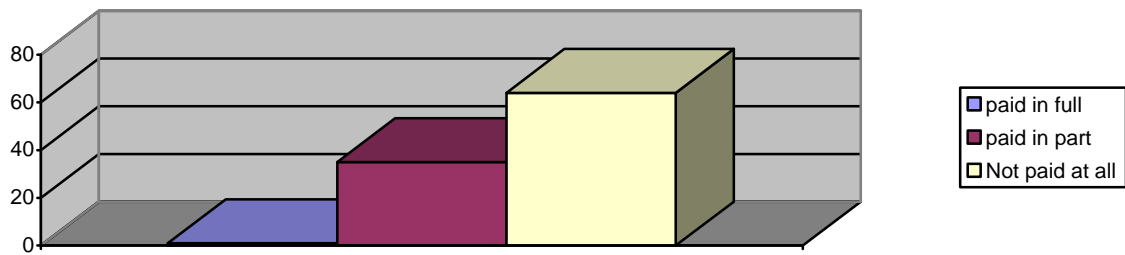


Table #46. Compensation of damage incurred to Gori Region Villages, Karbi, Ergneti, Tkviavi, Mereti, Gugutiantkati and Koshaka as the result of the war of 2008.

Besides, the persons affected by the war of 2008 suffered discrimination on the part of the authorities. Some of them found themselves in unequal conditions in comparison with their co-villagers. For the affected persons discrimination was expressed as follows (but not limited to): elimination of less damage in damaged houses (setting glass in windows) and leaving a hazard to life untouched; unfair apportionment of priority works in time; (Table N47.) 9% of the respondents consider that there was no place to discrimination; 63% of the respondents believe that allowance paid by the state was apportioned unfairly, and 22% of the respondents found it hard to answer.

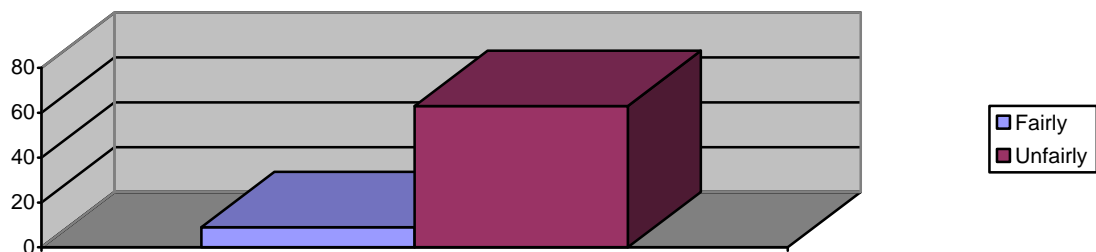


Table #47. Apportionment of the statement allowance to Gori Region Villages, Karbi, Ergneti, Tkviavi, Mereti, Gugutiantkati and Koshaka as the result of the war of 2008.

To most of the victims the government authorities provided no information on what assistance or allowance the state was going to provide them with. Moreover, most of the applications lodged by the victims for obtaining information were ignored. (Table #48). 13% of the respondents say that they received information from the community attorney; 1% of the respondents say that they received information from other source; and 75% of Gori Region villagers say that they received no information whatsoever on the allowance allocated for them from the state funds.

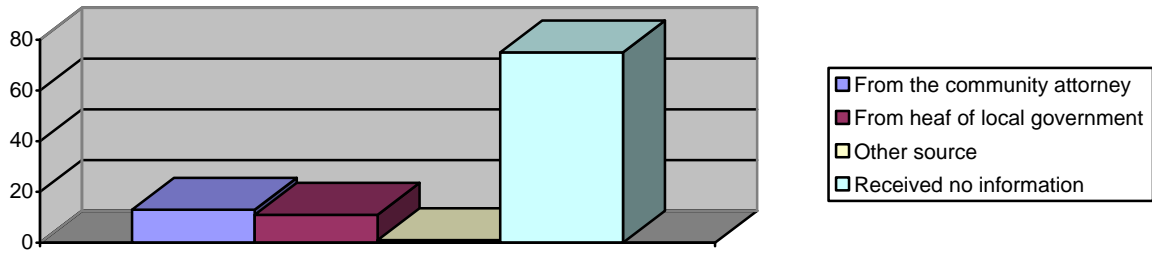


Table #48. Providing information on the state allowance to Gori Region Villages, Karbi, Ergneti, Tkviavi, Mereti, Gugutiantkati and Koshaka as the result of the war of 2008.

