

ZONE OF BARBED WIRES

Mass Human Rights Violations along the
Dividing Lines of Abkhazia and South Ossetia



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Non-governmental organization the Human Rights Center, formerly the Human Rights Information and Documentation Center (HRIDC) was founded on December 10, 1996 in Tbilisi, Georgia. The HRIDC aims to increase respect for human rights, fundamental freedoms and facilitate the peace-building process in Georgia. To achieve this goal, it is essential to ensure that authorities respect the rule of law and principles of transparency and separation of powers, to eliminate discrimination at all levels, and increase awareness and respect for human rights among the people in Georgia.

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CONTENTS

INTRODUCTION	4
METHODOLOGY.....	9
RIGHT TO LIBERTY AND SECURITY.....	9
DETENTIONS IN THE GEORGIA-CONTROLLED TERRITORY AND IN THE TERRITORIES UNEXPECTED FOR THE LOCAL POPULATION.....	9
DETENTIONS REGARDLESS THE POSSESSION OF “NECESSARY” DOCUMENTS	16
ILL-TREATMENT DURING DETENTION	17
POOR CONDITIONS.....	18
CONTACT WITH FAMILY	20
ACTIVITIES OF THE GEORGIAN LAW ENFORCEMENT BODIES.....	20
INVESTIGATIVE AND COURT PROCEEDINGS AND RELEASE FROM DETENTION.....	21
OTHER PROBLEMS.....	23
DETENTION OF JUVENILES.....	25
DETENTION OF PREGNANT WOMAN	26
ASSESSMENTS IN ACCORDANCE TO INTERNATIONAL HUMAN RIGHTS STANDARDS..	26
FREEDOM OF MOVEMENT AND ISSUES RELATED TO DOCUMENTATION	29
ASSESSMENTS IN ACCORDANCE WITH INTERNATIONAL HUMAN RIGHTS STANDARDS	33
ACCESS TO EDUCATION.....	33
ASSESSMENTS IN ACCORDANCE WITH INTERNATIONAL HUMAN RIGHTS STANDARDS	35
SOCIAL AND ECONOMIC PROBLEMS.....	36
THE ISSUE OF RESPONSIBILITY	37
INTERNATIONAL CRIMINAL COURT.....	41
RECOMMENDATIONS.....	42

INTRODUCTION

In August 2008, the Six-Point Ceasefire Agreement was signed between Russia and Georgia in order to stop ongoing armed conflict. Soon after signing the agreement, Russia started the so-called “borderization” of the occupied Abkhazia and South Ossetia. “Borderization” means arbitrary installment of border markers, fences and barbed wires alongside the Administrative Border Line (ABL), which aims to separate Abkhazia and South Ossetia from the rest of Georgia¹.

In April 2009, the Russian government and the de facto authorities of Abkhazia and South Ossetia signed agreements with Russia granting the Russian Federal Security Service (FSB) border forces jurisdiction over the ABLs², in violation of the principles of international law. The first reported incident of borderization occurred approximately three months later. Namely, in August 2009, Russian border guards put up border markers in the Georgia-controlled territory of the Kveshi village³.

According to the official data, the borderization process became intensive since 2013. By November 30, 2017 over 30 incidents of borderization were observed which included 33 villages alongside the dividing line of South Ossetia and seven villages alongside the dividing line of Abkhazia⁴. This process, which still continues along the dividing lines of Abkhazia and South Ossetia⁵, is accompanied with the mass violations of fundamental human rights, among which are the right to liberty and security, freedom of movement, right to private and family life, rights to health, property and education. When describing the life along the dividing line, one of the locals states that it feels like “blocking the air”. These words well reflect the gravity of life along the dividing lines.

As a result of the installment of barbed wires, access to the agricultural plots, pastures and irrigation water is restricted, that was the main source of income for the local population. There are cases when after the installment of the fences, the houses turned

¹ Georgian Institute of Politics “Mitigating Russia’s Borderization of Georgia: A Strategy to Contain and Engage”: <http://gip.ge/mitigating-russias-borderization-georgia-strategy-contain-engage/>

² Ibid

³ “Russian troops try to shift South Ossetia Border Markers in Kveshi village”: <https://www.radiotavisupleba.ge/a/1790975.html>
https://www.rferl.org/a/Russian_Troops_Try_To_Shift_South_Ossetia_Border_Markers/1791641.html

⁴ “Borderization in Georgia: is it possible to fight against Russian politics”: <http://netgazeti.ge/news/242817/>

⁵ “New barbed wires are observed near Khurvaleti village”: https://www.radiotavisupleba.ge/a/29732843.html?fbclid=IwAR3I2jibCsnnt-aYtM7fOo129tTq_FF05LXtjOBZwa9jMEavNOHUog40vg

“Ketevan Tsikhelashvili arrived at the ABL close to Atotsi village”: <http://liberali.ge/news/view/40852/sofel-atotstan-saokupatsio-khazis-mimdebare-teritoriaze-qetevan-tsikhelashvili-mivida>

up in the territories controlled by the de-facto authorities. For example, case of Data Vanishvili, 85-year-old resident of Khurvaleti village in Gori municipality, who has been living on the other side of the barbed wires since 2012. Data Vanishvili refused to abandon his house and stayed in the occupied territory together with his wife; however, at risk of his health and life he crosses the barbed wires and travels to the Georgia-controlled territory to receive his pension, to vote in the elections or realize his other rights⁶.



House of Data Vanishvili, living along the dividing line, in the occupied territory.

The security situation is particularly difficult at the dividing lines. According to the official data of the Government of Georgia, from 2011 to 2016 (including), 2404 persons were arrested at the dividing line with Abkhazia and South Ossetia⁷. Most detentions are performed by the officers of the Russian border forces under the charge of “illegal crossing of the so-called border.” In 2017, the State Security Service of Georgia documented 52 facts of detention at the dividing line of Abkhazia, while according to the reports of the Federal Security Service of Russia, more than 1000 persons were arrested along the dividing line of Abkhazia in 2017⁸. According to the information of the Russian Federal Security Service, in 2016, 3000 individuals were detained along dividing line of Abkhazia, while according to the Federal Security Service of Georgia, this number amounted to 193 individuals in 2016. Considering the fact that the central government of

⁶ “Forced domestic arrest for the inhabitant of the conflict zone”:

<https://www.amerikiskhma.com/a/khurvaleti-stringencies/3451764.html>

⁷ Special Report of the Public Defender of Georgia “the Human Rights Situation of the Conflict Affected Population in Georgia”

⁸ Report of the Public Defender of Georgia about the Situation of Human Rights and Freedoms in Georgia: <https://sites.google.com/view/geoombudsman2/reports/parliamentary-reports>

Georgia is not able to document all facts of detention in the occupied territory, the provided statistics is not full⁹. The higher number of the detentions observed by Russia presumably covers the instances of the crossings from Gali to Georgia-controlled territory which central government of Georgia is unable to register. According to the border service of the Russian Federation, the number of the detainees in 2009-2016 along the dividing line of Abkhazia amounted to 14 000 individuals¹⁰. This statistics demonstrates how important it is for the Gali population to freely access the territory controlled by Georgia, considering the existing economic, social, health and family issues.

According to the data of official bodies of Georgia, the statistics of the detentions according to the recent years is following (according to this data, the number of detentions along the dividing line of Abkhazia, amounts to 5-10% of the total number of the detentions)¹¹:

Years	2011	2012	2013	2014	2015	2016
Total number of the detainees	224	300	532	517	504	327
Juveniles	7	8	16	14	22	21
Women	15	62	111	98	57	32

There are facts of physical abuse of the detainees in the detention facilities in the occupied territories. According to the information provided to the Public Defender's Office (PDO) by the Ministry of Internal Affairs of Georgia (MIA), in 2014-2016, 26 former detainees reported about physical abuse during or after the detention at the dividing line of Abkhazia and 11 citizens – at the dividing line with South Ossetia¹². The information provided by the detainees demonstrates that there are no adequate conditions in the basements of the Russian military bases located in Gali district; detainees did not receive water and food; dozens of people were placed in one room regardless their gender and age¹³.

Closing of the crossing points at the dividing line with Abkhazia created serious problems for the people living alongside the ABL to reach the Georgia-controlled territory. From 2013 to 2016 five crossing points connected Abkhazia with the Georgia-controlled territory: crossing point on the Enguri Bridge, Shamgona-Tagiloni, Khurca-Nabakevi,

⁹ Ibid

¹⁰ Page 770, Report of Public Defender of Georgia regarding human rights and freedoms in Georgia, 2016: <https://sites.google.com/view/geoombudsman2/reports/parliamentary-reports>

¹¹ Page 12, Report of Public Defender of Georgia, Rights of Conflict Affected Population in Georgia.

¹² Special Report of the Public Defender of Georgia about “on the Rights of Women and Children in Conflict-Affected Regions,” review of 2014-2016: <https://drive.google.com/file/d/1owdb3xlqGSXR6Ing3TaYIOjpdP9IILTQ/view>

¹³ Report of the Public Defender of Georgia about the Situation of Human Rights and Freedoms in Georgia: <https://sites.google.com/view/geoombudsman2/reports/parliamentary-reports>

Otobaria-Orsantia and Saberio-Tskoushi. Shamgona-Tagiloni crossing point was closed in April 2016, and Khurcha-Nabakevi and Orsantia-Otobaia were closed on March 4, 2017¹⁴. As a result, local population now uses only two crossing points – Enguri and Saberio – Tskoushi crossing points. Blocking the abovementioned crossing points negatively affected all aspects of the life of Gali district population, including their access to healthcare and education, relationship with family members and economic activities. UN Permanent Representative in Georgia, Neil Scott stated that the closing of the abovementioned crossing points affected the lives of approximately 1000 individuals who used to daily cross the passages and it will put people living alongside the dividing line in more isolation¹⁵.



Abolished passway at the Otobaia-Orsantia destroyed bridge

In parallel to the closing of the crossing points, Abkhazian de-facto authorities almost tripled the fines for the detainees who are charged for the illegal crossing of the so-called border. Before 2016, resident of the occupied territory paid 2000 Russian Rubles (approximately 80 GEL) for the release; since 2017 the fine increased up to 4 800 - 6 000 Russian Rubles (approximately 210 -260 GEL). In case of the repeated violation, a person

¹⁴ Special Report of the Public Defender of Georgia “Influence of closed checkpoints on the human rights of people living on the dividing line with Abkhazia”:

<https://sites.google.com/view/geoombudsman/%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%94%E1%83%91%E1%83%98/%E1%83%A1%E1%83%9E%E1%83%94%E1%83%AA%E1%83%98%E1%83%90%E1%83%9A%E1%83%A3%E1%83%A0%E1%83%98-%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%94%E1%83%91%E1%83%98>

¹⁵ Ibid

is punished with the administrative imprisonment¹⁶. The de-facto authorities of South Ossetia also toughened the fines for the “illegal crossing of the border”. The de-facto Parliament of South Ossetia adopted the law about toughened administrative liability for the people illegally crossing the so-called border. According to the new law, fines against physical persons have increased from 5 000 Russian Rubles to 20 000 Russian Rubles (approximately 700 GEL)¹⁷.

