

**STATE OF HUMAN RIGHTS
ALONG THE DIVIDING LINES OF ABKHAZIA
AND SOUTH OSSETIA, 2019**



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MAIN FINDINGS

Throughout the 2019, the representatives of the Russian Federation continued mass human rights violations along the dividing/occupation lines of the regions of Georgia - Abkhazia and South Ossetia. Throughout the year, as a result of the continued “borderization” and marking of new areas in the territory controlled by Georgia with different “border” signs, fencing and erecting barbed wires, many locals living alongside the dividing lines of South Ossetia lost their agricultural plots, which were the only source of income for their families. In some instances, as a result of the illegal borderization, the local population lost their houses together with the land, which turned up on the other side of the dividing line after the so-called “border” signs were erected. The illegal borderization restricted the access of the local population to natural resources. The borderization violated the right of property, freedom of movement and right to the inviolability of the private life, which are guaranteed under the international human rights conventions¹.

In September 2019, two crossing points which connected South Ossetia with the rest of Georgia were closed. Closure of one of them, which is located in Akhagori district, created humanitarian crisis in Akhagori and the situation remains alarming. Local population has limited access to medical services and medicines with rare exceptions. They cannot travel to the Georgia-controlled territory to continue education, to return to their jobs, to buy products or for other urgent needs². De-facto administration states that the crossing point in Akhagori was closed due to security reasons. Their argument is general and it fails to provide concrete reasons for restricting the freedom of movement of the population in individual cases that contradicts the requirements of the international human rights conventions, including the International Covenant on Civil and Political Rights and the European Convention on Human Rights. According to UN Human Rights Committee Comment N27 on freedom of movement, the application of restrictions in any individual case must be based on clear legal grounds and meet the test of necessity and the requirements of proportionality³. Restriction of the freedom of movement shall meet the requirements of the necessity and proportionality in accordance to the European Convention on Human Rights as well. In accordance to the ECtHR Case Law, in order to consider the restriction as necessary measure in the democratic society, it shall serve pressing social need, have relevant and sufficient reasons and the principle of proportionality shall be respected⁴.

De-facto administration justifies the closure of the Akhagori crossing point by existing tension in the far-away located Chorchana-Tselisi villages, where Georgian authority opened a new police post in the Georgia-controlled territory that was followed by disagreement between the de-facto administration and the Government of Georgia (GoG). So far, the de-facto administration has not provided any other argument for the closure of the Akhagori crossing point. The representatives of the de-facto administration refuse to open the crossing point in

¹ UN International Covenant on Civil and Political Rights and the European Convention on Human Rights

² The problems are described in detail in the below chapter “Closure of the crossing points and humanitarian crisis in Akhagori”

³ UN Human Rights Committee, Comment N27, Freedom of Movement, Article 12, P. 4

⁴ Janneke Gerards, “How to improve the necessity test of the European Court of Human Rights,” Oxford University Press and New-York University Law School, 2013.

Akhalgori until the GoG removes the police post in Chorchana village. Chorchana village is located in Khashuri municipality. Akhalgori district borders with the Gori municipality. Thus, it is obscure what threats could come from the Akhalgori crossing point for the situation in Chorchana-Tselisi. Therefore, the closure of the crossing point and blanket restriction of the freedom of movement cannot be applicable for the requirement on “necessity” envisaged by the international human rights conventions – the decision did not rely on relevant and sufficient reasons and did not serve pressing social need.

In accordance to the international human rights conventions, restriction of the freedom of movement must be based on concrete, individualized security needs⁵⁻⁶, which were not observed in these particular circumstances. According to the UN HRC clarifications, the relation between right and restriction must be same as between norm and exception⁷. This principle means that the restriction of the freedom of movement may be applied as an exception in individual cases based on concrete grounds. With regard to the closure of the Akhalgori crossing point this inter-relation is reversed, namely restriction of the freedom of movement is norm and is applied to all individuals, regardless urgent medical or other humanitarian needs, while the freedom of movement is granted in exceptional cases⁸. Such approach contradicts the essence of this right⁹.

The representatives of the Russian border forces continue arbitrary detention of people along the dividing line of South Ossetia. They detain people in the areas, where local population had free access before. The detentions have arbitrary nature, do not meet the principles of legal certainty and foreseeability and violate rights of liberty and security guaranteed by the international conventions on human rights. During the year, the representatives of the de-facto South Ossetian forces arbitrarily detained the observers of the EUMM in the Georgia-controlled territory¹⁰.

On March 12, 2019, in Gali District in Abkhazia, the citizen of Georgia, Irakli Kvaratskhelia allegedly committed suicide under the illegal detention by the representatives of the border forces of the Russian Federation¹¹. According to the statement of the de facto organs of Abkhazia, Irakli Kvaratskhelia committed suicide by hanging in the village Nabakevi which is situated in the occupied Gali District in border service department of the Federal Security Service of the Russian Federation. He was taken there after being detained for “illegal crossing

⁵ p 4, UN Human Rights Committee, comment N 27, Freedom of Movement, Article 12

⁶ p. 40 Human Rights Watch, “Unwilling or Unable, Israeli restrictions on Access to and From Gaza for Human Rights Workers” <https://www.hrw.org/report/2017/04/02/unwilling-or-unable/israeli-restrictions-access-and-gaza-human-rights-workers>

⁷ p 4, UN Human Rights Committee, Comment N 27, Freedom of Movement, Article 13

⁸ On December 2, 2019, the de-facto security council of South Ossetia released decree N 119, based on which, citizens of Georgia residing in Akhalgori, who do not hold the passports of de-facto region or Russia, may travel to the Georgia-controlled territory if they have urgent medical needs or need high-technology medical service which they cannot get in Tskhinvali. However, there are still cases when gravely sick patients are not allowed to pass the checkpoint and travel to the Georgia-controlled territory to get medical service.

