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مجلس حقوق الإنسان
الدورة التاسعة والعشرون
البند ٤ من جدول الأعمال
حالات حقوق الإنسان التي تتطلب اهتمام المجلس بها

رسالة مؤرخة ٥ حزيران/يونيه ٢٠١٥ موجهة من الممثل الدائم لجورجيا لدى مكتب الأمم المتحدة في جنيف إلى رئيس مجلس حقوق الإنسان

أتشرف بأن أحيل إليكم طيه التقرير الفصلي الأول (كانون الثاني/يناير – آذار/مارس ٢٠١٥) لوزارة خارجية جورجيا بشأن حالة حقوق الإنسان في المناطق المحتلة من جورجيا (انظر المرفق).

وسأكون ممتناً للغاية إذا تفضلتم بتعميم هذه الرسالة ومرفقها* باعتبارهما وثيقة من وثائق الدورة التاسعة والعشرين لمجلس حقوق الإنسان في إطار البند ٤ من جدول الأعمال.

(توقيع) شالفا **تسيسكاراشفيلي**
السفير، الممثل الدائم

* استُنسخت كما وردت، باللغة التي قُدّمت بها فقط.

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الرجاء إعادة الاستعمال

Annex

[English only]

First quarterly report (January – March 2015) of the Ministry of Foreign Affairs of Georgia on the human rights situation in the occupied regions of Georgia

I. Introduction

1.1 Aims of the report and methodology applied

This report is prepared by the Ministry of Foreign Affairs of Georgia. It is the first quarterly report, covering the period of January-March 2015 and aiming at assessing the human rights situation in the occupied regions of Georgia. The Ministry of Foreign Affairs of Georgia will continue the preparation of such reports on a quarterly basis. This reporting exercise aims to contribute to the provision of regular and updated information to the international community, to states as well as to international inter-governmental and non-governmental organizations, on the human rights situation in the occupied regions of Georgia.

As for the applied methodology, this reporting exercise consolidates and assesses existing information from various open sources, national and international, on the human rights situation in the occupied regions of Georgia. Due to limitations on its length, the report does not aim to collect/contain information on all cases of violations of human rights in the occupied regions of Georgia; it aims to consolidate and assess only some of the most known examples of violations. The methodology applied does not provide for the conduct of fact-finding visits to the occupied regions of Georgia, nor to the conduct of interviews. Therefore the methodology applied does not enable this reporting exercise to collect and produce new data on the human rights situation in the occupied regions of Georgia.

1.2 Occupation of regions of Georgia and responsibility of the occupying power for human rights violations

As a result of military aggression, creeping annexation and occupation policy, well-planned and systematically implemented by the Russian Federation regarding the territory of Georgia, between 1991 and 2015 several hundreds of thousands of persons were expelled from their homes to become IDPs and refugees and they have been deprived of their internationally recognized right to a voluntary, safe and dignified return to places of their permanent residence.[1] Currently, the territories of two regions of Georgia – Abkhazia, Georgia and the Tskhinvali Region, Georgia are occupied by the Russian Federation. The Russian Federation as the occupying power, exercises effective control over these territories. The occupation of regions of Georgia by the Russian Federation has been

[1] Namely, as a result of the ethnic cleansings of 1991-1993 and 1998, approximately 450 000 persons were expelled from places of their permanent residence: approximately 20 000 persons from the Tskhinvali Region/South Ossetia, Georgia in 1991-1992; approximately 370 000 persons from Abkhazia, Georgia in 1992-1993; and approximately 60 000 from the Gali district Abkhazia, Georgia in 1998. In addition, as a result of ethnic cleansing during the 2008 August War and its aftermath, tens of thousands IDPs and refugees from the Akhalgori district and its adjacent areas, as well as Kodori Gorge/Upper Abkhazia were expelled from places of their permanent residence.

recognized by the international community.[2] It should be noted with particular emphasis, that recently the Russian Federation signed the so called "Treaty on Alliance and Strategic Partnership" with its occupation regime in Sokhumi and the so called "Treaty on Alliance and Integration" with its occupation regime in Tskhinvali: thus going well beyond its military occupation and laying ground for annexation[3] of Georgian territories.

