

Public Defender's Office of Georgia

Submission to the Office of the High Commissioner for Human Rights (OHCHR), pursuant to Human Rights Council resolution 34/37 entitled "Cooperation with Georgia"

The Office of Public Defender of Georgia, as a National Human Rights Institution in full compliance with the Paris Principles ('A' status) and within a broad mandate provided to it by the Organic Law of Georgia on Public Defender, is empowered to monitor human rights situation in the country. Monitoring the human rights of persons deprived of their liberty, prevention and eradication of torture and ill-treatment are the core priorities of Public Defender's activities. The present submission focuses on human rights and humanitarian situation in Georgia's occupied regions of Abkhazia and Tskhinvali region/South Ossetia.

1. Freedom of Movement and illegal Detentions across the Administrative Boundary Lines (ABL)

1. Since the deployment of military units of Border Service of the Federal Security Service (FSB) of the Russian Federation on the Administrative Boundary Lines (ABL) of Abkhazia and Tskhinvali region/South Ossetia, one of the pressing challenges for the rights of the conflict-affected communities has been infringement of freedom of movement and illegal detentions by Russian border guards, restricting the rights to private and family life, health, education and property of the local residents.

2. Recent cases of disappearances and killing have further aggravated security situation on the ABL. During the year 2016, murder of citizen G.O. at the Khurcha checkpoint (Zugdidi municipality) on 19th May and the disappearance of N.S. from the village of Kordi, Gori municipality on 26th May is an indication of vulnerability of the ABL communities. These issues have been repeatedly raised at the Geneva International Discussions and Incident Prevention and Response Mechanism (IPRM). However, lack of cooperation from Abkhazian/South Ossetian de facto authorities and Russian security sector representatives, has hampered effective investigation and the charging of perpetrators.

3. According to State Security Agency of Georgia, 134 individuals were detained on the ABL of Tskhinvali Region/South Ossetia in 2016 (14 women and 8 minors) and 163 in 2015 (18 women and 7 minors). Residents of villages in the vicinity of the ABL under an effective control of the Georgian authorities are the main contributors to these figures. As for Abkhazia, central authorities of Georgia cannot document each detention case, thus their statistical information is incomplete (193 in 2016 and 341 in 2015). According to data released by the Border Service of the Russian Federation the number of detentions on Abkhazian ABL between 2009 and 2016 totaled 14 000.¹

4. Witness accounts provided by detained citizens to the Public Defender's Office suggest that there are poor conditions in the basements of the Russian military bases, where detainees are held for several hours to few days. Detainees from Gali region in Abkhazia, report to the Public Defender that Russian militaries do not provide them with water and food for several hours, dozens of them are placed in the same room regardless of their sex and age. Furthermore, the detention of children, including infants, and their parents is deeply concerning. Children detained by Russian border guards are subject to inappropriate and degrading treatment at the Russian military bases. Such treatment involves verbal abuse, limited access to food and drinking water, etc.²

5. Restriction of the right of children to free movement across the ABL also violates their right to health and education as attending school is one of the main reasons for which children have to cross the ABL. In addition, according to Article 37 of

¹ 'Border Service of Russia's Federal Security Service celebrates the 7th anniversary in Abkhazia'. 29 April 2016. Apsnypress. Available in Russian at: <http://www.apsnypress.info/news/pogranupravlenie-fsb-rossii-v-abkhazii-prazdnuet-sedmuyu-godovshchinu-so-dnya-obrazovaniya/> [Last accessed 24.02.2017].

² For more information on specific cases 'Special Report of the Public Defender of Georgia on the Rights of Women and Children in Conflict-affected Regions for 2016'. P.14. Available at: <http://www.ombudsman.ge/uploads/other/4/4319.pdf>; See also 'Special Report of the Public Defender of Georgia The situation in the Rights of Conflict Affected Population in Georgia', 2015. Available at: <http://www.ombudsman.ge/uploads/other/3/3768.pdf>.

the UN Convention on the Rights of the Child the arrest, detention or imprisonment of a child shall be used only as a measure of last resort. However, with respect to children in Gali, detentions are mostly used to secure the payment of fines.

6. Although in most of the cases the persons are released after a few days upon payment of the fine, there are cases of long-term imprisonment. For example, a prisoner G.L. is serving a 20 year sentence in Abkhazia since 2012. A citizen of Georgia G.G. was detained in June 2016 was also sentenced to 20 years of imprisonment in Tskhinvali region/South Ossetia. Georgian authorities have repeatedly raised the issue of their release, but to no avail. Thus, illegal detentions continue to remain one of the key security challenges facing the local communities.

2. *The right to the healthcare*

7. Both in Abkhazia and Tskhinvali region/South Ossetia, there are problems with poor health services and underdeveloped medical infrastructure. Low level of qualification of medical staff and high costs associated with medical services are even more problematic considering the difficulties related to the movement across the ABL, which badly affect the health status of local communities and their access to the highest attainable standard of health.

8. Abkhazia's medical facilities suffer from the lack of qualified specialists and inadequate equipment. For instance, in 2016 Abkhazian media reported on disorder in Sukhumi's maternity hospital and several deaths of infants and newborns. Conditions of healthcare facilities in Gali District are particularly severe. There is no neonatal care service in the district. The situation is further complicated by the absence of children's emergency unit in Zugdidi which means that children in need of intensive care need to be transported to Kutaisi and thus the delivery of medical services may be considerably delayed.

9. International organisations, including UN agencies have contributed to improving healthcare provision for children, particularly in Abkhazia. However their involvement is absent in Tskhinvali Region/South Ossetia due to the restrictions placed on their work there.