⁹ p 4, UN Human Rights Committee, comment N 27, Freedom of Movement, Article 12

¹⁰ https://eumm.eu/en/press_and_public_information/press_releases/36655/?fbclid=IwAR3EuzN64ZbcpN1niOfDbsrVqS1aWG6wroKwMKNhj-ji3NYihpyY3oiPb4s

¹⁰ <https://civil.ge/ka/archives/279289>

¹¹ <https://civil.ge/ka/archives/279289>

of border” by the representatives of the border forces of the Russian Federation. According to the family member of Irakli Kvaratskhelia, the deceased had numerous injuries on his body, including, bruises, blue marks and open wound¹². According to the statement of the de facto Security Service of Abkhazia, the death of Irakli Kvaratskhelia was not physical violence. However, de facto organs and the Russian Federation have not clarified what could be the cause of the bodily injuries allegedly inflicted on Irakli Kvaratskhelia¹³. According to the case law of European Court of Human Rights, when the person dies under the detention, the government bodies bear the burden of proof to present convincing explanation regarding his/her death¹⁴. In this case this burden lies on the Russian Federation which exercises effective control over the regions of Georgia – Abkhazia and South Ossetia – therefore it is obliged to ensure protection of fundamental rights and freedoms in these regions. The Russian Federation has not provided convincing explanation regarding the death of Irakli Kvaratskhelia that contradicts article 2 of European Convention of Human Rights. The obligation to ensure right to life also envisages taking preventive measures towards the detained individual when he/she is under the risk of suicide, checking his/her mental state and providing relevant medical treatment¹⁵. It is unknown whether or not such measures were taken towards Irakli Kvaratskhelia under the detention. Also, in accordance to the positive obligation under right to life, the state must comprehensively and effectively investigate the circumstances which are related to the death of the person under the detention¹⁶. The Russian Federation must conduct comprehensive investigation whether or not there was crime committed against Irakli Kvaratskhelia, what was the cause of his suicide and present convincing explanation regarding these issues.

The Russian Federation also bears obligations under the international humanitarian law over Abkhazia and South Ossetia considering that it is occupying these territories.

According to the Article 42 of the Hague Regulations, “territory is considered occupied when it is actually placed under the authority of the hostile army¹⁷.” After the 2008 August War, Russia signed military agreements with the de-facto governments of Abkhazia and South Ossetia and deployed its military bases in both regions. Besides that, since 2014, based on the new agreements on alliance and integration with the de-facto authorities, which aims “to create joint defense and security space”, the armed groups of the de-facto regions joined the Russian Armed Forces¹⁸. At the same time, based on the April 2009 agreements signed by the Russian Authority and de-facto governments of Abkhazia and Tskhinvali, the border forces of the Russian Federal Security Service control the dividing lines 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

¹² <http://bit.ly/2R9m2IE>

¹³ *ibid*

¹⁴ *Akkum and Others v Turkey*

¹⁵ *Renolde v France*

¹⁶ *Fonseca Mendes v Spain*

¹⁷ the Hague Regulations, 1907, Article 42

¹⁸ By 2017, around 4500 military personnel were under the subordination of the Russian Armed Forces. . Similar agreement was signed between the representatives of the Russian Federation and Tskhinvali de-facto government in 2017, according to which the armed groups of Tskhinvali region joined the Russian Armed Forces.

facto administrations, (including significant budgetary financing, distribution of Russian passports for the people living in Abkhazia and providing relevant benefits)¹⁹. The military forces of Russia are deployed on the territory of Georgia against the will of Georgia. Considering these reasons, the regions of South Ossetia and Abkhazia are occupied by Russia.

In accordance to the Geneva Conventions of 1949, Additional Protocol I²⁰, if the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal. Such schemes, which may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing.

Currently, only the International Committee of Red Cross has access to Akhagori, which is the only international humanitarian organization operating in the occupied South Ossetia. However, the mandate of the ICRC is restricted and it cannot satisfy all needs of the district population, which is in critical situation now²¹. The de-facto government of South Ossetia and the Russian Federation shall allow other international humanitarian organizations to enter Akhagori, study the humanitarian needs of the local population and provide them with adequate aid.

ILLEGAL BORDERIZATION IN CHORCHANA VILLAGE

About 60 individuals live in Chorchana village of Khashuri municipality. Tselisi is the neighboring village, which has been occupied by Russia since 2008 and is under the control of the de-facto administration of South Ossetia²². The village is of particular interest for all parties as there are minerals in the village – ore of talcum powder and marble²³.

The Khashuri municipality is not divided from the neighboring occupied territories by barbed wires. Frone River was a division line for the local population²⁴. They knew that the territory controlled by the de-facto administration started from the other bank of the river, in the north of the village²⁵. The territory to the south of the river was safe for them. However, in February, 2019 the situation changed after the representatives of the Russian Federation and the de-facto administration of South Ossetia installed new signs in the area. Namely, they marked the trees in red in the Tsagvli village forest, another village in Khashuri municipality, where the ore of talcum and marble is located²⁶. Afterwards, people residing in the Georgia-controlled

¹⁹ p. 39, HRC “Zone of Barbed Wires: Mass Human Rights Violations along the Dividing Lines of Abkhazia and South Ossetia” <http://hrdc.org/admin/editor/uploads/files/pdf/hrcprep2018/Zone%20of%20Barbed%20Wires-Report%20-eng%202019.pdf>

²⁰ Geneva Conventions of 1949, Additional Protocol I, Article 59

²¹ See the chapter – “Closure of the Crossing Points and Humanitarian Crisis in Akhagori”

²² <https://netgazeti.ge/news/389205/>

²³ <https://www.amerikiskhma.com/a/iprm-ergneti-georgia-south-osetia-meeting-chorchana/4780786.html>

²⁴ <https://www.amerikiskhma.com/a/iprm-ergneti-georgia-south-osetia-meeting-chorchana/4780786.html>

²⁵ <https://www.amerikiskhma.com/a/iprm-ergneti-georgia-south-osetia-meeting-chorchana/4780786.html>

²⁶ Read the article of the Radio Liberty <https://bit.ly/36KEWEU>

territory, with the fear of arrest, could not dare to enter the forest, while they traditionally used the resources of the forest before – collected mushrooms and firewood there²⁷.