Since the August War of 2008, the international community has been calling on the Russian Federation to bear responsibility for violations of human rights in the territories of Georgia which are under Russia's effective control.[4] The UN Human Rights Committee issued recommendations to the Russian Federation on the issue at its 97th (2009) and 113th (2015) sessions.[5]

According to the European Parliament, "whereas Russia [in 2014] continues to occupy the Georgian regions of Abkhazia and the Tskhinvali region/South Ossetia, in violation of the fundamental norms and principles of international law; whereas ethnic cleansing and forcible demographic changes have taken place in the areas under the effective control of the occupying forces, which bear the responsibility for human rights violations in these areas, including violations of the rights to free movement, people-to-people contacts and education in one's native language."[6]

1.3 Occupation line and installation of barbed wire fences

The occupation line along the administrative boundary line (ABL) with Abkhazia and the Tskhinvali Region separates Georgia from its two occupied territories. The occupation line, established by the occupying power since the August War of 2008, prevents several hundreds of thousands of IDPs and refugees from returning to places of their permanent residence. The transfer of the control of the occupation line to the Russian FSB border guards puts further restrictions on ethnic Georgians: Russia continues to place undue restrictions on the local population wishing to cross the occupation line[7] that often runs through their orchards, yards, grazing fields, agricultural plots and cemeteries. People are regularly detained by Russian FSB border guards for so called "illegal border crossings" while the operating crossing points along the occupation line allow crossings only to individuals having one of the types of "documents" recognized by the occupying power and

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[2] For example, "Resolution on the Situation in Georgia" (2012), Parliamentary Assembly of the Organization for Security and Co-operation in Europe (OSCE PA), paragraphs 4 and 7; "European Parliament Resolution on the Conclusion of the Association Agreement with Georgia", 18 December 2014, European Parliament, paragraphs D and 11; "European Parliament Resolution on the Negotiations of the EU-Georgia Association Agreement", 17 November 2011, European Parliament, paragraph F; Resolution 1633 (2008) "The consequences of the war between Georgia and Russia", Parliamentary Assembly of the Council of Europe (PACE), paragraph 6; Resolution 1647 (2009) "Implementation of Resolution 1633 (2008) on the consequences of the war between

[3] "European Parliament Resolution on the Conclusion of the Association Agreement with Georgia", 18 December 2014, European Parliament, paragraph 11.

[4] For example, Resolution 1647 (2009) "Implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia", Parliamentary Assembly of the Council of Europe (PACE), paragraph 7; "European Parliament Resolution on the Negotiations of the EU-Georgia Association Agreement", 17 November 2011, European Parliament, paragraph F.

[5] Concluding Observations of the UN Human Rights Committee: Russian Federation, 97th Session, 2009, CCPR/C/RUS/CO/6 pp. 5-6; Concluding Observations of the UN Human Rights Committee: Russian Federation, 113th Session, 2015, CCPR/C/RUS/CO/7, p. 2.

[6] "European Parliament Resolution on the Conclusion of the Association Agreement with Georgia", 18 December 2014, European Parliament, paragraph D.

[7] Resolution 1683 (2009) "The War between Georgia and Russia: One Year After", Parliamentary Assembly of the Council of Europe (PACE), paragraphs 5 and 7.

based on vague criteria as to the validity of these documents.[8] Those unable to present those documents or show up at the crossing point out of working hours, are denied the right to cross, often leading to casualties among those locals, including children and women, seeking urgent medical treatment.

In the spring of 2011, the Russian occupation forces intensified the process of the installation of barbed wire fences and other artificial obstacles along the occupation lines in Abkhazia and the Tskhinvali Region (launched back in 2009). This process has been further intensified since January 2013 and is still ongoing. Currently, the total length of artificial barriers along the occupation line only in Tskhinvali Region is 51 km. In some segments, the barbed wire fence has intruded into territory controlled by the central government of Georgia, thus extending the area of occupation.

The installation of barbed wire fences and artificial obstacles significantly affects the everyday life of the local population; namely it divides families and communities and prevents people-to-people contact; blocks the access of the local population to their agricultural lands and to potable/irrigation water systems; it prevents the local population from visiting religious sites and from having an access to cemeteries; and, most alarmingly, blocks local residents from reaching the emergency medical services. Thus this process of the installation of barbed wire fences and other artificial obstacles by the Russian Federation violates human rights, including, but not limited to, the freedom of movement, the right to property, the right to family life, the right to education in the native language and other rights.[9] It should be noted that the installation of barbed wire fences along the occupation line in the Tskhinvali Region, Georgia, had a direct impact on 200 local families and some were compelled to flee, thus creating a further wave of IDPs. It should be emphasized that the international community condemned the process of the illegal installation of barbed wire fences and other artificial obstacles along the lines of occupation.[10]

1.4 Occupied territories as "Black Holes" of the human rights protection mechanisms

Former UN High Commissioner for Human Rights, Navy Pillay, assessed Georgia's occupied territory of South Ossetia/Tskhinvali Region as a "black hole" and "one of the most inaccessible places on earth"; she noted that very little is known about what is happening in this area and "more attention needs to be paid to the situation of human rights in South Ossetia and Abkhazia."[11] Notably, the High Commissioner, similarly to other

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[8] Consolidated Report on the Conflict in Georgia, Council of Europe (November 2014 - March 2015), 22 April 2015, SG/Inf (2015) 18, paragraph 44.