Closing of the crossing points alongside the dividing line of Abkhazia negatively affected about 3 400 families of 11 villages in the so-called lower zone of the occupied Gali district, who most often used the abovementioned crossing points which are not closed. Now they can travel to the Georgia-controlled territory only via the Enguri Bridge that significantly prolongs their travel time and increases expenses. The fee for transporting the load across the Enguri Bridge was also increased. This decision particularly damaged those farmers, who used to sell their agricultural products in Zugdidi market several days per week as it was the main source of their income. Also, the elderly population, who used to pass through the crossing points on their way to Zugdidi municipality in order to visit relatives or for healthcare services were negatively affected¹⁸.

Except for the mass violations of the above-mentioned fundamental rights, the violations of right to life have occurred from the side of the representatives of the de-facto authorities alongside the dividing line with Abkhazia and South Ossetia. No perpetrators were identified and punished in regards with these facts. On May 19, 2016, Giga Otkhзорia tried to take product across the Khurcha-Nabakevi crossing point when Abkhazian so-called border officer deadly wounded him after verbal argument¹⁹. In 2018, de-facto authorities of South Ossetia arrested Archil Tatumashvili, who, reportedly, was tortured to death in Tskhinvali pre-trial detention setting²⁰.

¹⁶ Report of the Public Defender of Georgia about the Situation of Human Rights and Freedoms in Georgia: <https://sites.google.com/view/geoombudsman2/reports/parliamentary-reports>

¹⁷ “More rigorous sanctions and Tskhinvali residents with breached rights”: <https://www.radiotavisupleba.ge/a/%E1%83%92%E1%83%90%E1%83%9B%E1%83%99%E1%83%90%E1%83%AA%E1%83%A0%E1%83%94%E1%83%91%E1%83%A3%E1%83%9A%E1%83%98-%E1%83%A1%E1%83%90%E1%83%9C%E1%83%A5%E1%83%AA%E1%83%98%E1%83%94%E1%83%91%E1%83%98-%E1%83%93%E1%83%90-%E1%83%A3%E1%83%A4%E1%83%9A%E1%83%94%E1%83%91%E1%83%90%E1%83%A8%E1%83%94%E1%83%9A%E1%83%90%E1%83%AE%E1%83%A3%E1%83%9A%E1%83%98-%E1%83%AA%E1%83%AE%E1%83%98%E1%83%9C%E1%83%95%E1%83%90%E1%83%9A%E1%83%94%E1%83%9A%E1%83%94%E1%83%91%E1%83%98/29583560.html>

¹⁸ Report of the Public Defender of Georgia about the Situation of Human Rights and Freedoms in Georgia: <https://sites.google.com/view/geoombudsman2/reports/parliamentary-reports>

¹⁹ Report of Human Rights Center - State of Human Rights in Georgia, 2016: <http://humanrights.ge/admin/editor/uploads/pdf/angarishebi/hridc/ANNUAL2017-ENG.pdf>

²⁰ Report of Human Rights Center – State of Human Rights in Georgia, 2018: <http://hridc.org/admin/editor/uploads/files/pdf/hrcprep2018/annual%20report%202019%20-eng-pdf>

METHODOLOGY

In order to study the abovementioned problems more comprehensively, the representatives of Human Rights Center – Nino Tsagareishvili, Ucha Nanuashvili and Aleko Tskitishvili organized field visits alongside the dividing lines of Abkhazia and South Ossetia; they interviewed the local population regarding the violations of their rights and other problems; they inspected on the spot and studied the problems caused by the borderization process as well. The meetings were organized with the representatives of the local municipality authorities. Human Rights Center, in total, organized 8 visits in 27 villages alongside the dividing lines with Abkhazia and South Ossetia. The following villages were visited in Gori municipality on the dividing line with South Ossetia – Bershueti, Kirbali, Ditsi, Ergneti, Zardiaantkari, Gugutiantkari, Dvani, Knolevi, Khurvaleti, Plavismani, Kere, Mereti, Koshka, Tvaurebi, Lamiskana, Okami, Saribali, Zadiantkari, Odzisi, and Bakakurebi. HRC visited the following villages alongside the dividing line with Abkhazia: Orsantia, Khurcha, Ganmukhuri, Pakhulani, Shamgona, Rike and Tkaia. The problems revealed within the frameworks of this project are analyzed in line with the international human rights standards. The report does not specify the villages where the concrete incidents occurred in order to avoid the identification of the individuals for the sake of their safety. However, it indicates the region where the concrete incident occurred.

RIGHT TO LIBERTY AND SECURITY

Detentions in the Georgia-Controlled Territory and In the Territories Unexpected for the Local Population

In 2018, Human Rights Center requested information from the State Security Service of Georgia as to where the facts of illegal restriction of liberty by the representatives of the de-facto authorities of Abkhazia and South Ossetia and Government of Russia were observed most often. According to the provided information, *“in the direction of the occupied Tskhinvali region, Russian occupation forces arbitrarily detained people alongside the occupation line of Tskhinvali region and occupation forces were particularly active in the municipalities of Gori, Kareli, Kaspi, Khashuri and Dusheti, as well as in Sachkhere and Kazbegi municipalities. In the direction of the occupied Abkhazia, representatives of the Russian occupation forces and Abkhazian de-facto authorities arbitrarily detained people alongside the occupation line of Abkhazian region, particularly in the villages adjacent to the occupied Gali district”*.

According to the interviews conducted within the frameworks of this project, it was revealed by the detained individuals that the Russian border officers sometimes come beyond the border signs they have installed, enter the Georgia-controlled territory and

arrest local people in this way. Similar facts were observed in 2018 as well. In one of the villages along the dividing line with Abkhazia a local resident stated:

„They patrol on the border; it would be good if our soldiers did the same. They are moving all day long, at day-time and in the evening. If we are prohibited to travel on the other side [of the border] why do they come here? They arrested our man here, twenty meters away from the border on our side. Russians arrived on our side and he ran away. If they had caught him, he would need to pay at least 5 000 rubles.”

One more person stated that a Russian border guard walked into the Georgia-controlled territory beyond the border markers in 2018 at the dividing line of Abkhazia:

„He came to our side, walked about two hundred meters, then turned back and walked back. A child took the video; children were coming from the school and friends suggested him to take photos of the [Russian] officer. Then the child published the photo on Facebook but then he removed it. Somebody said it was prohibited. However, people managed to see it.”

One more person speaks about the similar incident which occurred in the village adjacent to the dividing line with Abkhazia. The incident happened in 2014:

“They arrested my husband. He was near the border with a cart. He did not walk across the border. He did not return soon. I went to look for him. I saw the horse was tied to the tree. My husband was not there. I called him but then I realized what had happened. I come from Abkhazia and I called my sister to bring a car. Orsantia bridge was not yet closed. I took money and documents to cross the border. They brought my husband to Gali and I and my sister also arrived there. It was Saturday. On the weekends only one officer is on duty. There were many detainees: a woman, a child, and the men. Approximately 30 persons. They were all detained and brought from the border. My husband had not signed anything claiming that he had not breached the border. They demanded him to sign but he did not. He said - “find my horse and cart and I will sign the document then”. He insisted that he had not breached the border.”

Often people are arrested when they go to collect firewood in the forest. Locals collect wood to heat houses; as they say electricity is expensive and they cannot afford it. When commenting about similar incidents, a local living along the dividing line of Abkhazia recalled the 2017 incident: *“The forest is small and they arrested my husband there.*

Electricity is expensive and we try to collect wood. My husband now is afraid to go to the forest and bring the wood.”

Another person who was arrested in 2018 also spoke about a similar incident. As he described, he was captured in the Georgia-controlled territory, along the dividing line of Abkhazia and the Russian border officers had crossed the border markers.

“I had cut wood and loaded the cart. I had already taken one part of the wood home and on my second round I heard somebody broke a branch. I looked up and saw a border officer jumped into the trench. I ran because I knew he was not alone and he could capture me. They moved into our territory 60 meters deep. I fell down and they approached me. I asked them what they wanted and that I had not crossed the border. He did not say anything. He was just waiting for the other. I saw a dog in the distance. I have never seen such a big dog before. I thought it was time and I ran away.”

According to one of the former detainees, he was also arrested in the Georgia-controlled territory 150 meters away from the barbed wires, along the dividing line of Abkhazia. He said that the Russian border guards had crossed the barbed wires and arrested him: *“They had walked 150 meters from the barbed wires inside our territory; I had been there couple of times and never noticed anybody. Then I was on the horse and they arrested me; they took me to Gali. I spent 25 days in detention in Gali. Then they let me go.”*

According to one of the detained persons along the dividing line of Abkhazia, the cattle often moves towards the dividing line and gets stuck in the barbed wires. Once, when he lost his cows, the man went towards the barbed wires to find them. However, as he noted, he could not find them and returned back without crossing the dividing line. Then four individuals in uniforms with automatic guns ran after him, detained him, put handcuffs and took him to Gali, where investigators questioned him. The man recalled the interview details:

“They asked whether I had a document and where was I when detained. I told I was 200 meters away from the border and they asked how the officers moved there then. I said they had breached the border. Anyway they imposed the fine on me. The lawyer suggested me to go and take a photo near the border as if I had really crossed it but I refused. I said, take my photo where you really arrested me.”

In one of the villages with barbed wires along the dividing line of Abkhazia, one former detainee said that he was arrested about 400-500 meters away from the barbed wires. The man described the incident as follows: *„I heard shouting from behind. They hit us with*

the stock of the gun and we lost consciousness. They took both of us. When we recovered we were in the car.”

The following incident happened in one of the villages along the dividing line of South Ossetia, in 2018: a man, his son and their neighbor were arrested in the territory which was 20 meters away from the so-called dividing line. One of the former detainees said:

“We were about 20 meters away from their border. I called my people when [border officers] approached me. They were watching us. Later they said that they had seen us crossing the border on the previous day too. As I did not resist them, they started to speak with me kindly. One of my neighbors started arguing with them in the past and they beat him in the teeth and limbs with the stocks of the gun. I had a surgery short time ago and avoided conflict.”