Vice-speaker of the de-facto parliament of South Ossetia Ruslan Tedeev stated on June 21, 2019 that “residents of Tselisi village in Znauri, same as Kornisi community requested correction of the border,²⁸” for what, according to their statement, “the so-called border alongside the Tselisi village will be marked otherwise²⁹”.

Deputy head of the Analytic Department of the State Security Service of Georgia Irakli Antadze made statement in response to the abovementioned activities of the de-facto forces and he underlined the responsibility of the Russian border officers over the situation alongside the dividing line and announced that the Government of Georgia will take concrete steps to protect safety of local population³⁰.

Afterwards, in spring 2019, Khashuri municipality allocated funds to rehabilitate the road in Chorchana forest. The process lasted about 5 months and finished by the end of August. On August 20-24, 2019, the Government of Georgia constructed a police post in Chorchana village in the Georgia-controlled territory³¹. According to the State Security Service of Georgia, the police post in Chorchana was standard police unit, whose purpose was to ensure safety of the local population³². At the same time, the de-facto forces of South Ossetia installed new signs of borderization in the nearby territory. According to the EUMM, one of the signs – a flag of the self-proclaimed republic of South Ossetia was installed one kilometer inside the Georgia-controlled territory³³. The State Security Service of Georgia reported that on August 28, military vehicles of the Russian occupation forces moved around nearby Chorchana village in the occupied territory³⁴. Namely, heavy military equipment was detected in the occupied Tselisi village³⁵.

De-facto government of South Ossetia reacted to the construction of the police post in Chorchana village with ultimatum. On August 29, Igor Kochiev, deputy representative of the de-facto president of South Ossetia on the regulation of post conflict issues, stated that during the meeting in the frame of the Incident Prevention and Response Mechanism “the Ossetian delegation requested the Georgians to remove the police post by 6 AM of Friday. Unless the request is satisfied, the Government of the Republic will use all legal measures to defend the people and state border of South Ossetia”.³⁶ The Georgian side did not satisfy the ultimatum of the de-facto government of Tskhinvali region and did not remove the police post. Afterwards, the de-facto government of Tskhinvali region constructed a new police checkpoint in the occupied Tselisi village, next to Chorchana village. In September 2019, nearby Chorchana and

²⁷ See more information <https://bit.ly/35HdDKr>

²⁸ <https://www.amerikiskhma.com/a/iprm-ergneti-georgia-south-osetia-meeting-chorchana/4780786.html>

²⁹ Ibid

³⁰ <https://bit.ly/39T6LwF>

³¹ <https://netgazeti.ge/news/391839/>

³² <https://civil.ge/archives/320211>

³³ <https://netgazeti.ge/news/391839/>

³⁴ <https://netgazeti.ge/news/388884/>

³⁵ See more information <https://bit.ly/35EOH68>

³⁶ <https://www.radiotavisupleba.ge/a/30136568.html>

Tsagvli villages, the representatives of the de-facto armed forces constructed two more checkpoints in the forest³⁷.

On October 24, representatives of the de-facto forces of South Ossetia arbitrarily detained the observers of the EU Monitoring Mission in the Georgia-controlled territory nearby Chorchana-Tsnelisi villages³⁸. The EUMM monitors were released soon after the hotline communication started.

ILLEGAL BORDERIZATION CONTINUED IN GUGUTIANTKARI VILLAGE

Gugutiantkari village is located along the Administrative Border Line of South Ossetia in Gori municipality. During the August 2008 War the village was seriously damaged – houses were burnt and agricultural plots were destroyed. In 2017, representatives of the Russian Border Forces appeared in the village and started installment of barbed wires. As a result, part of the yard and warehouse of a local inhabitant – Dimitri Gugutishvili turned up in the Tskhinvali controlled territory³⁹. As a result of the Russian borderization in Gugutiantkari in 2017⁴⁰, the locals lost access to pastures, agricultural land, fruit-gardens, forest and water resources⁴¹.

In August, 2019, the process of illegal borderization renewed in Gugutiantkari village. Namely, representatives of the border forces of the Russian Federation installed a fence in one part of the village, as a result of what they deeply entered inside the territory controlled by the central authority of Georgia. As a result, the houses and estate of two families living in Gugutiantkari, that was the main source of income for them, turned up in the occupied territory. The families had to dismantle their houses in the timeframe determined by the occupation forces and transport the construction materials to the Georgia-controlled territory⁴².

HRC representatives visited Gugutiantkari village in September 2019, where they examined the territory where the fence was illegally installed and the houses dismantled on the other side of the fence.