[9] Decision of the Committee of Ministers of the Council of Europe, "The Council of Europe and the conflict in Georgia" 1198th meeting – 29-30 April and 2 May 2014, paragraph 3.

[10] "Statement by the Spokesperson of EU High Representative Catherine Ashton on the placement of obstacles along administrative boundary lines in Georgia", 1 October 2013 (131001/02); "Pillay praises Georgia's plan to introduce comprehensive human rights reforms, Opening remarks by UN High Commissioner for Human Rights, Navi Pillay, at a press conference in Tbilisi." Georgia, 21 May 2014, available at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14624#sthash.OkwTyUpY.dpuf; "State of Democracy, Human Rights and Rule of Law in Europe", Report by the Secretary General of the Council of Europe, 124th Session of the Committee of Ministers, 4-5 May 2014, p. 56; "EUMM: Recent installation of fences near Ditsi is unacceptable", 28.05.2013; "EUMM voices concern about the impact of fences on local communities", 02.08.2013; "EUMM notes resumption of fencing activities", 29.11.2013; "EUMM: Recent installation of fences near Ditsi is unacceptable", 28.05.2013; "EUMM voices concern about the impact of fences on local communities", 02.08.2013; "EUMM notes resumption of fencing activities", 29.11.2013.

[11] "Pillay praises Georgia's plan to introduce comprehensive human rights reforms, Opening remarks by UN High Commissioner for Human Rights, Navi Pillay, at a press conference in Tbilisi." Georgia, 21

representatives of international organizations, was denied access to the occupied region. It is noteworthy that "the Assembly [PACE] considers it unacceptable that persons residing in Abkhazia and South Ossetia should not be effectively covered by the human rights protection mechanisms granted to them as citizens of a Council of Europe member state under the European Convention on Human Rights, as well as other relevant Council of Europe conventions, as a result of the consequences of the war between Russia and Georgia. Such a human rights protection black hole should not be allowed to exist within the Council of Europe area."[12]

These two regions still remaining under foreign military occupation, constitute above all dangerous black holes in verifying human rights violations and holding the violators accountable. Protection of human rights in the occupied regions of Georgia remains a challenge not only for the government of Georgia but also for the international community. For years, the Georgian authorities have been trying to involve international organizations in the issue of the protection of human rights in the occupied regions of Georgia. The Georgian government keeps on emphasizing the significance of the access of international human rights monitoring mechanisms in Abkhazia, Georgia and the Tskhinvali Region, Georgia.[13] It is deplorable that the European Union Monitoring Mission (EUMM) in Georgia is prevented from monitoring inside the occupied regions, as provided by the mandate. The occupying power, exercising effective control, has been preventing numerous international organizations, including humanitarian[14], from entering those territories: this represents yet another blatant attempt to conceal grave human rights violations which systematically occur in this area.

II. Freedom from torture and ill-treatment

2.1 Introduction

During and after the August War of 2008, numerous cases have been reported from the occupied regions of Georgia of torture and ill-treatment.[15] The Commissioner for Human Rights of the Council of Europe received numerous reports on cases of torture and ill-treatment from displaced persons.[16] It should be noted that the European Committee for the

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May 2014, available at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14624#sthash.OkwTyUpY.dpuf

[12] Resolution 1647 (2009) "Implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia", Parliamentary Assembly of the Council of Europe (PACE), paragraph 7.

[13] Consolidated Report on the Conflict in Georgia, Council of Europe (October 2013-March 2014), 22 April 2014, SG/Inf (2014) 17, paragraph 39.

[14] "Human Rights in the War-Affected Areas Following the Conflict in Georgia", OSCE/ODIHR, 27 November 2008, p. 72.

[15] "Human Rights in the War-Affected Areas Following the Conflict in Georgia", OSCE/ODIHR, 27 November 2008, pp. 24-25, p. 36, p. 59, 74; "August Ruins", Report of the Georgian Non-Governmental Organizations on Violations of Fundamental Human Rights and International Humanitarian Law, August War, 2008, Tbilisi 2009, p. 40; "Russia's Responsibility for Human Rights in Occupied Regions of Georgia" Submission from the Georgian Young Lawyers' Association (GYLA), National Institute for Human Rights (NIHR) and Human Rights Priority for consideration at the 113th Session of the Human Rights Committee (16 March – 2 April 2015) Russian Federation, p. 3 and 9.

[16] "Human Rights in Areas Affected by the South Ossetia Conflict. Special Mission to Georgia and Russian Federation", by Thomas Hammarberg, the Council of Europe Commissioner for Human Rights (Vladikavkaz, Tskhinvali, Gori, Tbilisi and Moscow, 22-29 August 2008), paragraph 109.

Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) noted the practice of ill-treatment and abuse during detention, as well as poor detention conditions, in occupied Abkhazia.[17] It should be also noted that in March 2015, Mr. Juan E. Mendez, the UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment visited Georgia, but was not allowed to the occupied regions of Georgia.

2.2 Current situation

Numerous cases were noted during the reporting period[18] on violations of the right to freedom from torture and ill-treatment.[19] For example information available in the Georgian media and other open sources supply the following: on 23rd January 2015, 3 schoolchildren from Gali district were detained by the Russian FSB officers along the occupation line. The 3 schoolchildren, all of them members of the same family, were going to school in the village of Tskoushi, in the Tsalenjikha district. The Russian FSB officers were drunk and ill-treated the three children while they were detained for about five hours;[20] on 29th January 2015, Russian soldiers entered with armoured vehicles the village of Achadara, mainly populated by ethnic Armenians, in the vicinity of Sokhumi. The Russian soldiers severely beat several residents of the village, including the 78 years old ethnic Armenian;[21] on 28th February 2015, 55 years old man from the Zugdidi District was kidnapped and severely beaten by the Russian military. He was then transferred to the detention facility in the occupied territory of Abkhazia;[22] on 28th February 2015, a resident of the village of Nabakevi, Gali district was detained by the Russian FSB border guards for so called "illegal border crossing" in the area of the village of Nabakevi, Gali district. The detainee attempted to escape from a Russian FSB officers, and as a result was severely beaten with the butt of an automatic rifle and was taken to de facto Abkhazia State Security office in Gali; on March 13th, 2015 a resident of the village of Tagiloni, Gali district was detained by the Russian FSB officers for so called "illegal border crossing" and was taken to de facto Abkhazia State Security office in Gali. During the detention the detainee was severely beaten by the Russian FSB officers; on March 14th, 2015 a resident of Anaklia town and a resident of village Tsaishi, Zugdidi district were detained by Russian FSB officers for so called "illegal border crossing" reason in the area of the village of Orsantia, Gali district and were taken to de facto Abkhazia State Security office in Gali. During the detention both persons were severely beaten by the Russian FSB officers; on 26th March 2015, a man was detained in Gali district and severely beaten. Later he was transported to the Gali central hospital for the treatment;[23] on March 28th, 2015 a resident of the village of Nabakevi, Gali district was detained by the Russian FSB officers for so called "illegal border crossing" reason in the area of the village of Nabakevi, Gali district and was taken to de facto

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[17] Report on the visit to the region of Abkhazia, Georgia, carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 April to 4 May 2009.

[18] January-March 2015.

[19] See weekly press reviews on the human rights violations and current events in Abkhazia, prepared by the Justice Department of Georgia's Autonomous Republic of Abkhazia, January-March 2015

[20] See weekly press review (between 20 January and 25 January 2015) on the human rights violations and current events in Abkhazia, prepared by the Justice Department of Georgia's Autonomous Republic of Abkhazia, January-March 2015, p. 15.

[21] See weekly press review (between 26 January and 2 February 2015) on the human rights violations and current events in Abkhazia, prepared by the Justice Department of Georgia's Autonomous Republic of Abkhazia, January-March 2015, p. 6.

[22] See weekly press review (between 23 February and 28 February 2015) on the human rights violations and current events in Abkhazia, prepared by the Justice Department of Georgia's Autonomous Republic of Abkhazia, January-March 2015, p. 6.

[23] See weekly press review (between 23 March and 29 March 2015) on the human rights violations and current events in Abkhazia, prepared by the Justice Department of Georgia's Autonomous Republic of Abkhazia, January-March 2015, p. 12.

Abkhazia State Security office in Gali. During the detention the detainee was severely beaten by the Russian FSB officers.

2.3 Conclusion

Therefore it can be concluded that the situation described in the occupied regions of Georgia and examples provided for the reporting period[24] constitute infringements on freedom from torture and ill-treatment and therefore are violations of Article 7 of the International Covenant on Civil and Political Rights (ICCPR); Article 5 of the Universal Declaration of Human Rights (UDHR); Article 3 of the European Convention on Human Rights (ECHR); and the OSCE commitments[25].