Other detainees also speak about the incidents when Russian and Ossetian border guards walked into the Georgia-controlled territory in the village adjacent to South Ossetia. One of them said:

“We no longer take our cattle to pasture on the other side. I was on our side with the cattle. He saw me and arrested me. My son called his mother and said [occupants] had captured me. Then they also appeared. My son was 30 at that time. They captured both of us. They pointed automatic gun at us and took us in the upper village. They had a car there and took us to Disevi village headquarter. There they claimed I had breached the border. Then they took me to Tskhinvali; I spent one night there; they held trial. My cousin paid my fine; he is ethnic Ossetian and lives in Tskhinvali. They released me on the second day. I spent one night there but it seemed like entire century. Nobody beat me. We were all Georgians. They brought only one Ossetian man later. Upon my arrival there were only two persons and till morning our number increased up to 7-8. They held trial on my case. I said I had not crossed the border but nobody trusts our words there.”



The signs and barriers erected by the de facto and Russian forces along the dividing lines

However, in some areas, there are no signs and people are not aware that the territory is dangerous and that they may be captured by the de-facto or Russian border guards. HRC representatives observed the cases when the population used some territory in recent years and there were no warning or “border” signs indicated at the dividing line. But unexpectedly, without any warnings, people were arbitrarily detained in those areas.

In one of the villages located adjacent to the dividing line of Abkhazia, HRC representatives visited an elderly woman whose house is located next to the river. The woman said that the agricultural plot on the other side of the river belonged to her and her husband and they cultivated it for years. As the woman said, her six neighbors have the same problem – they owned land on the other bank of the river, cultivated plots, sold harvest and that was the main source of their income. She said that in 2017 she and her husband were captured in their plot suddenly, without any warning.



The territory along the dividing line of Abkhazia where the population cultivated their land

The woman recalled during the conversation with HRC representatives that:

“We never had problems to work on that land. We are about six families in this area who own agricultural plots on the other side of the river. We all cultivated them without problems two-three years ago. They took me and my husband but did not abuse us at all. I did not have money to go back and that man told me he would give me the money; he took me here by car. I did not pay fine. I told him my son had passed away and the money that I had was for building his cemetery. Abkhaz man got angry that the Russians arrested me. Then he told me he would take me home. He gave me food, and said: “grandma, eat, you may be hungry.””

In one of the villages along the dividing line of South Ossetia, there was an incident when a local resident was arrested in his own garden. This territory is located beyond the barbed wires set up by Russian border guards, in Georgia-controlled territory. According to the person arrested on the Georgia-controlled territory, the Russian border officers had walked inside the territory 80 meters deep. The man said that the Ossetians had arrested him.

“They were wearing uniform and were armed. I got scared when masked people approached me; I resisted them but what could I do, they had guns. They took out handcuffs and I thought it was electro-shock and got scared. Then they put me on the ground and tried to put handcuffs on me. I had bruises on the hands and neck”

as they twisted me so much. They beat me; they were holding my hands. I knew my husband was going to come; it was windy and I wanted to collect walnut from the ground. My husband wanted to come and I shouted him not to come. Then they dragged me on the other side by force. They were two. I can recognize one of them any time; the second had his face fully covered with mask and I cannot recognize him. When they brought me to the Russian base, the Russians brought ice to put on the hands; I had bruises.

They took me to Tsinagaran and blindfolded me. Then they most likely took me in the yard and then downstairs. There were two steps, then corridor and then 12 steps again. They demanded me to speak Russian but I was answering in Georgian claiming that I did not know Russian. When they were asking me something, I was not answering. They demanded me to admit that I had crossed the border and promised to let me go. I said I had not breached anything and that they came to my yard and took me. They said that 50 meters beyond the barbed wires belong to them as well. I said that I had not approached that distance either. Then they spoke with each other: "she is so prepared, she will never admit anything; she knows that even if she admits, we will not take her there." I smiled at their words and they asked why I was smiling. I told them I could understand both Ossetian and Russian languages but could not speak. Then they printed some documents, about one hundred pages and made me sign all of them. I did not sign the paper where it was written that I had crossed the border. Then they came and demanded me to sign that paper too. It was oppression. They did not beat me but Russians cursed me.

One of the detainees arrested on the Georgia-controlled territory along the dividing line of South Ossetia said:

"They arrested me first in 2016 and next in 2017. At the first time, they suddenly approached me. I had cattle in the field. Next time they enticed me. The cattle were on the other side and they called me out, "do not be afraid come and take your cattle." When I went there, they got out with automatic guns and arrested me; how could I resist them. First time we were two; second time I was alone. They have a big headquarter in Disevi village and they took me there. I told them that their people cheated but nobody cared about it. Russians took me from the headquarter by car. They arrested my neighbors - father and son as well; they cheated them too.

Often people are arrested in the forest along the dividing line of South Ossetia, where Georgian law enforcement bodies cannot properly control the area. This territory is not marked. It should be noted that some warning signs would have helped locals to be cautious.

A person, who was arrested in 2018, said: *“There are no barbed wires there. You must be lucky. Somebody may come or may not. But we run risk and go to collect firewood. They might not arrest us at all if you know Russian; but if we cannot explain them anything, they arrest us.”*

Detentions Regardless the Possession of “Necessary” Documents

Along the dividing line of Abkhazia, even if the persons are crossing the dividing line with the necessary document, for example, Abkhazian passport, they still get arrested if they do not use the official crossing point of the Abkhazian de-facto authority – Enguri Bridge. There are cases when the locals try to travel to the occupied territory via roundabouts because their villages are located far from the Enguri Bridge and traveling through the official checkpoint requires more financial resources and time. In one of similar incidents, a woman was arrested in 2016 (HRC representatives interviewed the woman before January 2019, when the Abkhazian passports were annulled):

“Two years ago, my husband and I went to visit my daughter. She has family on the other side. Afterwards they were compelled to resettle here. I went to see my daughter; I recently had a surgery. In 2015 I had a surgery and had 15 procedures of chemotherapy. I had not hair grown yet and was wearing a hat. We arrived there without problems and on our way back on the next day, I told my husband to take the short way. I could not take the long one. He did not want to take the short way saying that [officers] may be there. My husband was captured several times. He said that they would arrest him again and it would make me feel even worse. I said I had heard nobody was patrolling on the dividing line before 3 pm and we went. I saw some people walking ahead of us who managed to cross the dividing line and safely arrived on the Georgian side. I told my husband people had safely crossed the line and officers were not there. We walked faster, I was walking first, and my husband was behind me. They were hidden in the forest; one Russian man rushed out and approached me. “Woman” he shouted and I stopped. I could not run. I could escape him if I could run but I could not because of my surgery. He arrested me. My husband also approached us. They were two. I told them I had visited my daughter and relatives in Gali; “Can I not see my relatives?” I showed them my passport. Everybody has Abkhazian passports. I have two houses abandoned there and I do not want to lose them.”

In the abovementioned incident, when the couple with the Abkhazian passports was captured when using the roundabout, fines were not imposed on the detainees.

“They arrested us in the morning and took us to Gali at 10 pm in the evening. They did not impose fines on me and my husband. Abkhaz man was surprised why they had arrested us; he said “the woman had the passport and was going to see her relatives.”

Ill-treatment during Detention

Former detainee from one of the villages located at the dividing line of South Ossetia recalled facts of ill-treatment during the detention by the Russian border officer. According to him, he was arrested in 2015 in the forest, where he was with a horse and a cart. The Russian border officer suddenly jumped out of the valley with an automatic gun and a mask. The former detainee said that the Russian officer made him lay with his face down on the ground from 9 am till 6 pm. Russian border officer also took his boots. The incident happened on the Georgia-controlled territory. However, according to the man, Russians claimed that it belonged to South Ossetia. There was no banner or any border sign in the area at that time. According to the former detainee, the Russian officer demanded him to pay approximately 10 000 GEL. He told the following story:

“He told me that if I did not pay the money, he would capture me. There is Tsovi village upper there. He said Kazaks are there and they would take everything from me. Then he put me back on the ground and took off my boots; he made me walk with bare feet. I urged him to let me put on the shoes, or sit on the cart but he refused. Finally, he took pity on me and let me go”.

According to the detained person, he informed police about the incident. However as he noted: “Police came. I told them I could help them to arrest the man but they refused and said that [Russians] would open fire against them. They wrote a protocol and nothing more. Nobody returned my boots and nothing was done.”

The former detainee from one of the villages along the dividing line of South Ossetia described his and his neighbor’s capture as follows:

“As I did not resist them, they started speaking kindly with me. My neighbor resisted them and they beat him in the teeth and limbs; he had injuries. I had surgery recently and avoided conflict.”

One of the persons arrested near the cemetery in one of the villages adjacent to South Ossetia in 2016, described the moment of detention:

“Half of the cemetery belongs to us. They arrested me on their side. But our ancestors are buried there. A week ago we had buried our neighbor boy and I went to see the grave. They were two and I told them I had not breached the border as it was our territory. They started to put handcuffs on my hands and I resisted them. I took them 50 meters down, they got tired and I also got tired. They had automatic guns. One of them was from Siberia; the other looked like Kazakh. I was moving down. I am 52 and got tired soon. I threw handcuffs away but the second man hit me with automatic gun and I started bleeding. When they went to find the handcuffs I ran and reached our road.”

Poor Conditions

The person who was detained in 2016 was placed in the temporary detention cell in Otobaia village in the occupied territory. She spoke about poor conditions in the detention setting. More precisely, according to her story, she spent all day in the cell though it is designed only for 3-hour detention. The woman said:

“My husband shouted them twice as to how long they would keep us there. He told them that I had health problems and it was necessary to free us soon. They answered that it was their business when to take us out; they were speaking rudely. When we were taken to Gali, Abkhaz man shouted at the Russians, why they had kept the sick woman so long time; he said that he had already warned them to bring people to Gali after three hour detention and not to keep them longer. The Russians did not answer. It was evident that they did not have good cooperation.”

The same woman spoke about ill-treatment in the Gali district temporary detention cell:

“On the way to Gali, I felt bad and asked to stop a car and let me drink water. How can anybody treat a person like that? I asked them several times but they did not stop the car. They said we have almost arrived. I realized that I started to have a problem with ulcer and next day I went to the doctor.”

One of the former detainees spoke about the situation in the Nabakevi temporary detention cell:

“There is only one floor above the ground and another floor is under the ground. They place all detainees there. People are collected till evening and then they put them on the truck and take to Gali. It is Russians’ base. They interrogate the detainees there and then place them in the cells. There was a case when the

detainee was sentenced to 15-day detention. There were people who were released after the trial.”

According to one of the persons who spent 3 days in the Gali district temporary detention cell, it was warm in the cell and they received water. However, because of arbitrary detention he felt himself as a slave.