Besides, the survey showed that the authorities have failed to show due and appropriate interest in the problems of the victims. Nor do they timely respond to reports of such problems.

Although 100% of the population, as they say, are sure that the damage incurred to them as a result of the war must be paid by the state, almost no one has appealed the government’s ignorance or dismissal of the claims for damages with superior authorities. Only one of those surveyed has appealed with the court the authorities’ decision to dismiss his claim. The majority believes that trying to protect your rights through court will be futile exercise.

Proceeding out of all that has been mentioned above, we can conclude that the process of granting property restitution to the victims of the war of 2008 kicked off but has not ended.

Besides, it should be noted that our survey covered only the victims having returned to their homes. As for those who are still refugees or IDPs now and are provided by the state with temporary accommodation, the property restitution process for them has not started yet.



Property Restitution Recommendation for the War-Affected Persons:

- 1. Performance of restitution obligations provided under the international law and domestic law of the country and initiating the respectful processes therefore;**
- 2. Accessibility of documents for assessment of the material damage inflicted to the population affected by the war of August 2008;**
- 3. Accessibility of title deeds of the war-affected population in a simplified manner;**
- 4. Allocation of alternative parcels of land to the population which lost their land plots that was the only source of their income, or payment of compensation based upon the market value of the land plot;**
- 5. Monitoring of efficiency and performance of rehabilitations works and funds allocated for rehabilitation works and involvement of the affected population into this process;**
- 6. Creating a favorable business environment in the region;**
- 7. Attraction of investors in the region (e.g. opening a processing plant) to enable selling the harvest reaped by the population;**
- 8. Digging channels and wells in villages to provide the population with irrigation and drinking water;**
- 9. Supplying the region with gas;**
- 10. Assessment of the population's potential, providing appropriate trainings and development of different programs and further employment. Involvement of population in rehabilitation works;**
- 11. Supplying the war-affected children with school textbooks throughout the entire course of education;**
- 12. Providing discounted education fees to young students of the region;**

13. Compulsory familiarization of the war-affected population with the Pinheiro principles, the respectful rights and the applicable law and implementation thereof.

14. Promotion of international and local NGOs and taking actions to involve the population in monitoring of performance of strategies, action plans and certain programs developed by the state in the process of restitution of rights to property of the war – affected persons and, accordingly, liquidation of the war results.

ⁱ Principle 2. The Right to Property Restitution

2.1 All refugees and displaced persons have the right to have restored to them any housing, land or/and property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land or/and property that is factually impossible to restore as determined by an independent, impartial tribunal.

2.2 States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.

ⁱⁱ Principle #2, The Right to Property Restitution, UNO, 2005

ⁱⁱⁱ Principle 3. The Right to Non-Discrimination

3.1 Everyone has the right to be protected from discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth or other status.

3.2. States shall ensure that de facto and de jure discrimination on the above grounds is prohibited and that all persons, including refugees and displaced persons, are considered equal before the law

^{iv} **Principle 8. The Right to Adequate Housing**

8.1 Everyone has the right to adequate housing.

8.2 States should adopt positive measures aimed at alleviating the situation of refugees and displaced persons living in inadequate housing.

^v **Principle 12. National Procedures, Institutions and Mechanisms**

12.1 States should establish and support equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims. In cases where existing procedures, institutions and mechanisms can effectively address these issues, adequate financial, human and other resources should be made available to facilitate restitution in a just and timely manner.

12.2 States should ensure that housing, land and property restitution procedures, institutions and mechanisms are age and gender sensitive, and recognize the equal rights of men and women, as well as the equal rights of boys and girls, and reflect the overarching principle of the “best interests of the child”.

12.3 States should take all appropriate administrative, legislative and judicial measures to support and facilitate the housing, land and property restitution process. States should provide all relevant agencies with adequate financial, human and other resources to successfully complete their work in a just and timely manner.

12.4 States should establish guidelines that ensure the effectiveness of all relevant housing, land and property restitution procedures, institutions and mechanisms, including guidelines pertaining to institutional organization, staff training and caseloads, investigation and complaints procedures, verification of property ownership or other rights of possession, as well as decision-making, enforcement and appeals mechanisms. States may integrate alternative or informal dispute resolution mechanisms into these processes, insofar as all such mechanisms act in accordance with international human rights, refugee and humanitarian law and related standards, including the right to be protected from discrimination.