III. Arbitrary detentions

3.1 Introduction

Since the August War of 2008, in the occupied regions of Georgia, cases of arbitrary detentions of ethnic Georgians are very common; in addition, the Russian FSB border guards regularly carry out arbitrary detentions for so called "illegal border crossing" along the occupation line.[26] The following number of arbitrary detentions took place by the Russian border guards in the years 2011-2014: 184 detainees in 2011; 301 detainees in 2012; 441 detainees in 2013; 307 detainees in 2014. Detentions along the occupation line are among the most serious problems faced by local communities on both sides of the occupation line for years.[27] In most cases detentions are followed by fines and later releases. It has been observed that the "detention period varies from several days up to several months or years without due access to procedural guarantees and right to fair trial."[28]

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[24] January-March 2015.

[25] The Vienna Concluding Document (1989) prohibits torture and other cruel, inhuman or degrading treatment or punishment. Paragraph 23.4; The Paris Document (1990) also prohibits torture and other cruel, inhuman or degrading treatment or punishment; the Istanbul Charter for European Security commits to "eradicating torture and other cruel, inhuman or degrading treatment or punishment throughout the OSCE area". Paragraph 21.

[26] Georgia's Human Rights Report for 2013, United States Department of State, p. 15, available at:http://www.state.gov/documents/organization/220492.pdf; "Human Rights in the War-Affected Areas Following the Conflict in Georgia", OSCE/ODIHR, 27 November 2008, pp. 24-25, p. 25, pp. 37-38, 74; "August Ruins", Report of the Georgian Non-Governmental Organizations on Violations of Fundamental Human Rights and International Humanitarian Law, August War, 2008, Tbilisi 2009, p. 40; "Human Rights in Areas Affected by the South Ossetia Conflict. Special Mission to Georgia and Russian Federation", by Thomas Hammarberg, the Council of Europe Commissioner for Human Rights (Vladikavkaz, Tskhinvali, Gori, Tbilisi and Moscow, 22-29 August 2008), paragraph 94; "Pillay praises Georgia's plan to introduce comprehensive human rights reforms, Opening remarks by UN High Commissioner for Human Rights, Navi Pillay, at a press conference in Tbilisi." Georgia, 21 May 2014, available at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14624#sthash.OkwTyUpY.dpuf.

[27] "Information Bulletin of Public Defender of Georgia: On Human Rights of Conflict Affected Population", Public Defender of Georgia, 2014, p. 4.

[28] "Russia's Responsibility for Human Rights in Occupied Regions of Georgia" Submission from the Georgian Young Lawyers' Association (GYLA), National Institute for Human Rights (NIHR) and Human Rights Priority for consideration at the 113th Session of the Human Rights Committee (16 March – 2 April 2015) Russian Federation, p. 3.

3.2 Current situation

Numerous cases have been reported during the reporting period[29] on arbitrary detentions in the occupied regions[30]. Numerous sources suggest that arbitrary detentions took place during the reporting period with dire humanitarian consequences: for example, according to some leading Georgian NGOs, "While people on both sides continue to cross the ABL for various reasons, such as to access medical care, to visit graveyards, or to see relatives or family members on the other side, most of this movement across the ABL is considered illegal by the de facto authorities. Due to these restrictions on freedom of movement, Russian and Ossetian border guards mostly with alleged charge of 'illegal border crossing' have arrested residents of Georgian controlled territories, including women, minors and elderly people. Civilian inhabitants of the villages located alongside the ABL have been arrested by the Russian guards while harvesting the capers or cutting wood in close proximity to the ABL. International independent bodies have expressed their concern over the absence of official crossing points and regulations concerning the crossing of the ABL. The location of the ABL in many places is unclear. In some places the ABL is demarcated but in many places it is not."[31] And it has been stated by the Council of Europe that "[a]ccording to publicly available official Russian data, during the January-March 2015, more than 550 people were detained on "illegal border crossing" grounds. The practice of detentions and release after payment of fines continues to be enforced. It was also reported to the delegation that a more "heavy-handed" approach of Russian border guards had been observed in several detention cases linked to "unauthorised" crossings. The delegation was informed that local residents have recently become more apprehensive with regard to ABL crossings."[32] There are numerous cases of individuals subjected to arbitrary detentions. For example, information available in the Georgian media and other open sources suggest the following: on January 10th, 2015 the Russian FSB border guards conducted a special operation along the occupation line and detained ten residents of the Gali District for so called "illegal border crossing" in the area of the village of Nabakevi, Gali district; on January 13th, 2015 the Russian FSB border guards conducted a special operation in the village of Meore Otobaia, Gali district, and detained seven residents of this area for so called "illegal border crossing"; on March 6th, 2015, two residents of the village of Akhali Burghulebi, Dusheti district were detained by Russian FSB officers for so called "illegal border crossing" in the area of the village of Nagomevi, Akhalgori district. Both of the latter detainees were released on March 11 after paying a fine amounting to 4 000 rubles; on March 13th, 2015 a resident of the village of Zardiantkari, Gori district was detained by Russian FSB officers for so called "illegal border crossing" in the area of the village of Khelchua, Tskhinvali district. The detainee was released on March 25 after paying a fine amounting to 2 000 rubles; on March 17th, 2015 a resident of Gori and a resident of Tbilisi were detained by Russian FSB officers for so called "illegal border crossing" in the area of the village of Zemo Artsevi, Tskhinvali district. One detainee was released on March 21st after paying a fine amounting to 2 000 rubles. There are numerous cases of arbitrary detentions that are not linked to the so called "illegal border crossings", for example,

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[29] January-March 2015.