³⁷ See more information <https://bit.ly/37Skj9V>

³⁸ https://eumm.eu/en/press_and_public_information/press_releases/36655/?fbclid=IwAR1hAHNP3TDhDa1-Y1yP3PooM4eK9P7lvCljIAxa8G6GM0rW858M0PcNIkA

³⁹ See more information <https://bit.ly/36KDbYi>

⁴⁰ Borderization is unilateral installment of border signs, fences and barbed wires by the Russian Federation alongside the ABL, which aims to separate Abkhazia and South Ossetia from the rest territory of Georgia

⁴¹ p. 7 Amnesty International, “Behind Barbed Wires: Human Rights Toll of “Borderization” in Georgia

⁴² <http://humanrights.ge/index.php?a=main&pid=19939&lang=eng>



(in the photos: illegally erected fence by the Russian Federation in Gugutiantkari village and the houses now located in the occupied territory, which were dismantled by the owners in the timeframe fixed by the occupation forces)

CONTINUED BORDERIZATION IN ATOTSI VILLAGE

After the August 2008 War, the representatives of the border forces of the Russian Federation installed various signs of borderization in Atotsi village, Kareli municipality, which is located adjacent to the dividing line of South Ossetia. In 2014, barbed wires were installed in one part of the village, as a result of what the local population lost access to their agricultural plots.

Borderization process continued in Atotsi village in 2019. Representatives of the border forces of the Russian Federation set up new occupation fence in the village on October 19⁴³. As a result of the new stage of borderization, the plots of the local population, about 30-40 hectares of the land, are now on the other side of the fence. The population lost access to the plots and they no longer can cultivate them. According to the locals, after the new fences were erected, the so-called border was moved 300 meters deep inside the Georgia-controlled territory from Atotsi village and the Ossetian village Okona⁴⁴. According to locals, the so-called border officers often patrol nearby the village, ambush locals and detain them⁴⁵.

When commenting on the situation in Atotsi village, the Minister of Interior Vakhtang Gomelauri stated that it is not correct that Georgia lost additional territories as a result of recent developments.

“It is bad when people say that the state lost additional territories with the new fences. We lost those territories as a result of 2008 August War. In 2008, the occupation line was signed according to which Russian and Ossetian sides will be on the other side of that line, while Georgian side will be on this side. Do we cross the line where they have not erected the fences? Do we cultivate or plant anything there? The territory is closed. Whether it will be a fence or a Russian army, they will not allow us to cross the line and the situation does not change. Do we cross the line where there is no fence? No, we don’t. It is closed. Of course it is very bad that they erect fences and draw division lines, but it is not correct that the Government of Georgia lost another 500 meters of land,” Vakhtang Gomelauri said.

The statement of the Minister of Interior contained substantially incorrect information. According to the Minister, as a result of the recent borderization in Atotsi, Georgia has not lost additional territories. However, it is not true. Throughout 2019, the lands of local population, which they cultivated before the borderization without any problems, turned up on the other side of the fences. The statement of the Minister as if the abovementioned territory was lost as a result of the 2008 August War instead of the recent creeping occupation, based on which the Russian Federation misappropriated additional territory, is incorrect.

HRC representatives, in the frame of the NHC supported project “Support to the Victims of 2008 War and ICC Investigation in Georgia,” visited Atotsi village in April 2019 before the borderization process renewed. In the village, before the renewed borderization, one of the signs of the so-called border marked by the Russian Federation was banner in Georgian and

⁴³ <https://bit.ly/2sIF9zx>

⁴⁴ *ibid*

⁴⁵ *ibid*

Russian languages indicating that the territory was “state border” and “movement was prohibited.” Similar banners are installed in many villages along the dividing line of South Ossetia. During the visit in Atotsi, HRC representatives went to the territory, where the banner is placed. The agricultural plots of the local population were located in the area. According to the information of the villagers, representatives of the Russian Border Forces used to cross the territory marked by the banner and used to enter the Georgia-controlled territory, where they used to detain people while they were working on their plots. Therefore, the locals stopped cultivating the lands for some time because of the fear of being captured. However, as locals reported, after the members of the public movement *Power Is in Unity* appeared in their village and started patrolling in the mentioned territory with video-equipment, the situation changed and the Russian soldiers avoided entering the Georgia-controlled territory and detention of the locals. As the villagers said, afterwards, they had possibility to cultivate their plots. As the locals said, after the activity of the members of the civil movement, the Georgian law enforcement officers also started patrolling in their village.

As a result of the illegal borderization in October 2019, the right of the local population to have access to their land and the main source of their income is violated in Atotsi village.

CLOSURE OF THE CROSSING POINT AND HUMANITARIAN CRISIS IN AKHALGORI

In the beginning of September 2019, based on the decision of the de-facto administration of South Ossetia, two crossing points “Razdakhani” and “Sinaguri” were closed, which connect South Ossetia with the rest of Georgia. According to the statement of the de-facto security committee of South Ossetia, the reason of the closure was the safety of the population of South Ossetia. The de-facto administration blamed Tbilisi in creation of tense situation in some parts of the ABL with South Ossetia and indicated at the complicated operative situation caused by those facts⁴⁶.

One of the crossing points – “Razdakhani”, which was closed in September 2019, is located on the territory between Akhalgori district and Tbilisi-controlled territory⁴⁷. The de-facto authority connected the closure of the crossing point with the situation in Tsnelisi-Chorchana villages and refused to open the crossing point until the conflict is resolved⁴⁸. The Akhalgori district population used to travel to the Georgia-controlled territory via the “Razdakhani” crossing point to get various services including medical services, also to buy medicines and get pension. As a result of closure, the local population has restricted access to the abovementioned services and needs. In order to get medical service, besides some rare exceptions, the population has to travel to Tskhinvali, which is far from Akhalgori and requires additional financial resources. In the end of October, de-facto forces did not allow an emergency ambulance to transport a patient from Ikoti village of Akhalgori district to the Georgia controlled territory, who had a stroke and needed immediate and high-qualified medical aid. Afterwards, the ambulance drove

⁴⁶ <https://bit.ly/35OMPrN>

⁴⁷ <https://bit.ly/2Nrj9KV>

⁴⁸ Ibid

to Tskhinvali but the patient passed away in Tskhinvali hospital, allegedly because of delayed medical help⁴⁹.