According to the stories of the former detainees, before being taken to Gali and Tskhinvali temporary detention cells, they spent several hours, or sometimes the whole day, in the detention settings in various villages where the conditions are quite poor.

Before being taken to Tskhinvali, one of the former detainees was first taken to Ghromi village, where he was placed in the temporary detention cell. The man described his stay in the setting as follows:

“Initially before placing me in the cell in Ghromi, they put a head covering over my head so that I could not see anything. The cell is down in the basement under the ground. It was cold there. The cell had something like window. I spent three hours there. Nobody brought me food or water. When I was taken to Tskhinvali, the officer on duty spoke very politely with me; he asked whether I needed anything but I could not eat; I spent three-four days there. They offered me food but I took bread from them only once.”

Wife of one of the former detainees, who was captured in 2017, spoke about the conditions in Tskhinvali detention setting:

“He was lying on the wooden bed. When he returned, he had pains all over the body. It was cold in the cell as he said. But he said they were provided with everything.”

One of the persons arrested by Ossetians in 2017 in one of the villages along the dividing line of South Ossetia, was taken to Artsevi military base, where Russian soldiers are deployed. He described the conditions in the Artsevi military base as follows:

“There is awful situation there. My pig lives in cleaner conditions than they do. The mattresses were all wet. They gave food only once a day. It was bread and 40 grams of meat, black meat.”

Another person also spoke about the conditions in Artsevi military base. *“Nobody will keep cattle in such conditions.”*

One of the former detainees described the days spent in Tskhinvali detention cell in 2012 as follows:

“They used to bring food with saucepans; we did not have bowls or plates to eat from. We just had half-divided plastic bottles and ate from them. There was one guard; he saw us with the bottles and seized them; he said we did not deserve to eat from the bottles. Afterwards, another man, the bailiff, brought the bottles back.”

Contact with Family

According to the information obtained from the people interviewed by HRC representatives, after detention, the detainees are not allowed to contact their family members. The relatives receive information about the detainees mostly from their relatives, neighbors, acquaintances or other mediators living in the occupied territories. None of the interviewed persons mentioned that they obtained information about detention from the Georgian law enforcement bodies or the EU Monitoring Mission (EUMM). However, some of the detainees noted that after the release, the representatives of the EUMM meet with them and conduct interviews regarding the detentions.

One of the former detainees spoke about his contact with the family members during the detention in 2016:

“I had agreed with my daughter I would call her after having crossed the border. If I would not have called her and the phone would be unavailable, it would be evident that I was captured. So, my daughter knew about it and she called my neighbors in Gali and they met us there.”

One of the former detainees captured in 2017 said that the Russian soldiers suddenly grabbed his phone and switched it off. He said that the family members understood that he was arrested as the phone was off and they could not call him.

Activities of the Georgian Law Enforcement Bodies

According to the population of the Kirbali village, located along the dividing line of South Ossetia, Georgian police does not often patrol in their village. The locals said that if the police patrolled more often, Russian border officers may not have captured people so often. One of the locals said:

“They come once a week or so. But if somebody is captured, then they patrol during two-three days. If they were here, the [Russian/Ossetian] border officers would be more cautious and would not capture us so often. When our police is here, they do not come out.”

The so-called dividing line established by the de-facto and Russian authorities in Kirbali village of Gori municipality runs through the village cemetery. Regardless the threat of being captured, population of Kirbali village goes to the cemetery where their family members are buried. One of the interviewed persons said:

“My father’s grave is there and should not I go?! Let our police patrol here, is it a problem? They would not capture so many people then. If they capture anybody now, they will demand to pay 20 000 Rubles; nobody will be able to pay it. So the government will have to pay it and it is better to have our border guards here and pay salaries to them. Who cares about us? Nobody!”

According to the information provided by the locals, when Georgian police patrols alongside the dividing line, Russian and Ossetian border guards avoid to capture people. In one of the villages adjacent to South Ossetia, local resident said:

“Nobody was captured this year; our police was patrolling here and they are afraid of police. They became active since 2008; before that the situation was different.”

In the villages adjacent to Abkhazia and South Ossetia, the police posts, in most of the cases are not located near the dividing line, at the end of those villages where the illegal detentions are often observed. It is important to establish police posts in such territories and ensure police patrolling in order to avoid illegal detentions.

Investigative and Court Proceedings and Release from Detention

One of the former detainees along the dividing line with Abkhazia said that in Gali, where his trial was held, the process was held in Russian language. He did not request translator because he knew Russian but as he said “nobody asked him any questions” to him during the trial.

A person captured in the Georgia-controlled territory adjacent to South Ossetia, who was taken to Tskhinvali, said:

“It was about 4 pm. They have a separate office; one woman questioned me there. They made me sign 30 pages of papers but I did not read them. I asked them what I was signing but they answered I knew very well what I was signing.”

According to the information obtained from the interviewed people, the practice of releasing people from imprisonment and imposing fines varies. If the detainees have the document satisfactory for the de-facto administration, administrative court proceedings are held, where they are found guilty in “illegal crossing of border”, then they are released and receive a receipt based on which they have to pay fine. However, if the detainees do not have the documents, also those who resist officers during detention, they have to pay the fine before being released that is done by the family members with the mediation of the relatives, friends, neighbors and acquaintances living on the other side of the dividing line. However, people who have nobody on the occupied territory may face serious problems as there may be nobody to help them. At the same time, one of the former detainees said: “You must find somebody, you definitely have to pay the money; otherwise they will not let you go.”

If a person, together with the “illegal crossing of the border” is accused of “the resistance to officers”, the duration of imprisonment is longer and it may last several years while a person, accused only of the “illegal crossing of the border” may spend only several days in the administrative imprisonment.

One of the former detainees in the Georgia-controlled territory adjacent to Abkhazia, said:

“Initially they took us to Tchuburkhinji and then to Gali. We arrived in Gali in the evening and next morning we were taken to Sokhumi. They sentenced us to two-month pretrial detention and two months later they extended the imprisonment with another 2 months. Then they took us back to Gali and Gali district court reviewed our case. I was sentenced to two and half years and served only 10 months – according to their laws, one month equals to three months because I was in the strict regime prison. The border officer claimed I had beaten him. They sentenced me to long-term imprisonment because of the charge of resisting the detention.”

One of the persons detained in the Georgia-controlled territory adjacent to South Ossetia in 2018, recalled about the payment of the fine:

“My relative from Tskhinvali paid the fine. Georgian person cannot pay there. Then I paid him the money back when he arrived here. If he had not paid, I would have been still there.”

One of the former detainees from the village along the dividing line of Abkhazia described the process of release as follows:

“Two persons came and brought me here. During the detention I did not have ID card with me; we called the family and they sent us the documents.”

Other Problems

There are instances in the villages located along the dividing line to Abkhazia when the cattle cross the dividing line and go to the territory uncontrolled by Georgia. This entails significant problems considering that the cattle which is one of the main sources of income for the local people, often get lost. Also, there are instances when by the help of the people living in the occupied territories, the lost cattle is given back to their owners in Georgia-controlled territory.

The local living in one of the villages stated regarding this problem:

“You have to prepare documents, and then get them translated and approved by the notary. Then you have to find someone in the occupied territory who will find you the cow. Then you have to go to the local administration here. You have to ask them to give you the right to have your cattle brought to the border. Not many people can manage that. One cow costs 50 GEL at minimum. You also have to find the person who finds you the cow. The cattle are used to crossing that line for their whole life and there is no way that they get out of that habit”.

In some villages, despite the fact that there are barbed wires along the dividing line, according to the information provided by the local population, the cattle still find the places to cross the line. *“Then we find the acquaintances. We might have to give some gifts and they will send the cattle back”* – one of the local residents notes.

In one of the villages located along the dividing line to Abkhazia, the representatives of Human Rights Center saw a place where the house and a gate were situated on the territory of occupied Abkhazia and the yard – on the territory controlled by Georgia. According to the information obtained by Human Rights Center, the person living in this house was detained several times due to crossing his yard and coming to Georgia-

controlled territory. In the same village, there was a place where the house is located in Georgia-controlled territory, as for the gate and the yard – in the occupied territory.

In the village Pakhulani located along the dividing line to Abkhazia, following situation was observed: the house belonging to the local resident is situated beyond the dividing line, in the occupied territory, as for the yard – in the territory controlled by Georgia. According to the information provided by the family, the Russian border guards came to the territory and they announced that they are planning to erect a fence around the territory. According to the information provided by the local resident living in this house, his children are studying in Georgia-controlled territory. Also, they have connections, work and family relations in the territory controlled by Georgia. The family asked the Russian border guards to give them time before they erected fences in order to make relevant documents:

“My son asked to give him some time. He told them that he did not have money to make all the documents. They gave us time till the New Year. However, they might start working today or tomorrow. We have no guarantee. I have a cornfield on the other side. However, they are not letting me go there”.



Human Rights Center representatives are interviewing the local resident living along the dividing line in the village Pakhulani

According to this local resident, the Russian border guards give him right to cross the dividing line only twice during the day:

They let us pass only twice a day. They open the “customs” in the morning and again in the evening. When the “customs” opens in the morning, if we do not pass, they close it. They have the lock and when we come back, they open it. It is better to be a prisoner. I must make “residence permit”. What can I do if my child becomes sick? I cannot do anything before they open the door. They are saying that it is not their fault and that they get such orders. They asked us to destroy our corn-house. They are saying that they must cut the trees. They are saying that they want to erect barbed wires. When I bring children to school here, I do this in secret. We go through the corn-field. If they erect barbed wires, how can I bring them? I wrote a letter to the Ministry, but they are not paying any attention. They are saying that we should not teach children Georgian, only Russian and Abkhazian. I do not know Abkhazian, how can I teach my children? In order to bring them to school on the other side, I must walk 14 kilometres. Besides, I do not want my children to study where their native language is not taught”.

Detention of Juveniles

An individual living along the dividing line to Abkhazia talks about the detention of her juvenile son in one of the villages situated along the dividing line.