12.5 Where there has been a general breakdown in the rule of law, or where States are unable to implement the procedures, institutions and mechanisms necessary to facilitate the housing, land and property restitution process in a just and timely manner, States should request the technical assistance and cooperation of relevant international agencies in order to establish provisional regimes for providing refugees and displaced persons with the procedures, institutions and mechanisms necessary to ensure effective restitution remedies.

12.6 States should include housing, land and property restitution procedures, institutions and mechanisms in peace agreements and voluntary repatriation agreements. Peace agreements should include specific undertakings by the parties to appropriately address any housing, land and property issues that require remedies under international law or threaten to undermine the peace process if left unaddressed, while demonstrably prioritizing the right to restitution as the preferred remedy in this regard.

^{vi} „ **Law of Georgia on Structure, Authorities and Activity Procedure of the Government of Georgia.**

vii If they respond to this matter, the said sums were allocated for allowance, then, moreover, they should allocate sums when the law provides for a liability to be fulfilled by the government.

viii Principle 13. Accessibility of restitution claims procedures

13.1 Everyone who has been arbitrarily or unlawfully deprived of housing, land and/or property should be able to submit a claim for restitution and/or compensation to an independent and impartial body, to have a determination made on their claim and to receive notice of such determination. States should not establish any preconditions for filing a restitution claim.

13.2 States should ensure that all aspects of the restitution claims process, including appeals procedures, are just, timely, accessible, free of charge, and are age and gender sensitive. States should adopt positive measures to ensure that women are able to participate on a fully equal basis in this process.

13.3 States should ensure that separated and unaccompanied children are able to participate and are fully represented in the restitution claims process, and that any decision in relation to the restitution claim of separated and unaccompanied children is in compliance with the overarching principle of the “best interests of the child”.

13.4 States should ensure that the restitution claims process is accessible for refugees and other displaced persons regardless of their place of residence during the period of displacement, including in countries of origin, countries of asylum or countries to which they have fled. States should ensure that all affected persons are made aware of the restitution claims process, and that information about this process is made readily available, including in countries of origin, countries of asylum or countries to which they have fled.

13.5 States should seek to establish restitution claims-processing centres and offices throughout affected areas where potential claimants currently reside. In order to facilitate the greatest access to those affected, it should be possible to submit restitution claims by post or by proxy, as well as in person. States should also consider establishing mobile units in order to ensure accessibility to all potential claimants.

13.6 States should ensure that users of housing, land and/or property, including tenants, have the right to participate in the restitution claims process, including through the filing of collective restitution claims.

13.7 States should develop restitution claims forms that are simple and easy to understand and use and make them available in the main language or languages of the groups affected. Competent assistance should be made available to help persons complete and file any necessary restitution claims forms, and such assistance should be provided in a manner that is age and gender sensitive.

13.8 Where restitution claims forms cannot be sufficiently simplified owing to the complexities inherent in the claims process, States should engage qualified persons to interview potential claimants in confidence, and in a manner that is age and gender sensitive, in order to solicit the necessary information and complete the restitution claims forms on their behalf.

13.9 States should establish a clear time period for filing restitution claims. This information should be widely disseminated and should be sufficiently long to ensure that all those affected have an adequate opportunity to file a restitution claim, bearing in mind the number of potential claimants, potential difficulties of collecting information and access, the extent of displacement, the accessibility of the process for potentially disadvantaged groups and vulnerable individuals, and the political situation in the country or region of origin.

13.10 States should ensure that persons needing special assistance, including illiterate and disabled persons, are provided with such assistance in order to ensure that they are not denied access to the restitution claims process.

13.11 States should ensure that adequate legal aid is provided, if possible free of charge, to those seeking to make a restitution claim. While legal aid may be provided by either governmental or non-governmental sources (whether national or international), such legal aid should meet adequate standards of quality, non-discrimination, fairness and impartiality so as not to prejudice the restitution claims process.