[30] See weekly press reviews on the human rights violations and current events in Abkhazia, prepared by the Justice Department of Georgia's Autonomous Republic of Abkhazia, January-March 2015.

[31] "Russia's Responsibility for Human Rights in Occupied Regions of Georgia" Submission from the Georgian Young Lawyers' Association (GYLA), National Institute for Human Rights (NIHR) and Human Rights Priority for consideration at the 113th Session of the Human Rights Committee (16 March – 2 April 2015) Russian Federation, p. 6.

[32] Consolidated Report on the Conflict in Georgia, Council of Europe (November 2014 - March 2015), 22 April 2015, SG/Inf (2015) 18, paragraph 45.

information available in the Georgian media and other open sources suggest that on 17th February 2015 Russian militaries kidnapped 4 residents of the village Merkula, the Ochamchire district and demanded a ransom of USD 20 000 for each one from their families.[33]

3.3 Conclusion

Therefore it can be concluded that the situation described in the occupied regions of Georgia and examples provided for the reporting period[34] constitute arbitrary detentions and therefore violations of Article 9 of the International Covenant on Civil and Political Rights (ICCPR); Article 3 of the Universal Declaration of Human Rights (UDHR); Article 5 of the European Convention on Human Rights (ECHR); and of OSCE commitments[35].

IV. Freedom of movement

4.1 Introduction

The crossing regime that was established by the occupying power along the occupation line in the aftermath of the August War of 2008 puts restrictions and limitations on freedom of movement for people living on both sides of the administrative boundary line (ABL) with Abkhazia and the Tskhinvali Region. Russian FSB border guards administering and controlling the occupation line prevent people, including hundreds of thousands of IDPs and refugees, from exercising their right to freedom of movement and freedom to choose their residence within the borders of the state. The Russian FSB border guards regularly detain individuals for the so called "illegal border crossings", including women, minors and elderly people.[36] The Russian FSB border guards place undue restrictions on the local population wishing to cross the occupation line[37]; operating crossing points, along the occupation lines, function in conjunction with the illegal and discriminatory rules and arbitrariness imposed by the Russian FSB border guards.

4.2 Current situation

The situation described with regard to the freedom of movement continues and has remained unaltered between January and March 2015: numerous cases were reported during the reporting period[38] on violations of the right to freedom of movement and

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[33] See weekly press review (between 9 February and 16 February 2015) on the human rights violations and current events in Abkhazia, prepared by the Justice Department of Georgia's Autonomous Republic of Abkhazia, January-March 2015, p. 7.

[34] January-March 2015.

[35] The Vienna Concluding Document (1989) provides for ensuring that no one is subjected to arbitrary arrest, detention or exile. Paragraph 23.1; According to the Moscow Document (1991) "no one will be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law". Paragraph 23.1 (i).

[36] "Russia's Responsibility for Human Rights in Occupied Regions of Georgia" Submission from the Georgian Young Lawyers' Association (GYLA), National Institute for Human Rights (NIHR) and Human Rights Priority for consideration at the 113th Session of the Human Rights Committee (16 March – 2 April 2015) Russian Federation, p. 3.

[37] "Human Rights in the War-Affected Areas Following the Conflict in Georgia", OSCE/ODIHR, 27 November 2008, p. 63; "Abkhazia: Deepening Dependence", International Crises Group, Europe Report No. 202 (2010), p. 4.

[38] January-March 2015.