“My son was detained 5 years ago. We have some relatives on the other side of dividing line and he was helping them. They were bringing nuts from there and he got detained. He was supposed to come back in twenty minutes. When he did not come back, I called him on the phone. The phone was turned off. My husband was drunk. I told him that the kid was detained, that I was calling him, but he was not answering. They were going to make third round with the nuts. They did twice already. We went to look for him. We were both crawling in the mud. We were afraid but you would do anything for your kid. I saw that the Russians were bringing the nuts back. They had come with the Ural Car and were storing the nuts. They were not treating kids badly. They took father of one of the kids. Two more people were detained. But they let the kids go. My husband wanted to go there, but I did not let him. I told him that it would be easier for me to bring the kid back than him as his release would cost me approximately 1000 GEL. He believed me. Then in about 200 meters distance I called my son – I asked where he was. Then I found out that in that moment they asked my son who I was. In the beginning they wanted to take him. But, then one of the guards said that he also had a kid who looked similar. Then they decided to let him go. They let both kids go. We live with such difficulty. Nobody is able to go there. Everybody is afraid. When the children were coming from there for study purposes, the school principal knew that they would face obstacles - they would not be allowed to cross or would be forced to go back. Now my relative’s kid speaks such good Russian

and Abkhazian, you would be surprised. They are now taught Russian and Abkhazian in school. What can we do? Life is this way. We have been internally displaced for 25 years now. My blind mother, brothers, little kids and the daughter-in-law were not even given one room to live here. That's how we are struggling. They stayed there. They are coming only for the medicine and doctor. But, my mother has not come for months".

Detention of Pregnant Woman

Pregnant woman was trying to pass from the occupied territories to the territory controlled by Georgia in order to receive medical help in September 2015. She described the process of detention in a following way:

"We left at 5 am in the morning. We walked approximately 7-8 kilometers by foot. When we approached the dividing line, we could not notice them. Apparently they were standing near and they detained us on the spot. They said that the territory on the other side was not controlled by them and that they could not let us go. They took us to the temporary detention cell. More people they were detaining, quicker they were taking them. We were seven including the children. They did not give us water, food or anything else. We were placed underground. I felt bad. At approximately 12 pm we went to Gali. We had to pay some fines. In Georgian GEL, it would be about 120 GEL for one person if you were resident there. If you are from another region, then you would have to pay more. The case could be even brought to the court".

Regarding her health issues, the woman describes:

"I got hypertonic. I was feeling very bad for two days. The air was heavy. There were no windows. The underground was 4 meters long. The light was coming only through the crank. There was no mattress either. The floor was normal. However, they did not give us blanket or anything".

Assessments in Accordance to International Human Rights Standards

According to the Article 5 of European Convention of Human Rights, everybody is entitled to the right to liberty and security. There are several instances when the individual can be detained or arrested lawfully, including when there is a reasonable suspicion that the person committed offense and his/her arrest or detention serves to bring him/her to the competent legal authority. Also, when the lawful detention of a person takes place after the conviction by a competent court. In the case of *Ilascu and Others v. Moldova and*

Russia, according to the decision of European Court of Human Rights (ECtHR), competent court refers in the first place to a body “established by law” satisfying number of conditions which include independence, particularly, vis-à-vis the executive, as well as impartiality. According to the explanation of European Court of Human Rights, in certain circumstances, a court belonging to the judicial system of an entity not recognized under international law may be regarded as a tribunal “established by law” provided that it forms part of a judicial system operating on a “constitutional and legal basis” reflecting a judicial tradition compatible with the Convention²¹. In this case, according to the assessment of ECtHR, the “Supreme Court of the Moldavian Republic of Transdniestria (MRT)” which passed sentence on Mr. Ilașcu and Others was set up by an entity which is illegal under international law and has not been recognized by the international community. According to the assessment of the European Court of Human Rights, this court belonged to a system which could hardly be said to function on a constitutional and legal basis reflecting a judicial tradition compatible with the Convention²². The Court accordingly found that none of the applicants were convicted by a “court”, and that a sentence of imprisonment passed by a judicial body such as the “Supreme Court of the MRT” in the present case cannot be regarded as “lawful detention” ordered “in accordance with a procedure prescribed by law”²³.

The situation existing in Abkhazia and South Ossetia is similar to the above mentioned case. The de facto countries of Abkhazia and South Ossetia are not recognized by the international community. Abkhazia and South Ossetia are recognized only by 5 states – Russia, Syria, Nicaragua, Venezuela and Nauru. The majority of member countries of the UN does not recognize these de facto countries and consider them to be part of Georgia. These de facto countries are also not recognized by the international governmental organizations, such as UN²⁴, NATO²⁵, European Union²⁶ and Council of Europe²⁷. In their

²¹ Paragraph 460,

[https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22Ilașcu%20and%20Others%20v%20Moldova%20and%20Russia%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-61886%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Ilașcu%20and%20Others%20v%20Moldova%20and%20Russia%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-61886%22]})

²² Paragraph 436;

[https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22Ilașcu%20and%20Others%20v%20Moldova%20and%20Russia%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-61886%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Ilașcu%20and%20Others%20v%20Moldova%20and%20Russia%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-61886%22]})

²³ Paragraph 462;

[https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22Ilașcu%20and%20Others%20v%20Moldova%20and%20Russia%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-61886%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Ilașcu%20and%20Others%20v%20Moldova%20and%20Russia%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-61886%22]})

²⁴ UN General Assembly Approved Resolution Initiated by Georgia;

<http://agenda.ge/en/news/2018/1271>

²⁵ Allies Reaffirm Support for Georgia in NATO-Georgia Commission;

https://www.nato.int/cps/en/natohq/news_157877.htm

²⁶ European Parliament Resolution on Georgian occupied territories 10 years after the Russian invasion;

http://www.europarl.europa.eu/doceo/document/RC-8-2018-0275_EN.html?redirect

²⁷ The Council of Europe has adopted a decision on the Georgia-Russia Conflict;

resolutions, they mention that these territories are part of Georgia and that they are occupied by Russia.

Through an initiative of the European Union's Special Representative in South Caucasus, report prepared by Thomas Hammarberg²⁸ and Magdalena Grono²⁹ regarding human rights in Abkhazia today includes analysis regarding the situation existing in de facto judiciary and law enforcement structures in Abkhazia. This assessment demonstrates that there are cases of judicial corruption in Abkhazia³⁰. According to the report, the judiciary is believed by many to be under pressure in Abkhazia's social environment dominated by ethnic Abkhaz and a social structure in which extended families operate on the basis of deep loyalty. This is also largely relevant to prosecution and the police. This can in a number of cases challenge the boundaries of individual rights and responsibilities, and even undermine accountability, according to the report³¹.

According to the report of International Federation of Human Rights (FIDH), the judiciary in the de facto countries, including in Abkhazia and South Ossetia lacks independence and are influenced by the executive and other political, economic and criminal elites. According to FIDH, lack of rule of law and high levels of corruption render local laws and courts in the disputed entities largely ineffective. "The absence of effective remedies forms the foundation on which a climate of impunity prospers" – states the report³². According to FIDH report, although the Ombudsman offices generally exist in the disputed territories, they do not seem to compensate for the weaknesses of judicial systems³³.

These assessments demonstrate that the de facto courts existing in Abkhazia and South Ossetia do not meet the constitutional and legal foundations envisaged by the European Convention of Human Rights, as they are not independent or impartial. Therefore, they cannot be considered to be competent courts which can make decisions regarding the detention and arrest of individuals.

http://coe.mfa.gov.ge/default.aspx?sec_id=400&lang=2&NewsID=131824

²⁸ Thomas Hammarberg was a Senior Expert mandated to carry out the assessment. He was previously Secretary General of the Olof Palme International Center and has served as Council of Europe Commissioner for Human Rights, as well as expert adviser to the European Union and United Nations on Human Rights matters.

²⁹ Magdalena Grono was made available by International Crisis Group where she is Europe and Central Asia Program Director. She previously worked with the European Union, as co-moderator in the Geneva International Discussions and adviser.

³⁰ Pages 21-22, Human Rights in Abkhazia Today, 2017;

<https://www.palmecenter.se/wp-content/uploads/2017/07/Human-Rights-in-Abkhazia-Today-report-by-Thomas-Hammarberg-and-Magdalena-Grono.pdf>

³¹ *ibid*

³² Page 26, Assessing Human Rights Protection in Eastern European Disputed and Conflict Entities; https://www.fidh.org/IMG/pdf/rapport_disputed_entities_uk-ld3.pdf

³³ Page 23, Assessing Human Rights Protection in Eastern European Disputed and Conflict Entities; https://www.fidh.org/IMG/pdf/rapport_disputed_entities_uk-ld3.pdf

The practice of detention of individuals by the representatives of the Russian government and de facto forces of South Ossetia along the dividing lines of Abkhazia and South Ossetia comes in conflict with the principles and case law of the European Court of Human Rights. According to the assessment of ECtHR, where deprivation of liberty is concerned, the general principle of legal certainty must be satisfied. The conditions for the deprivation of liberty must be clearly defined and the law itself must be foreseeable in its application that will allow the person to foresee the consequences which a given action may entail. (*Khlaifia and Others v. Italy* [GC], § 92; *Del Río Prada v. Spain* [GC], § 125; *Creangă v. Romania*, § 120; *Medvedyev and Others v. France* [GC], § 80). Also, the detention must not be arbitrary. The Court has clarified that the arbitrariness may arise where there has been an element of bad faith or deception on the part of the authorities³⁴.

The detention of individuals along the dividing lines of Abkhazia and South Ossetia by the representatives of the de facto South Ossetian and Russian authorities carries arbitrary nature and does not meet the standards of legal certainty and foreseeability. The cases studied by the Human Rights Center shows that the representatives of the de facto and Russian forces often detain individuals by passing to the territory controlled by Georgia, beyond the so called border signs erected by the de facto and Russian forces. Also, in the territory where there are no signs indicating the dividing line and the detentions are completely unpredictable for the individuals. As a result, it is unforeseeable for the individuals to know what factors and grounds cause their detention. They often say that it is difficult to determine which territory may be dangerous and susceptible for the detention.

FREEDOM OF MOVEMENT AND ISSUES RELATED TO DOCUMENTATION

The problems related to the freedom of movement are especially problematic for the ethnic Georgians living in the Gali region. Gali region is situated in the South-East part of the occupied Abkhazia and it represents the only territory in the occupied Abkhazia where the ethnic Georgians returned since the 1992-1993 War in Abkhazia. The Gali region is currently controlled by the de facto Abkhazian and Russian government. After the end of the War, approximately 45000-55000 Georgians returned to the Gali region³⁵.

The problems related to the documentation impede the freedom of movement of Gali population. In recent years, the ethnic Georgian population used five types of documents for passing to the territory controlled by Georgia – Soviet passport, Abkhazian passport, Form N9, residence permit and the so-called visa. The Soviet passport has expired and

³⁴ Paragraphs 32 and 39, Guide on Article 5 of the European Conventions on Human Rights:

https://www.echr.coe.int/Documents/Guide_Art_5_ENG.pdf

³⁵ Thomas Hammarberg and Magdalena Grono, Human Rights in Abkhazia Today, 2017;

<https://www.palmecenter.se/wp-content/uploads/2017/07/Human-Rights-in-Abkhazia-Today-report-by-Thomas-Hammarberg-and-Magdalena-Grono.pdf>

can no longer be used for crossing the dividing line. Since the 2008 till 2013, approximately 22 000 Abkhazian passports have been issued³⁶ to ethnic Georgians in Gali, Ochamchire and Tkvarcheli. The necessary requisite for obtaining these passports was the denouncement of Georgian citizenship. Due to this reason, many Georgians refused to receive these passports. These passports were expired by the decision of the de facto authorities in January of 2019. The de facto authorities extended the term only for the pensioners³⁷.