13.12 States should ensure that no one is persecuted or punished for making a restitution claim.

^{ix} **Law of Georgia on State Due, Civil Procedure Code of Georgia.**

^x **Principle 14. Adequate consultation and participation in decision-making**

14.1 States and other involved international and national actors should ensure that voluntary repatriation and housing, land and property restitution programmes are carried out with adequate consultation and participation with the affected persons, groups and communities.

14.2 States and other involved international and national actors should, in particular, ensure that women, indigenous peoples, racial and ethnic minorities, the elderly, the disabled and children are adequately represented and included in restitution decision-making processes, and have the appropriate means and information to participate effectively. The needs of vulnerable individuals including the elderly, single female heads of households, separated and unaccompanied children, and the disabled should be given particular attention.

^{xi} **Principle 15. Housing, land and property records and documentation**

15.1 States should establish or re-establish national multipurpose cadastral or other appropriate systems for the registration of housing, land and property rights as an integral component of any restitution programme, respecting the rights of refugees and displaced persons when doing so.

15.2 States should ensure that any judicial, quasi-judicial, administrative or customary pronouncement regarding the rightful ownership of, or rights to, housing, land and/or property is accompanied by measures to ensure registration or demarcation of that housing, land and/or property as is necessary to ensure legal security of tenure. These determinations shall comply with international human rights, refugee and humanitarian law and related standards, including the right to be protected from discrimination.

15.3 States should ensure, where appropriate, that registration systems record and/or recognize the rights of possession of traditional and indigenous communities to collective lands.

15.4 States and other responsible authorities or institutions should ensure that existing registration systems are not destroyed in times of conflict or post-conflict. Measures to prevent the destruction of housing, land and property records could include protection in situ or, if necessary, short-term removal to a safe location or custody. If removed, the records should be returned as soon as possible after the end of hostilities. States and other responsible authorities may also consider establishing procedures for copying records (including in digital format), transferring them securely and recognizing the authenticity of said copies.

15.5 States and other responsible authorities or institutions should provide, at the request of a claimant or his or her proxy, copies of any documentary evidence in their possession required to make and/or support a restitution claim. Such documentary evidence should be provided free of charge, or for a minimal fee.

15.6 States and other responsible authorities or institutions conducting the registration of refugees or displaced persons should endeavour to collect information relevant to facilitating the restitution process, for example by including in the registration form questions regarding the location and status of the individual refugee's or displaced person's former home, land, property or place of habitual residence. Such information should be sought whenever information is gathered from refugees and displaced persons, including at the time of flight.

15.7 States may, in situations of mass displacement where little documentary evidence exists as to ownership or rights of possession, adopt the conclusive presumption that persons fleeing their homes during a given period marked by violence or disaster have done so for reasons related to violence or disaster and are therefore entitled to housing, land and property restitution. In such cases, administrative and judicial authorities may independently establish the facts related to undocumented restitution claims.

15.8 States shall not recognize as valid any housing, land and/or property transaction, including any transfer that was made under duress, or which was otherwise coerced or forced, either directly or indirectly, or which was carried out contrary to international human rights standards.

xii Principle 18. Legislative measures

18.1 States should ensure that the right of refugees and displaced persons to housing, land and property restitution is recognized as an essential component of the rule of law. States should ensure the right to housing, land and property restitution through all necessary legislative means, including through the adoption, amendment, reform, or repeal of relevant laws, regulations and/or practices. States should develop a legal framework for protecting the right to housing, land and property restitution which is clear, consistent and, where necessary, consolidated in a single law.

18.2 States should ensure that all relevant laws clearly delineate every person and/or affected group that is legally entitled to the restitution of their housing, land and property, most notably refugees and displaced persons. Subsidiary claimants should similarly be recognized, including resident family members at the time of displacement, spouses, domestic partners, dependents, legal heirs and others who should be entitled to claim on the same basis as primary claimants.

18.3 States should ensure that national legislation related to housing, land and property restitution is internally consistent, as well as compatible with pre-existing relevant agreements, such as peace agreements and voluntary repatriation agreements, so long as these agreements are themselves compatible with international human rights, refugee and humanitarian law and related standards.

xiii Principle 21. Compensation

21.1 All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.

21.2 States should ensure, as a rule, that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal. Even under such circumstances the holder of the housing, land and/or property right should have the option to repair or rebuild whenever possible. In some situations, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice.

^{xiv} **Official web-site of Georgian Statistics Service www.geostat.ge**