On December 2, the de-facto security council of South Ossetia issued edict N 119, according to which, citizens of Georgia residing in Akhagori, who do not hold the passports of the de-facto region or Russian passports, may travel to the Georgia-controlled territory to receive emergency or high-technology medical service if similar service is not available in the occupied territory⁵⁰⁻⁵¹. However, there are still instances, when patients with grave health problems are not allowed to cross the crossing point and enter the Georgia-controlled territory to get medical service⁵².

On December 2, based on the edict of the de-facto security council of South Ossetia, the retired people, who get pensions from Georgia and hold only Georgian citizenship, will be allowed to get their pensions⁵³. On December 12, it was reported that the retired people will be allowed to leave Tskhinvali region and travel to the Georgia-controlled territory only once in two months⁵⁴. The information was not yet confirmed by the official sources. No retired person has crossed the “Razdakhani” crossing point so far.

Closure of the crossing point connecting the Akhagori district and Georgia-controlled territory and restriction of the access of the district population to humanitarian needs violates the principles of the international human rights law and international humanitarian law.

In accordance to the UN International Covenant on Civil and Political Rights (ICCPR), the freedom of movement shall not be subject to any restrictions except for those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the Covenant. The closure of the crossing points between South Ossetia and Georgia-controlled territory and restricting freedom of movement does not meet any grounds enumerated in the ICCPR. Referring to the tense situation in Chorchana-Tselisi by the de-facto forces of South Ossetia as a reason of the closure of the crossing points, cannot be explained by the reasons of protection of national security or public order, because those territories are far from each other and the administration of South Ossetia could not present concrete arguments why it was necessary to restrict liberty of movement through closing the crossing points.

ARBITRARY DETENTIONS

During 2019, the representatives of the border forces of the Russian Federation continued illegal detentions of the individuals along the dividing lines of South Ossetia and Abkhazia. In

⁴⁹ <https://bit.ly/2NpjCNr>

⁵⁰ <https://bit.ly/2FQfoKQ>;

⁵¹ <https://bit.ly/2QRa9AB>

⁵² <https://netgazeti.ge/news/417218/>

⁵³ <https://netgazeti.ge/news/410841/>

⁵⁴ <https://reginfo.ge/people/item/17430-axalgorel-pensionerebs-%E2%80%99Erazdaxanis%E2%80%9C-sagushaos-gavla-2-tveshi-ertxel-sheewlebat>

2018, HRC observed many facts, when the representatives of the Russian Border Forces arbitrarily detained people under the charge of illegal crossing of the so-called border in the territories where there were no signs of the so-called administrative boundary line. In 2018, HRC identified several cases, when the population cultivated the plots in the previous years, where there were no signs indicating the so-called dividing line. However, all of a sudden, without any warning, the people were arbitrarily detained in those territories⁵⁵. Also, in 2018, there were cases, when Russian border guards crossed the dividing line including the barbed wires, which they had installed themselves, entered the Georgia-controlled territory and arrested people⁵⁶.

Throughout 2019, Russian border guards continued arbitrary detentions of the people under the charge of illegal crossing of the so-called border along the dividing line in the territories, where there are no signs of the so-called Administrative Border Line. Similar territory is Akhalubani village, where Russian border guards arbitrarily detained 7 locals under the charge of illegal crossing of the so-called border nearby the church on August 17, 2019⁵⁷. According to the locals, there are no signs of the dividing line in the village and they might be captured anywhere in the village territory⁵⁸. Representative of the de-facto president of South Ossetia on the post-conflict regulation issues Murat Jyoev stated that those people were arrested in the South Ossetian settlement of Adzesari for illegal crossing of the so-called border⁵⁹. He added that the detainees were drunk and under influence of narcotic substances⁶⁰. However, the detainees were charged only for illegal crossing of the so-called border. The de-facto administration of South Ossetia released the detainees on August 20 after they paid the fine⁶¹.

On November 11, 2019, HRC received a response from the State Security Service of Georgia to the letter of HRC, which notified that from January 1 to November 1, 2019, they had identified 71 cases of arbitrary detentions of people by the Russian occupation forces in the direction of Tskhinvali region; among the detainees 9 individuals were women and 1 - underage person. According to the Service, the arbitrary detainees are released after they pay so-called fines whose amount varies from 2000 (approximately 90 GEL) up to 20 000 Russian Rubles (approximately 900 GEL). As for the territory of the occupied Abkhazia, the fine amount varies from 30 000 (480 GEL) up to 60 000 Russian Ruble (960 GEL). According to the SSSG, mostly, the arbitrary detentions last 2-3 days. However, there are instances, when arbitrary detainees, based on fabricated charges, stay in prison for longer period. Unlike the occupied Tskhinvali, the detention period in occupied Abkhazia is much longer. According to the information provided by the SSSG, from January 1 to November 1, 2019 the Russian occupation forces arrested 20 persons for illegal crossing of the so-called border in the direction of Abkhazia; among the detainees 1 individual was woman and 2 - underage.

⁵⁵ p.13-15, Human Rights Center, "Zone of Barbed Wires: Mass Human Rights Violations along the Division Lines of Abkhazia and South Ossetia," <https://bit.ly/2FQIVE7>

⁵⁶ *ibid*

⁵⁷ <http://humanrights.ge/index.php?a=main&pid=19939&lang=eng>

⁵⁸ *ibid*

⁵⁹ <https://bit.ly/36QwrYZ>

⁶⁰ *ibid*

⁶¹ <https://bit.ly/2uL75NW>

The 2018 report of Human Rights Center revealed that during the arbitrary detention, if the detainees resist the officers, they often beat them as a result of what the detainees get physical injuries⁶² that contains signs of inhuman and degrading treatment. The HRC report also revealed that there are ill conditions in the detention settings – lack of fresh air, pollution, lack of hygiene items, delays in supply of food, poor quality of food, and more.