The so called Form N9 was an administrative form which was widely used to replace the lost identification documents in the Soviet Union. When the soviet passports expired, this form was used by the Gali population as a replacing ID document. It was meant to be a temporary solution. However, it continued to be used by the Gali population for a long time³⁸. In 2017, this document was issued to approximately 12 000 individuals³⁹. Form N9 used to be issued for different terms – from one week up to 6 months. The cost for each month used to be approximately 1000 Russian Rubles (approximately 45 GEL)⁴⁰. In the beginning of 2017, after making amendments to the Law on Foreign Citizens, the issuing

³⁶ Page 59, Thomas Hammarberg and Magdalena Grono, Human Rights in Abkhazia Today, 2017; <https://www.palmecenter.se/wp-content/uploads/2017/07/Human-Rights-in-Abkhazia-Today-report-by-Thomas-Hammarberg-and-Magdalena-Grono.pdf>

³⁷ “What is requested from the Georgians living in the occupied Abkhazia in exchange for the Abkhazian passport”:
<https://www.radiotavisupleba.ge/a/%E1%83%A0%E1%83%90%E1%83%A1-%E1%83%98%E1%83%97%E1%83%AE%E1%83%9D%E1%83%95%E1%83%94%E1%83%9C-%E1%83%9D%E1%83%99%E1%83%A3%E1%83%9E%E1%83%98%E1%83%A0%E1%83%94%E1%83%91%E1%83%A3%E1%83%9A-%E1%83%90%E1%83%A4%E1%83%AE%E1%83%90%E1%83%96%E1%83%94%E1%83%97%E1%83%A8%E1%83%98-%E1%83%93%E1%83%90%E1%83%A0%E1%83%A9%E1%83%94%E1%83%9C%E1%83%98%E1%83%9A%E1%83%98-%E1%83%A5%E1%83%90%E1%83%A0%E1%83%97%E1%83%95%E1%83%94%E1%83%9A%E1%83%94%E1%83%91%E1%83%98%E1%83%A1%E1%83%92%E1%83%90%E1%83%9C-%E1%83%90%E1%83%A4%E1%83%AE%E1%83%90%E1%83%96%E1%83%A3%E1%83%A0%E1%83%98-%E1%83%9E%E1%83%90%E1%83%A1%E1%83%9E%E1%83%9D%E1%83%A0%E1%83%A2%E1%83%98%E1%83%A1-%E1%83%A1%E1%83%90%E1%83%9C%E1%83%90%E1%83%AA%E1%83%95%E1%83%9A%E1%83%9D%E1%83%93/29755093.html>

³⁸ Thomas Hammarberg and Magdalena Grono, Human Rights in Abkhazia Today, 2017; <https://www.palmecenter.se/wp-content/uploads/2017/07/Human-Rights-in-Abkhazia-Today-report-by-Thomas-Hammarberg-and-Magdalena-Grono.pdf>

³⁹ “The impact of the abolishment of crossing points on the rights of the population living along the dividing line to Abkhazia”:
<file:///G:/conflicts/%E1%83%92%E1%83%90%E1%83%93%E1%83%90%E1%83%A1%E1%83%90%E1%83%A1%E1%83%95%E1%83%9A%E1%83%94%E1%83%9A%E1%83%94%E1%83%91%E1%83%98%E1%83%A1%20%E1%83%92%E1%83%90%E1%83%A3%E1%83%A5%E1%83%9B%E1%83%94%E1%83%91%E1%83%90.pdf>

⁴⁰ “Faced with new bureaucratic hurdles, Georgians in Abkhazia ponder leaving”:
<https://dfwatch.net/bureaucratic-hurdles-georgians-abkhazia-49484>

of Form N9 stopped and it was replaced by the residence permit⁴¹. The residence permits give right to the owner to only cross the dividing line and does not cover significant rights such as the right to property. Due to this, the part of the Gali population shows distrust towards the issuance of the residence permits⁴². The residence permits are issued for 5 years term.

Another possibility to cross the dividing line of Abkhazia is visa. In order to be entitled to visa, it is necessary to have a foreign passport and pay relevant cost. The visa is used for 10, 20 and 30 days⁴³.

Human Rights Center met with the individuals in the territory controlled by Georgia who often cross the dividing line to Abkhazia in order to see their family members. These individuals face problems related to the obtaining of documentation that hinders them to visit their family members on the other side of the dividing line. There are instances when the old parents are left on the other side of the dividing line, in the occupied territory, who refuse to leave their houses. They need support. However, their children are unable to visit them due to the problems related to the freedom of movement and documentation.

One of the persons interviewed by the Human Rights Center stated regarding this problem:

"I often had to go. But lately, due to the abolishment of the red Soviet passports, I can no longer go there. The red Soviet passports have written Union of Soviet Socialist Republics on it. It was made in Soviet Union. I was born in 1972. When I graduated from the school in 1989, I kept the red passport and I found it valuable. It was possible to cross the dividing line with it. We crossed without problems.

⁴¹ Pages 58-60; Thomas Hammarberg and Magdalena Grono, Human Rights in Abkhazia Today, 2017; <https://www.palmecenter.se/wp-content/uploads/2017/07/Human-Rights-in-Abkhazia-Today-report-by-Thomas-Hammarberg-and-Magdalena-Grono.pdf>

⁴² "The impact of the abolishment of crossing points on the rights of the population living along the dividing line to Abkhazia":

<https://sites.google.com/view/geoombudsman/%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%94%E1%83%91%E1%83%98/%E1%83%A1%E1%83%9E%E1%83%94%E1%83%AA%E1%83%98%E1%83%90%E1%83%9A%E1%83%A3%E1%83%A0%E1%83%98-%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%94%E1%83%91%E1%83%98>

⁴³ Faced with new bureaucratic hurdles, Georgians in Abkhazia ponder leaving:

<https://dfwatch.net/bureaucratic-hurdles-georgians-abkhazia-49484>

They scanned it in the computers, recorded the ID number and then we could cross without any problems. However, in recent period, Abkhazians are no longer accepting it for some reason. Our side has no problem. The Abkhazian side refuses. Now, there are Abkhazian documents – green and blue passports. The green passports were made in the past. There are also blue passports which proves that the individual is citizen of Abkhazia. However, I have no wish to receive this passport. When you receive this passport, you have to indicate that you are refusing Georgian citizenship. That is why I do not wish to receive this passport. If I say that I am not Georgian, I will lose everything. I left Gali with my children in 2010 because I saw that the Georgian language was attacked. That is why I left my family and came here with my children. My parent still lives there. We wanted to sell the house, but we do not have right to do so because we have to give half of the money to Abkhazians. They have such law – if you sell your house, you have to give them half of the money because they say we live in their territory. There is local government. The Governor is Russian. I do not remember his name. He takes half of the money. This does not happen officially. It happens unofficially. But they do not allow otherwise. They do not give you right to take the total share of your property. I have to pay a lot of money in order to visit my father and pay for visa. For this I have to make one-month visa for which they are requiring a lot of money – 500-600 GEL. However, if you cross the following day, or after 1 hour, it will be abolished”.

One of the individuals noted regarding the crossing and documentations:

If your documents are not in order, they will not let you go. There was an instance when the deceased person was secretly transferred to the other side. 10-15 guys helped each other. At that time there was only one bypass road and they took the deceased at 3 am secretly, because the mother of the deceased was old and could not come to this side and she was asking to see her son. We are living in such conditions.

One of the individuals living along the dividing line of South Ossetia in Georgia-controlled territory, who has family members on the other side of the dividing line, notes regarding the problems related to free movement:

“The people who are from that region can pass. But I am not from there and I cannot go there. They will not give me the document. Approximately three years ago my relative died - a young guy. At that time, I made some document in Tbilisi, in Didube – some sort of invitation. Both Georgians as well as Russians knew. That is how we went there at that time and then left”.

The representatives of Human Rights Center visited Enguri Bridge in January 2019 where the crossing on the checkpoint was closed by the arbitrary decision of the de facto government of Abkhazia. The representatives of the de facto authorities state that the reason of the closure was the epidemic of H1N1 virus⁴⁴. In this period, the de facto authorities allowed the crossing only for those people who had a special medical notification and were coming to Georgia in order to treat health issues. The checkpoint on Enguri Bridge was closed since January 10 till February 5, 2019⁴⁵.

The woman interviewed at the Enguri Bridge in January 2019 confirmed the abolishment of Abkhazian passports:

“They want to take away green passports and we have to make residence permits. But this means that you do not mean anything there. You are not citizen. You do not have right to anything. I have green passport, but it does not work anymore. Now my child is sick and I took the medical notification and came here for the medicines”.

Assessments in accordance with International Human Rights Standards

The freedom of movement is guaranteed by multiple international documents, including International Covenant on Civil and Political Rights and European Convention on Human Rights. According to the Article 2 of Protocol 4 of the European Convention, everyone who is lawfully present within the territory of the state has right to free movement. This right can be restricted only when it is necessary in a democratic society in the interests of national security, or public safety, for the maintenance of public order, for the prevention of crime, for the protection of health or morals, or for the protection of the rights of freedoms of others. Restricting freedom of movement along the dividing lines of Abkhazia and South Ossetia, including through the closure of the checkpoints and toughening the rules for obtaining the documents cannot be explained by any of these reasons. Therefore, this restriction comes in conflict with the principles of European Convention on Human Rights.

ACCESS TO EDUCATION

One of the most significant problems in the occupied Gali region is the lack of access to education in the native language. Since 1995, the de facto Abkhazian government started

⁴⁴ Abkhazia considers 20 day quarantine to stem flu epidemic, locals say real reason is shortage of medicines:

<https://dfwatch.net/abkhazia-considers-20-day-quarantine-due-to-flu-52794>

⁴⁵ The movement renewed at Enguri Bridge:

<https://1tv.ge/news/enguris-khidze-mimosvla-ganakhlda/>

to gradually change teaching from Georgian to Russian language in the Georgian schools. As a result, ethnic Georgian children were restricted right to receive education in their native language.