10. Access to medical services is one of the most problematic issues for conflict-affected communities. Abkhazian de facto authorities banned the free movement of Emergency cars across ABL in 2011, patients often have to take a bypass to cross the ABL or take ordinary motor cars which are obviously not a suitable vehicle for the transportation of patients in critical condition and seek medical service in hospitals/clinics on Georgian controlled territories. In these situations, they risk being detained. Public Defender was informed on several cases when patients, including minors who attempted to cross bypass routes to seek medical treatment on Georgian controlled territories, were detained in freezing basement at the Russian military base. Delay in treatment aggravates their health condition.

11. As for Tskhinvali Region/South Ossetia, in the recent years several hospitals have been rehabilitated and refurbished. However, these hospitals are mainly used for primary medical purposes by local communities because of lack of qualified medical personnel. As the ABL with Tskhinvali Region/South Ossetia is completely closed (except for Akhgori district), patients requiring emergency medical attention are transferred to medical facilities on the Georgian controlled territory with the support of International Committee of the Red Cross. However, the Public Defender is aware of several death cases of patients because of delayed consent by the Tskhinvali hospital management and de-facto authorities.³ For pre-planned examinations and treatment South Ossetians often enter Georgia through an Upper Larsi checkpoint (Georgia-Russia border), taking a route which is 8-10 hours longer.

3. *Right to Education in Mother-tongue*

12. The right to education in one's native language and access to quality education remains a grave problem facing communities in Gali district (Abkhazia, Georgia), who identify themselves as ethnic Georgians.⁴ Until 2015, among the 31 schools in Gali district, 11 schools in the so-called "lower zone" maintained instruction in Georgian language. However,

³ 2016 Information provided to the Public defender's Office by patients' family members, 2016.

⁴ For more information see a special report of the Public Defender of Georgia 'The Right to Education in the Gali District: New Developments and Challenges in the Academic year of 2015-2016'. Available at:
<http://www.ombudsman.ge/uploads/other/3/3363.pdf>.

based on the decision of the *de facto* government, the first to fourth classes of these schools had to shift to instruction in Russian language. In addition, each following first class starts school in Russian language. Accordingly, teaching in Georgian language will be fully terminated in Gali district schools by 2021, finalizing the process that was launched in 1995, aimed at substituting Georgian language teaching with Russian.⁵

13. This policy has been protested several times by school administrators as well as by parents but with no result. According to the Public Defender, there is a tendency of families leaving the territory and moving their children onto the territory controlled by Georgia in order to enable their children to receive education in Georgian language.

14. Shifting to Russian language teaching seriously reduced the quality of education in Georgian populated regions of Abkhazia (Gali district, parts of Oчамchire and Tkvarcheli districts). Students have difficulties learning subjects in Russian language as Russian is not their native language, while teachers have difficulties teaching as they have received education in Georgian language.

15. According to international standards, the form and substance of education, including the curriculum and teaching methods, shall be appropriate, culturally relevant and of good quality for students and parents.⁶ In addition, according to the Convention on the Rights of the Child, education should aim at promoting respect for the culture, language and values of the child and his/her parents.⁷

16. It is noteworthy, that other ethnic groups in Abkhazia, like Armenians, Russians, are able to receive education in their native language, while Georgians cannot exercise the same rights or their ability to exercise this right is being limited every year. This should be assessed as discrimination on an ethnic basis. Regrettably, in spite of consistent efforts by the Ministry of Foreign Affairs the situation remains the same. Nor has any agreement been achieved yet on a programme or a mechanism which would be acceptable for all sides.

3. Responsibility and Recommendations

17. The Russian Federation, which maintains effective political, economic and military control of Abkhazia and Tskhinvali region/South Ossetia, is immediately responsible for human rights violations committed on those territories. Georgia, as the state of the territory on which the human rights violations take place, despite the fact that it cannot exercise effective control still carries the positive obligation to restore its jurisdiction and to take all necessary measures, including legal and diplomatic measures, to effectively address human rights violations in these regions.

18. Public Defender of Georgia urges the government of Russian Federation to ensure the freedom of movement for the conflict affected population of Abkhazia and Tskhinvali region/South Ossetia: Desist from illegal detention and placement of local residents in military bases, as well as from inhuman and degrading treatment of detainees, including minors. Furthermore, the government of Russian Federation is obliged to respect the of Gali districts students to enable them receive education in safe environment and conditions that are acceptable for them, including enjoyment of right to education in their native language and ensuring the free movement across the ABL.

19. Public Defender of Georgia urges that even in the absence of effective control over the Abkhazia and Tskhinvali region/South Ossetia, Georgian government still has a positive obligation to take the diplomatic, economic, judicial or other measures that it is in its power to take and are in accordance with international law to secure to the rights guaranteed, *inter alia* to provide material, financial and educational support to the medical and academic personnel; develop and widen both formal and informal education programs for the school children living in occupied regions; support those non-governmental organisations who offer services to women, children, persons with disabilities, victims of violence and abuse etc on the Occupied Territories; make all political, legal and diplomatic instruments to improve the situation in the rights of conflict affected communities.

⁵ See also “Living in Limbo”, Human Rights Watch, 2011. Available at: <https://www.hrw.org/sites/default/files/reports/georgia0711LR.pdf>.

⁶ General Comments of UN Committee on Economic, Social and Cultural Rights N13, par.6.

⁷ UN Convention on the Rights of a Child, Art. 28 and Art 29(1)(c).