“There are bad conditions in the prison, particularly in the punishment room in the basement. There is no air and the walls are damp. They gave food only once a day. I spend three days without food,” resident of Bershueti village Shota Bidzinashvili reported, who was arbitrarily arrested in November, 2019⁶³ and spent 5 days in Tskhinvali based detention setting.

Shota Bidzinashvili was arrested nearby Bershueti village. The village borders the occupied territory and the facts of arbitrary detention of locals are quite frequent. The local people, often, are arrested when they are pasturing the village cattle or are collecting firewood or mushrooms in the forest⁶⁴. HRC identified the facts of illegal detention of local people during the visits in Bershueti village and from the interviews with local people in 2018 and in 2019. According to their information, with the fear of being captured, the locals are afraid to enter the forest to collect firewood.

Shota Bidzinashvili also spoke about the beating during the detention. He said, he resisted the Russian border officers and told them that they were in the Georgian territory illegally for what they hit him in the head with the grip of the firearm. He was placed in the Tskhinvali detention setting with injuries on the head. He could not get doctor’s help and medicines. As Shota Bidzinashvili reported, on November 9, arbitrarily detained doctor Vazha Gaprindashvili was brought into his cell who put wet clothes on his wounds on the head⁶⁵.

In accordance to the international conventions on human rights⁶⁶, prohibition of torture, inhuman and degrading treatment is absolute prohibition. There are no circumstances, which can justify similar treatment. The member states shall adequately investigate similar facts and punish perpetrators. The Russian Federation, which exercises effective control over the self-proclaimed Republic of South Ossetia⁶⁷ and whose representatives allegedly inhumanly treated the arbitrarily detained people, is obliged to conduct effective investigation over those facts and punish perpetrators. The Russian Federation has not implemented its obligation so far.

⁶² Human Rights Center, “Zone of Barbed Wires: Mass Human Rights Violations along the Division Lines of Abkhazia and South Ossetia,” <https://bit.ly/2FQIVE7>

⁶³ <https://netgazeti.ge/news/407156/>

⁶⁴ <https://www.radiotavisupleba.ge/a/dakaveba-bershuettan/26634779.html>

⁶⁵ <https://bit.ly/2QTrPfa>

⁶⁶ UN International Covenant on Civil and Political Rights, European Convention on Human Rights and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

⁶⁷ Human Rights Center, “Zone of Barbed Wires: Mass Human Rights Violations along the Division Lines of Abkhazia and South Ossetia” <https://bit.ly/2FQIVE7>

ARBITRARY DETENTION OF DOCTOR VAZHA GAPRINDASHVILI

On November 9, 2019, the Russian border guards arrested Doctor Vazha Gaprindashvili near the Akhagori district dividing line. He is a president of the Georgian Association of Orthopedics and Traumatology. The family members assumed that the doctor was going to Akhagori to examine the patients there, who could not get medical service because of closed crossing point⁶⁸. The doctor was sentenced to two-month pretrial detention for the illegal crossing of the so-called border⁶⁹. The de-facto administration of South Ossetia disseminated information that the doctor had taken part in the 2008 August War as a captain of the military-medical unit⁷⁰. However, the family members and the representatives of the medical field denied this information. According to their statement, during the August War Doctor Gaprindashvili worked in Tbilisi based hospital and treated the patients wounded during the military operations.

On December 20, the Tskhinvali de-facto court found Gaprindashvili guilty “in the intentional illegal crossing of the state border” and sentenced him to imprisonment for one year and 9 months during the closed hearing⁷¹. Vazha Gaprindashvili did not plead guilty. He does not recognize the dividing line of South Ossetia as a state border. The cases processed by HRC in 2018 revealed that when people were charged of “illegal crossing of the so-called border”, the de-facto institutions mostly imposed fines on the detainees and released them in several days unless there were no other charges brought against them. For example, resistance to the Russian border officers or de-facto law enforcement officers or had committed other criminal offences according to the allegations of the de facto organs⁷². The de-facto administration of Tskhinvali did not charge Doctor Vazha Gaprindashvili for any other violation besides the “illegal crossing of the so-called border”. Consequently, it can be concluded that his sentence was stricter in comparison to other cases because he did not admit the imposed charge.

The arrested doctor was released on December 28, 2019. As reported by the local South Ossetian media, the de-facto president of South Ossetia Anatoly Bibilov pardoned him⁷³. According to the statement of Vazha Gaprindashvili, he wrote petition on pardon on December 27, but he did not plead guilty in the imposed charge in the petition⁷⁴.