Since 2005 till today, all schools in the Upper Zone villages in Gali region changed teaching to Russian language. As for the schools in the Lower Zone, since the academic year of 2015-2016, the teaching in Russian was introduced from the first to the fourth grades. Also, every future first grade will be taught in the Russian language.⁴⁶

Teaching in Georgian language is also prohibited in the territory occupied by South Ossetia. Specifically, in Akhgori region inhabited with the ethnic Georgians. In Akhgori region, teaching is conducted only in Russian and Ossetian languages⁴⁷.

In 2016, after the checkpoints connecting Abkhazia and the territory controlled by Georgia were abolished, the right to education was even more restricted, considering that the Georgian children were crossing to Georgia-controlled territory through the checkpoints in order to go to Georgian schools. The abolishment of the checkpoints impeded free movement of the students. In 2016-2017 years, 17 students were coming from the village Otobaia in the occupied Gali region to the village Ganmukhuri in Zugdidi municipality in Georgia-controlled territory. As for the 2017-2018 years, no fact of crossing of students is observed according to the official data⁴⁸.

The representatives of Human Rights Center met with the families who have left the occupied Gali region because of the termination of teaching in Georgian language as it was critically important for them to educate their children in Georgian language. Now, they are living in the territory controlled by Georgia and their children are studying in Georgian schools.

One of the interviewed individuals noted regarding the issue of education:

“Now teaching in Georgian language has entirely stopped. The children who go to the first grade now find it very hard to learn the language. However, they are categorically requiring that the parents should not speak to their children in Georgian. It is very hard to do when you do not have Russian education. People who are approximately my age know Russian. But, the younger people do not speak Russian and they cannot teach their children. Abkhazian language is very hard”.

⁴⁶ Page 4, “Right to Education in Gali Region: 2015-2016 Academic Year and Related Problems”.

⁴⁷ Teaching in Georgian language prohibited in Akhgori region:
<https://www.radiotavisupleba.ge/a/kartuli-enis-sakitkhi-akhalgorshi/28671045.html>

⁴⁸ The Situation of Human Rights and Freedoms in Georgia, 2017:
<https://sites.google.com/view/geoombudsman2/reports/parliamentary-reports>

One of the interviewed individuals stated regarding the village in the occupied Gali region:

“There was a Georgian kindergarten. It had Georgian principal who took care of it for 20 years. He did not want the children to forget the Georgian language. This person was fired. The reason was that he is Georgian and they wanted to teach children in Russian or Abkhazian. This was the only reason. When they fired him, they wrote in the document of dismissal that he worked well for all these years, but they started teaching in Russian and Abkhazian. This was the only reason”.

Assessments in Accordance with International Human Rights Standards

According to the UN Convention on the Rights of the Child, the rights set forth by the Convention must be ensured without discrimination of any kind, including, irrespective of the child’s or his or her parent’s or legal guardian’s religion, national, ethnic or social origin. According to the Convention, the education of the child shall be directed to the development of child’s cultural identity, language and national values of the country in which the child is living⁴⁹.

The restriction of teaching in Georgian language in Gali region comes in conflict with the European Convention of Human Rights and standards established by the case law of the European Court of Human Rights. In this regard, the ECtHR decision on *Cyprus v. Turkey* is notable. By this decision, the Court ruled that the state of Turkey violated right to education of Greek Cypriots as they did not have possibility to receive education in their language, considering that the de facto government in the Northern Cyprus abolished Greek schools. According to this decision:

“The legitimate wish of Greek Cypriots living in northern Cyprus to have their children educated in accordance with their cultural and ethnic tradition, and in particular through the medium of the Greek language, could not be met. The total absence of secondary-school facilities for the persons concerned could not be compensated for by the authorities’ allowing pupils to attend schools in the south, having regard to the fact that restrictions attached to their return to the north”⁵⁰.

This case is similar to the situation existing in Gali where the teaching is totally prohibited in Georgian language. It is not possible to compensate for this problem in another way considering that for the school children living in Gali it is problematic to come to the

⁴⁹ Articles 2, 28, 29; UN Convention on the Rights of the Child:
<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁵⁰ Paragraph 275, *Cyprus v Turkey*;
[https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22cyprus%20v%20Turkey%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-144151%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22cyprus%20v%20Turkey%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-144151%22]})

territory controlled by Georgia due to various restrictions, including the closure of the checkpoints and the problems related to the documentation.

SOCIAL AND ECONOMIC PROBLEMS

In the village Bershueti which is situated along the dividing line to South Ossetia, the non-existence of the clean drinking water is a serious problem. The local population carries the clean water from the neighboring village. The lack of the income generating sources is also a serious problem. As a result of the occupation, the population lost the agricultural land and pastures which was one of the main sources of their income. Due to the lack of income generating activities and employment opportunities, the young people are leaving the village. The bad roads and infrastructure represent significant problems. The unclean drinking water is also serious problem in the village Kirbali. There is also no kindergarten in this village.

Human Rights Center addressed the City Hall of Gori Municipality regarding the problems existing in Bershueti and Kirbali. According to the official letter of Gori Mayor issued in June 2018, the City Hall of Gori Municipality prepared and sent letter to the Temporary Commission on Territorial Integrity of Parliament of Georgia, requesting to address the relevant services in order to arrange the bore wells and water webs in the villages along the dividing lines, including in the village Kirbali. As for the non-existence of the kindergarten in the village Kirbali due to which the school pupils have to go to the kindergarten in the village Zerti, according to the response provided by the Gori Municipality City Hall, it is looking for the alternative space in order to establish the kindergarten, considering that the kindergarten in the village Zerti does not meet the required standards. Except for this, according to the information of the City Hall, it is planning to build the kindergarten in the village Kirbali as well in future.

In July 2018, the representatives of Human Rights Center visited the village located along the dividing line to South Ossetia – Zardiaantkari. According to the observation of the representatives of Human Rights Center, in the village Zardiaantkari the houses damaged during the 2008 August War are still not rehabilitated. The roofs and the windows of the houses are still damaged. According to the information provided by the population, they have been requesting help for years and restoration of the damaged houses, however, with no result.

Another significant problem existing in the village Zardiaantkari is the non-existence of the irrigation water channels for the big part of the population. Specifically, the irrigation channels do not reach to the agricultural land of the population. As a result, the local residents are unable to cultivate their land which is the main source of their income. Another serious problem in this village is the non-existence of the clean drinking water. Due to this, the population has to carry the clean drinking water from another end of the

village. Non-existence of the ambulatory services and pharmacy is also a serious problem in the village Zardiaantkari.

Similar to the village Zardiaantkari, the irrigation channels are not working in the village Gugutiantkari either. The population is also complaining about the low quality of the drinking water.

While visiting these villages, the representatives of Human Rights Center met with the representatives of the local municipality and spoke about the problems observed in the villages. According to the information provided by the representatives of the local municipality, they are working for the eradication of the problems related to the clean drinking and irrigation water.

The low quality of the drinking water and non-existence of the irrigation water is problematic in the village Dvani located along the dividing line as well. Because of the non-existence of the irrigation water, the local residents lost their harvest which used to be their main source of income. The village does not have ambulatory service either. Due to this, the locals are deprived of possibility to receive the relevant medical assistance. The unclean drinking water and non-existence of the irrigation water is also problematic in the village Knolevi. Due to these problems, the local residents are leaving the village.

According to the assessment of Human Rights Center, both villages – Dvani and Knolevi – meet the status of the high mountainous village which includes various social and tax benefits. However, when the representatives of Human Rights Center made visits to these villages, none of them had a status of the high mountainous village. Human Rights Center addressed the administration of the Governor in the municipalities of Gori, Kaspi, Kareli and Khashuri. According to the response received from the Governor's administration, the acting Governor addressed the National Council of the Mountain Development with the request to grant the status of the high mountainous villages to these villages.

THE ISSUE OF RESPONSIBILITY

The Russian Federation is a responsible state for the ongoing human rights violations along the dividing lines of Abkhazia and South Ossetia as it carries out effective control over the territories of Abkhazia and South Ossetia. On the case of *Loizidou v Turkey*, according to the decision of the European Court of Human Rights, the state jurisdiction extends beyond its national territory, in the area where it exercises effective control. The effective control can be exercised directly, through the armed forces of the state, as well as through the subordinate local administration⁵¹.

⁵¹ Paragraph 52, *Loizidou v Turkey*,

In the case of *Al-Skeini and Others v. The United Kingdom*, the Court stated regarding the issue of effective control: “Where the fact of such domination over the territory is established, it is not necessary to determine whether the Contracting State exercises detailed control over the policies and actions of the subordinate local administration. The fact that the local administration survives as a result of the Contracting State’s military and other support entails that State’s responsibility for its policies and actions. The controlling State has the responsibility under Article 1 to secure, within the area under its control, the entire range of substantive rights set out in the Convention and those additional Protocols which it has ratified. It will be liable for any violations of those rights”⁵².

Another case of extraterritorial jurisdiction arises when the rights guaranteed by the convention are violated by the official representatives of the state. In the case *Al-Skeini and Others v The United Kingdom*, the ECtHR noted that in certain cases when the state representatives use force beyond the national territory of the state, the state responsibility arises. The court states following regarding this in its decision: “It is clear that, whenever the State, through its agents, exercises control and authority over an individual, and thus jurisdiction, the State is under an obligation under Article 1 to secure to that individual the rights and freedoms under Section 1 of the Convention that are relevant to the situation of that individual”⁵³. In this case, the ECtHR considered that the United Kingdom, through its soldiers engaged in security operations in Basra during the period in question, exercised authority and control over individuals killed in the course of such security operations, so as to establish a jurisdictional link between the deceased and the United Kingdom for the purposes of Article 1 of the Convention⁵⁴.

Since the 2008 August War, the Russia Federation made military agreements with the de facto governments of Abkhazia and South Ossetia and deployed Russian military bases in both regions in accordance with the agreement made on September 15, 2009⁵⁵. In

<https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22loizidou%20v%20turkey%22%5D%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%5D%2C%22itemid%22:%5B%22001-58007%22%5D%7D>

⁵² Paragraph 138, *Al-Skeini and Others v. The United Kingdom*;

<https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22al%20skeini%20and%20others%20v%20uk%22%5D%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%5D%2C%22itemid%22:%5B%22001-105606%22%5D%7D>

⁵³ Paragraph 137, *Al-Skeini and Others v. The United Kingdom*;

<https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22al%20skeini%20and%20others%20v%20uk%22%5D%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%5D%2C%22itemid%22:%5B%22001-105606%22%5D%7D>

⁵⁴ Paragraph 149, *Al-Skeini and Others v. The United Kingdom*;

<https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22al%20skeini%20and%20others%20v%20uk%22%5D%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%5D%2C%22itemid%22:%5B%22001-105606%22%5D%7D>

⁵⁵ Russian Military Bases in Abkhazia, Teona Akubardia.
Georgian Foundation for Strategic and International Studies.
<http://bspn.gfsis.org/resources/articles/display/256>

November 2014, the Russian government and the representatives of the de facto government of Abkhazia signed the agreement on “alliance and integration”. One of the main directions of this agreement is creation of “common security and defense space”, including the creation of the joint military forces⁵⁶. In 2015, the process of integration of the de facto armed groups of Abkhazia with the Russian armed forces started. By 2017, approximately 4500 persons from the de facto Abkhazian forces were subjected to the Russian armed forces. In 2017, similar agreement was signed between the Russian Federation and the representatives of the de facto government of South Ossetia according to which the de facto armed groups of South Ossetia joined the armed forces of the Russian Federation⁵⁷. Besides, according to the agreements signed between the Russian Federation and the de facto governments of Abkhazia and South Ossetia in April 2009, the representatives of the Border Service of the Federal Security Service of Russian Federation are operating along the dividing lines of Abkhazia and South Ossetia⁵⁸.