freedom to choose one's residence[39]. Numerous sources suggest violations of the freedom of movement during the reporting period. The erection of barbed wire fences has been described by some leaning Georgian NGOs as interfering with the freedom of movement of the population residing along the occupation line: "the fences constructed by Russian and *de facto* authorities are unjustifiable barriers to their freedom of movement within their property and elsewhere in the territory of Georgia, currently under Russian control."[40] And it has been argued by the Council of Europe that "[p]redictability and transparency of the crossing regime at the ABL continue to be hindered by the confusion surrounding the validity of documents used for crossing purposes. While the majority of people use an Abkhaz "passport", in some cases Forms N° 9 and old Soviet passports reportedly continue to be accepted. The period of validity of their use however remains unclear."[41] Information available in the Georgian media and other open sources report the following cases: on January 17th 2015, Russian FSB border guards detained 17 people for so called **"**illegal border crossing". All of them were heading to Gali district from the territory controlled by the central government of Georgia. They were taken to the military base in the village of Otobaia, Gali district and fined;[42] on February 9th, 2015 two persons were detained at the occupation line while they were heading to the region of Abkhazia for hazelnut harvesting. Both were sentenced to four months imprisonment.[43] There are numerous cases of individuals not allowed to enter territory controlled by the central government of Georgia. For example, information available in the Georgian media and other open sources suggest the following: on February 26th, 2015 a resident of the village of Pirveli Gali, Gali district, who was in urgent need of medical attention, was trying to enter territory controlled by the central government. He was detained by the Russian FSB border guards for so called **"**illegal border crossing" in the area of the village of Nabakevi, Gali district. The detainee was taken to the Russian FSB border guards' base in the village of Nabakevi; however the person was released later due to worsened health; on March 12th, 2015 a parent and a child, residents of the village of Otobaia, Gali district, were not allowed to enter the territory controlled by the central government. The child, suffering from pneumonia, was in desperate need of medical attention; on March 17th, 2015 a parent and a child, residents of Gali district, were not allowed to enter the territory controlled by the central government. The child, having third-degree burns, needed urgent medical care.

4.3 Conclusion

Therefore it can be concluded that the situation described in the occupied regions of Georgia and examples provided for the reporting period[44] constitute violations of the right to freedom of movement, namely of Article 12 of the International Covenant on Civil and

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[39] See weekly press reviews on the human rights violations and current events in Abkhazia, prepared by the Justice Department of Georgia's Autonomous Republic of Abkhazia, January-March 2015.

[40] "Russia's Responsibility for Human Rights in Occupied Regions of Georgia" Submission from the Georgian Young Lawyers' Association (GYLA), National Institute for Human Rights (NIHR) and Human Rights Priority for consideration at the 113th Session of the Human Rights Committee (16 March – 2 April 2015) Russian Federation, p. 6.

[41] Consolidated Report on the Conflict in Georgia, Council of Europe (November 2014 - March 2015), 22 April 2015, SG/Inf (2015) 18, paragraph 44.

[42] See weekly press review (between 9 February and 16 February 2015) on the human rights violations and current events in Abkhazia, prepared by the Justice Department of Georgia's Autonomous Republic of Abkhazia, January-March 2015, p. 2.

[43] See weekly press review (between 9 February and 16 February 2015) on the human rights violations and current events in Abkhazia, prepared by the Justice Department of Georgia's Autonomous Republic of Abkhazia, January-March 2015, p. 3.

[44] January-March 2015.

Political Rights (ICCPR)[45]; Article 13 of the Universal Declaration of Human Rights (UDHR); Article 2, Protocol No. 4 of the European Convention on Human Rights (ECHR); and the OSCE freedom of movement commitments[46]. And limitations imposed by the Russian FSB border guards on freedom of movement and residence in the occupied regions of Georgia cannot be considered as permissible.[47]

It is of great significance to note that limitations on freedom of movement in the occupied regions of Georgia divides families and communities; blocks the access of the local population to their agricultural lands and potable/irrigation water systems; prevents the local population from visiting religious sites and from having access to cemeteries; restricts the right to education in the native language[48]; and most alarmingly, blocks local residents from reaching the emergency medical services.[49] Therefore it can be further concluded that limitations on freedom of movement in the occupied regions of Georgia violate the economic, social and cultural rights under the International Covenant on Economic, Social and Cultural Rights and relevant international instruments.

V. Right to property

5.1 Introduction

The issue of homes and property lost during the conflicts in Georgia remains unsolved. For years, the right to property has been subject to systematic and gross violations in the occupied regions of Georgia; hundreds of houses of ethnic Georgian were burned/destroyed

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[45] It should be emphasized that the Human Rights Committee, in Concluding Observations on Israel stated: " . . . the Committee is concerned that the construction of the 'Seam Zone', by means of a fence and, in part, of a wall, beyond the Green Line, imposes additional and unjustifiably severe restrictions on the right to freedom of movement of, in particular, Palestinians within the Occupied Territories. The 'Seam Zone' has adverse repercussions on nearly all walks of Palestinian life; in particular, the wide ranging restrictions on freedom of movement disrupt access to health care, including emergency medical services, and access to water. The Committee considers that these restrictions are incompatible with article 12 of the Covenant. The State party should respect the right to freedom of movement guaranteed under article 12. The construction of a "Seam Zone" within the Occupied Territories should be stopped." (2003, UN doc. CCPR/CO/78/ISR, paragraph 19).