⁶⁸ <https://www.radiotavisupleba.ge/a/30277805.html>

⁶⁹ *ibid*

⁷⁰ <https://bit.ly/2uRjz1V>

⁷¹ <https://reginfo.ge/human-rights/item/17469-eqim-vaja-gaprindashvils-zxinvalshi-1-xlit-da-9-tvit-patimroba-miusajes>

⁷² Human Rights Center, “Zone of Barbed Wires: Mass Human Rights Violations along the Division Lines of Abkhazia and South Ossetia,” <https://bit.ly/2FQlVE7>

⁷³ <https://bit.ly/2suWkia>

⁷⁴ <https://bit.ly/2uIBSLh>

DEATH OF IRAKLI KVARATSKHELIA

On March 12, 2019, Georgian citizen Irakli Kvaratskhelia allegedly committed suicide in Gali district. According to the de-facto security service of Abkhazia, Irakli Kvaratskhelia had “illegally crossed the state border of Abkhazia” and on March 10, the officers of the border unit of the Russian Federal Security Service arrested him. According to them, “he was taken to the unit of the border police. He hung up himself in the room where he was alone. The doctors could not save him.”⁷⁵

Step-brother of Irakli Kvaratskhelia – Paata Uzarashvili said, who examined the body of the deceased man, that he had bruises, blue marks and open wound⁷⁶. According to Paata Uzarashvili, Irakli Kvaratskhelia was arrested at the Khurcha-Nabakevi crossing point, where he tried to go to Zugdidi, Georgia-controlled territory⁷⁷.

The Russian Federation exercises effective control over the regions of Georgia – Abkhazia and South Ossetia therefore it bears the obligations to ensure right to life in these regions according to the European Convention of Human Rights. The Russian Federation must provide convincing explanation regarding the multiple injuries which were allegedly observed on the body of the deceased and it must conduct comprehensive investigation whether or not he was driven to commit suicide. Also, the Russian Federation must explain whether or not his mental state was examined during the detention, whether or not risk of suicide was assessed and preventive measures taken in order to diminish these risks.

REGISTRATION OF AGRICULTURAL LAND ALONGSIDE THE OCCUPATION LINE

Ditsi Village

Ditsi village in Gori municipality is located along the occupation line of South Ossetia. In 2013, the border officers of the Russian Federation set up barbed wires in one part of Ditsi village. The iron poles were installed about 120 meters deep inside the Georgia controlled territory, as a result of what the locals lost access to their agricultural lands⁷⁸.

On March 29, 2018, resident of Ditsi village (Berula) I.B addressed HRC Shida Kartli office for help, who owns and cultivates land located nearby the occupation line. I.B managed to register one part of the land in the National Agency of Public Registry without problems but the Agency refused to register the second part of the land stating that it was occupied. However, in fact, the land was not occupied and it was located on this side of the occupation line and banner, in the Georgia-controlled territory. I. B does not have problem to enter his land and work on it. He

⁷⁵ <https://bit.ly/30nFdex>

⁷⁶ <https://bit.ly/2FTM06p>

⁷⁷ *ibid*

⁷⁸ <https://old.civil.ge/geo/article.php?id=26984>

submitted all necessary documents to the Public Registry but in vain. With the legal advocacy of HRC lawyer I.B lodged administrative lawsuit to the court and requested to annul the acts of the National Agency of the Public Registry (NAPR).

On April 25, 2018, at the preparatory session, the NAPR representative presented unidentified map, where the registration zone was marked (border). However, the representative of the NAPR could not clarify based on which sources the map was created and by whom. In order to answer the mentioned questions and to provide additional documents, the court hearing was postponed to May 16. On May 16, 2018, the Gori district court fully satisfied the appeal of I.B and ordered the NAPR to register the disputed land as his property. The NAPR appealed the court judgment in the Tbilisi Appellate Court but the latter did not satisfy the appeal of the NAPR either and upheld the judgment of the Gori district court. Finally, the NAPR did not appeal the decision of the Tbilisi Appellate Court and the decision of the Gori district court was enforced, based on which I.B's lawsuit was satisfied and the acts of the NAPR were annulled. The Agency was ordered to register the disputed land on I.B.

Akhrisi Village

Akhrisi village in Gori municipality is located nearby the dividing line of South Ossetia. As a result of continued borderization, which started in Akhrisi village in 2012, the land of G. Kh, beneficiary of Human Rights Center, turned up in the occupied territory. G. Kh lost access to his plot and could not get income from it. Nevertheless, the Revenue Service sequesters his property every year and charges his property with taxes. Every year, G. Kh has to file an application clarifying that the plot is located in the occupied territory and it cannot be taxed. He many times petitioned the local self-governmental bodies for help but in vain.

Upon the HRC petition, the Ministry of Finances ordered the Revenue Service to re-consider the complaint of G. Kh with regard to discharging his property from taxes; the Revenue Service re-considered the complaint and decided to fully free G. Kh from the imposed property taxes.

Social-economic Problems in the Villages along the Dividing Line

In 2019, HRC representatives visited and identified significant social-economic problems in the villages along the dividing line in Gori district – Tsitsagiantkari, Jariasheni and Gugutiantkari.

In Tsitsagiantkari village, according to the information provided by the local population, part of the population is not properly supplied with the drinking water. Non-existence of outpatient care facility is significant problem. The villagers have to go to the neighboring village of Akhrisi, 2-3 kilometers away, to get first medical aid. According to the locals, the local self-government promised them to build outpatient care facility in the frame of the Village Assistance Program. Besides that, the locals complained that combine harvesters are not sent to their village because they have small corn-fields and cannot harvest the corn. The population does not get any help from the local government.

As a result of the Russian borderization in Jariasheni village, more precisely as a result of new tillage alongside the occupation banners, approximately 30 hectares of the local population turned up on the other side of the occupation line and the people lost chance to cultivate and harvest there. The damaged road to the village is also a significant problem and it needs rehabilitation.

The safety problem is also acute in the mentioned villages. Although the villages are located alongside the dividing line, there were no representatives of the MIA patrolling on the ground. In Tsitsagiantkari village, the irrigation channel was the so-called dividing line. In Akhrisi and Jariasheni villages, the plots were ploughed near the banners, which the occupation regime had marked as their controlled territory. According to locals, Russian border officers arbitrarily arrest people in all three villages.