Russia is responsible for the ongoing human rights violations along the dividing lines of Abkhazia and South Ossetia considering all three principles of extraterritorial jurisdiction: The Russian Federation exercises effective control in the territories of Abkhazia and South Ossetia. The Russian Federation has established control in the territories of Abkhazia and South Ossetia both with the significant military presence, as well as providing substantial support to the local de facto administrations, including significant budgetary financing, distributing Russian passports to the people living in Abkhazia and providing the relevant benefits. In 2012, Russia allocated approximately \$210 million to Abkhazia that comprises approximately 70% of the total budget of Abkhazia. As for South Ossetia, Russia allocated approximately \$170 million that comprises approximately 92% of the total budget of South Ossetia⁵⁹. Since 2012 Russia simplified the rules for receiving the Russian citizenship for the population of Abkhazia and South Ossetia and started to distribute the Russian passports on mass-scale level. In order to encourage the receiving of the Russian passports, Russia offered various benefits, including, the social assistance, pension, easier travel and educational opportunities. As a result, virtually all non-ethnic Georgian

⁵⁶ Page 6, Georgian Institute of Politics, Borderization in Georgia – Strategy of Deterring Russia’s Politics; <http://gip.ge/ge/%E1%83%91%E1%83%9D%E1%83%A0%E1%83%93%E1%83%94%E1%83%A0%E1%83%98%E1%83%96%E1%83%90%E1%83%AA%E1%83%98%E1%83%90-%E1%83%A1%E1%83%90%E1%83%A5%E1%83%90%E1%83%A0%E1%83%97%E1%83%95%E1%83%94%E1%83%9A%E1%83%9D/>

⁵⁷ Page 6, Georgian Institute of Politics, Borderization in Georgia – Strategy of Deterring Russia’s Politics; <http://gip.ge/ge/%E1%83%91%E1%83%9D%E1%83%A0%E1%83%93%E1%83%94%E1%83%A0%E1%83%98%E1%83%96%E1%83%90%E1%83%AA%E1%83%98%E1%83%90-%E1%83%A1%E1%83%90%E1%83%A5%E1%83%90%E1%83%A0%E1%83%97%E1%83%95%E1%83%94%E1%83%9A%E1%83%9D/>

⁵⁸ Page 5, *ibid*

⁵⁹ Page 15, Public Diplomacy and Conflict Resolution; <https://www.uscpublicdiplomacy.org/sites/uscpublicdiplomacy.org/files/useruploads/u35361/2012%20Paper%207.pdf>

residents in Abkhazia and South Ossetia have taken up Russian citizenship⁶⁰. Therefore, it is evident that the local de facto administrations of Abkhazia and South Ossetia are largely dependent and survive based on Russia's support. Russia's effective control over the de facto governments is also demonstrated in the presence of its large military units in the occupied territories. Besides, the human rights violations along the dividing lines are committed directly by the official representatives of the Russian authorities, including the Russian border guards who are illegally detaining the individuals, impeding their free movement, right to education and other fundamental rights. Thus, the third principle of the extraterritorial jurisdiction which gives rise to Russia's responsibility for the ongoing human rights violations along the dividing lines is also satisfied.

Human Rights Center requested information from the Office of Chief Prosecutor of Georgia as to what investigative activities were implemented and what kind of legal consequences followed the facts of the illegal detention of individuals by the representatives of the de facto and Russian forces along the dividing lines of Abkhazia and South Ossetia. According to the information received from the Office of Chief Prosecutor, regarding the facts of illegal detentions and kidnappings the investigation has started in accordance with the Article 143 of the Criminal Code of Georgia – illegal deprivation of liberty. However, according to the information received from the Office of Chief Prosecutor, due to the inability to identify the responsible individuals, no one was detained or charged.

Human Rights Center also addressed the Prosecutor General's Office of Russian Federation and Federal Security Service. Considering that the Russian Federation exercises effective control over the territories of Abkhazia and South Ossetia and is therefore responsible for the ongoing human rights violations there, Human Rights Center requested information whether or not the investigation has started and what kind of legal consequences arose as a result of the illegal deprivation of liberty, restriction of free movement and other human rights violations observed along the dividing lines. The Prosecutor General's Office has not responded to the official letter of Human Rights Center. As for the Federal Security Service, Human Rights Center requested information as to what was the basis for the detentions along the dividing lines to Abkhazia and South Ossetia, as well as who is detained and under what grounds. According to the official response of the Russian Federal Security Service, they do not possess such information as it does not belong to their competence.

⁶⁰ Pages 16-17, Public Diplomacy and Conflict Resolution;
<https://www.uscpublicdiplomacy.org/sites/uscpublicdiplomacy.org/files/useruploads/u35361/2012%20Paper%207.pdf>

INTERNATIONAL CRIMINAL COURT

The human rights violations along the dividing lines of Abkhazia and South Ossetia have been ongoing on a mass scale since the 2008 Russia-Georgia August War. The alleged war crimes and crimes against humanity committed during the 2008 August War are now investigated by the International Criminal Court. According to the Policy Paper on Case Selection and Prioritization of ICC Office of Prosecutor, one of the criteria which is taken into account when selecting the cases is impact of the crimes. In order to assess the impact of the crimes, following issues are taken into account – the increased vulnerability of victims, the terror subsequently instilled, or the social, economic and environmental damage inflicted on the affected communities⁶¹. The ongoing human rights violations along the dividing lines of Abkhazia and South Ossetia, including the violations of liberty and security, free movement and education, represent the direct result and continuation of those crimes which were committed during the war in the villages along the dividing lines. Starting the process of borderization since the 2008 August War by the Russian Federation, erecting the so-called border signs and the creeping occupation resulting in the detentions of hundreds of individuals, impeding their free movement and disrupting people-to-people contacts is a continuation of the terror brought by the 2008 August War.

The ongoing mass human rights violations along the dividing lines of Abkhazia and South Ossetia also carry the signs of the crimes against humanity envisaged by the Rome Statute of the International Criminal Court. According to the Article 7 of the Rome Statute, the crimes against humanity means various acts committed as part of a widespread and systematic attack directed against the civilian population envisaged by the Statute, including imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law. Also, persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law. 'Persecution' means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity⁶².

Crimes against humanity do not necessarily have to be linked with the armed conflict⁶³. When assessing whether or not the attack has widespread nature, the scale of the attack which includes high number of victims as well as the accumulation of underlying acts over

⁶¹ Office of the Prosecutor, Policy Paper on Case Selection and Prioritization; https://www.icc-cpi.int/itemsdocuments/20160915_otp-policy_case-selection_eng.pdf

⁶² Rome Statute; https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

⁶³ Page 502, *Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran*, International Human Rights Law, 2014.

a period of time is taken into account⁶⁴. When assessing a systematic nature, factors such as organized nature and regular patterns of the acts of violence is taken into account⁶⁵.

The mass human rights violations along the dividing lines of Abkhazia and South Ossetia contain the signs of crimes against humanity. The unlawful acts have been going on systematically for several years. These acts have widespread nature, considering that they are committed on large scale directed against majority of the individuals who are living along the dividing lines of Abkhazia and South Ossetia. These acts also have organized nature, as the de facto and Russian government forces work in coordination in an organized way when committing these acts. They also committed recurrently and are not random occurrence.

RECOMMENDATIONS

To the Ministry of Internal Affairs:

- Ensure patrolling along the dividing lines of Abkhazia and South Ossetia in the villages where the illegal deprivation of liberty is often observed;
- Establish the police posts at the end of the villages near the dividing lines where the illegal deprivation of liberty is often observed.

To the Ministry of Internal Affairs, Office of Chief Prosecutor of Georgia and EU Monitoring Mission in Georgia:

- Ensure the proper informing of the population living along the dividing line. Specifically, regarding following issues: what to do when their family member is detained, how to use hot line, what kind of help they can expect, who to contact and what information to give.

To the Ministry of Regional Development and Infrastructure and Ministry of Reconciliation and Civic Equality of Georgia, within the frameworks of the Interagency Commission on the responses to the needs of the affected communities along the dividing lines:

- Ensure rehabilitation of the houses destroyed as a result of the 2008 August War and provide compensation as well as clean drinking and irrigation water to the villages located along the dividing lines.

To the Ministry of Justice:

⁶⁴ Page 14, Crimes against Humanity, Case Matrix Network;
<https://www.legal-tools.org/doc/6de633/pdf/>

⁶⁵ *ibid*

- Use every international judicial, quasi-judicial and diplomatic mechanism in order to raise the responsibility of the Russian Federation and de facto governments for the mass human rights violations observed along the dividing lines.

To International Governmental and Non-governmental organizations:

- Work more actively against the mass human rights violations occurring along the dividing lines of Abkhazia and South Ossetia.

To government of Georgia:

- To actively discuss the issues of mass human rights violations at Geneva International Discussions and Incident Prevention and Response Mechanisms and seek the possible solutions.

To International Criminal Court:

- While selecting the cases within the ongoing investigation into the 2008 August War, it must take into account the impact of the war crimes on the affected communities living along the dividing lines of Abkhazia and South Ossetia;
- Assess the ongoing human rights violations along the dividing lines in the light of the crimes against humanity.

To the Russian Federation and de facto governments of Abkhazia and South Ossetia:

- Stop illegal detention and restriction of free movement of individuals along the dividing lines of Abkhazia and South Ossetia. Provide possibility for the Ethnic Georgians living in the Gali region to receive education in Georgian language.

To the European Union Monitoring Mission:

- Make public the reports which reflect the results of the interviews conducted with the individuals who have been detained along the dividing lines of Abkhazia and South Ossetia; assess the observed human rights violations and pass information to international human rights mechanisms.