Polluted drinking water is a significant problem in Gugutiantkari village. As a result of HRC advocacy in 2018, HRC received a promise from the Gori municipality mayor that they would replace the old reservoir. However, HRC representatives found the same situation in the village in July 2019.

On November 11, 2019, HRC petitioned the Gori municipality city hall and requested information regarding the problems identified by them in different villages along the occupation line (Gugutiantkari, Zardiaantkari, Bershueti, Kirbali, Jariasheni, Tsitsagiantkari), including the villages which HRC visited in 2018. The organization was interested whether the local authority had satisfied the needs of the local population and what was planned in this direction.

On November 21, 2019, HRC received an answer from the Gori municipality city hall, which stated that in the frame of the Village Support Program, in 2019, they planned to purchase a outpatient care facility in Tsitsagiantkari village; they were working on respective procedures to announce tender competition. In the same village, they had prepared project documentation to implement necessary works to arrange water-supply system. In accordance to the provided information, the municipality administration was eventually working on the arrangement of water-supply systems in all villages along the dividing line. In 2020, the city hall has planned to rehabilitate the Kirbali-Bershueti road and arrange irrigation channels in Kirbali village.

Investigation of the 2008 August War by the ICC

In 2019, with regard to the ongoing investigation into the 2008 August War by the International Criminal Court, the statement of the Prosecutor Fatou Bensouda at the Assembly of the Rome Statute Member States in The Hague, in December 2019 was significant news. The Prosecutor Fatou Bensouda noted that the investigation into the situation of Georgia is followed by numerous challenges, including the fact that long period has passed since the war as well as Russia's refusal to cooperate with the investigation. Despite this, according to the Prosecutor,

the investigation has entered active phase and there may be certain results in the nearest period⁷⁹.

In 2019, the ICC Trust Fund for Victims supported the assessment of the state of victims in Georgia and in May 2020, the TFV board will make decision regarding the need of implementation of concrete assistance programs for the support of victims in Georgia.

The outreach office of the ICC continues operation in Georgia. The office implements various awareness-raising and informative activities, including the meetings with the victims and wider society. It is essential that the local office was better equipped with human and financial resources to make its work more active and effective. Throughout the year, the office held informative meetings with the NGOs, in which the members of the Georgian Coalition for the ICC also participated⁸⁰.

In May 2019, the delegation of the ICC composed of the representatives of the Registry, Public Information and Outreach Section, Victim's Participation and Reparation Section, OTP and Trust Fund for Victims visited Georgia. The ICC delegation held meetings in two IDP settlements in Shavshvebi and Prezeti. The members of Human Rights Center and other member organizations of the GCICC participated in the meetings. The ICC Delegation members informed the victims about the ongoing investigation into the Georgian situation and their rights; they answered the questions of the victims. Representatives of the Section on Victims' Participation and Reparation held training about the rights of victims and legal representation for the lawyers.

On May 20-24, 2019, annual round table meetings took place between the representatives of International Criminal Court and non-governmental organizations in Hague, Netherlands. The representatives of Human Rights Center, Article 42 of Constitution, Georgian Young Lawyers Association and Georgian Center for Psychosocial and Medical Rehabilitation of Torture Victims attended the meetings from Georgia. The representatives of Georgian NGOs highlighted the challenges related to the ongoing ICC investigation of 2008 August War in Georgia and called on the representatives of the ICC Office of Prosecutor to pay attention to the most large-scale and grave crimes, including ethnic cleansing of Georgian population. The representatives of the NGOs also underlined the fact that considering the mass scale of the crimes committed against the ethnic Georgians, the OTP must determine the highest ranking officials responsible for the crimes. The attention was also drawn to the importance of the Georgia investigation for the regions beyond the African continent, considering that it is the first non-African investigation which will have an impact on public support and trust towards the ICC in future as well as raising awareness⁸¹.

⁷⁹ See more information <http://humanrights.ge/index.php?a=main&pid=20010&lang=eng>

⁸⁰ Article 42 of Constitution; Georgian Center for Psychosocial and Medical Rehabilitation of Torture Victims (GCRT); Georgian Young Lawyers Association; Human Rights Center; Human Rights Priority; International Center on Conflict and Negotiation; Justice International.

⁸¹ See more information <http://humanrights.ge/index.php?a=main&pid=19877&lang=eng>

In 2019, HRC continued advocacy to defend the rights of the victims of 2008 August War and to continue the investigation on the domestic level. In 2019, as a result of the address of HRC, the Chief Prosecutor's Office granted status of victim to 7 persons and passed relevant resolutions. As a result of the address of Human Rights Center, during last three years, the Chief Prosecutor's Office granted victim status to 49 individuals victimized as a result of 2008 August War.

RECOMMENDATIONS

To the Russian Government and de-facto authority of South Ossetia:

- To immediately open the crossing point "Razdakhani", which connects Akhagori district with the rest of Georgia;
- To allow international monitoring missions and humanitarian organizations to enter Akhagori district;

To the Government of the Russian Federation:

- To stop illegal borderization and mass violation of human rights along the dividing lines of Abkhazia and South Ossetia;
- To stop occupation of the Georgian territory and respect sovereignty and territorial integrity of Georgia.

To the Government of Georgia:

- To use all available diplomatic and international legal mechanisms to compel the Russian Federation to stop occupation of the Georgian territory and mass violation of human rights on the dividing lines;
- To intensify police patrolling in the villages along the dividing line of Abkhazia and South Ossetia/Tskhinvali region, where facts of arbitrary detentions and borderization are observed;
- To conduct informative and awareness-raising activities about security measures for the local population in high-risk zones along the division line.

To international organizations and community:

- To intensify their effort to fight against the mass violation of human rights in Abkhazia and South Ossetia and to implement monitoring activities in the occupied territories.