[46] According to paragraph 33 of the Moscow Document (1991), the OSCE participating States are obliged to remove all restrictions with regard to travel within the territory of a State and with regard to residence for those entitled to permanent residence within the territory of a State. And according to paragraph 20 of the Vienna Concluding Document (1989), the OSCE participating States are committed to secure the right of everyone to freedom of movement and residence within the borders of a State.

[47] For example, under paragraph 3 of Article 12 of the ICCPR, the following measures could constitute permissible restrictions on the right under paragraph 1: traffic safety rules, restrictions on access to nature reserves, avalanche zones, quarantine zones, and prohibitions on unlicensed access to private property. (Joseph, S. Schultz J. and Castan, M. The International Covenant on Civil and Political Rights: Cases, Materials and Commentary (Oxford: Oxford University Press, 2004, p. 364). According to paragraphs 3 and 4 of Article 2, Protocol No. 4 of the ECHR, any measure restricting the right in paragraph 1 must be lawful and pursue one of the legitimate aims listed and strike a fair balance between the public interest and the individual's rights. (Riener v Bulgaria, (App.46343/9), 23 May 2006, (2007) 45 EHRR 723, paragraph 109).

[48] It should be emphasized that in Gali district there are 31 schools and only in 11 schools the curricula is in the Georgian language. It is alarming that in these 11 schools, the teaching hours of the Georgian language and literature has been decreased from 10-10 hours to 6-6 hours, it means for 4-4 hours.

[49] It has been argued that socio-economic conditions of people residing in the vicinity of the occupation line is grave. For example, see "Information Bulletin of Public Defender of Georgia: On Human Rights of Conflict Affected Population", Public Defender of Georgia, 2014, pp. 5-7.

on purpose during and after the August War 2008.[50] It has been noted that "[c]ivilians seeking to cross the Administrative Boundary Line are continuing to be unlawfully detained. Their detention may last for several days, and they are only freed on payment of substantial fines, often simply for attempting to visit their own property on the other side of the wire to harvest their crops, including the valuable local delicacy known as jonjoli, which for many is their sole source of income."[51] For example, in the village of Zaardiaantkari, Gori district most of the houses were destroyed.[52]

5.2 Current situation

The situation described with regard to the right to property has continued and remained the same between January and March 2015. Numerous sources suggest continuing violations of the rights to property during the reporting period[53]: for example, according to the report, which partially covers the reporting period, "the demarcation activities led to the loss of access to the family houses for several residents living adjacent to the administrative boundary line, in violation of their right to home and family life. E.g. the village residents of Dvani and Gugutiantkari have been denied access to the ancestral residences where they have deep family roots and emotional attachment. Even after the 2008 war they had been consistently trying to refurbish those houses that were damaged by the conflict and continued living there with their families. . . The newly constructed barbed wire fences also deprived hundreds of village residents in 24 villages from their sustenance – the land plots they cultivated for their living fell beyond the Russian marked borders. Security concerns, Russian and South Ossetian border guards and physical barriers make it impossible for village residents to cultivate the land plots or collect the harvest. . . There has not been any attempt from Russian or South Ossetian authorities to provide reparation for the population for the loss they sustained as a result of unlawful interference in their right to home and family life and lack of ability to cultivate their lands and collect harvest."[54] For example, in the village of Gugutiantkari, Gori district, the residents lost

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[50] "Human Rights in the War-Affected Areas Following the Conflict in Georgia", OSCE/ODIHR, 27 November 2008, pp. 24-25, pp. 26-28; p. 42; pp. 44-45, p. 61; "August Ruins", Report of the Georgian Non-Governmental Organizations on Violations of Fundamental Human Rights and International Humanitarian Law, August War, 2008, Tbilisi 2009, p. 28; "Human Rights in Areas Affected by the South Ossetia Conflict. Special Mission to Georgia and Russian Federation", by Thomas Hammarberg, the Council of Europe Commissioner for Human Rights (Vladikavkaz, Tskhinvali, Gori, Tbilisi and Moscow, 22-29 August 2008), paragraph 94; "Russia's Responsibility for Human Rights in Occupied Regions of Georgia" Submission from the Georgian Young Lawyers' Association (GYLA), National Institute for Human Rights (NIHR) and Human Rights Priority for consideration at the 113th Session of the Human Rights Committee (16 March – 2 April 2015) Russian Federation, p. 4 and 9.

[51] "Pillay praises Georgia's plan to introduce comprehensive human rights reforms, Opening remarks by UN High Commissioner for Human Rights, Navi Pillay, at a press conference in Tbilisi." Georgia, 21 May 2014, available at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14624#sthash.OkwTyUpY.dpuf.

[52] "Special Report of the Public Defender of Georgia on Human Rights in the Conflict Affected Region, Zardiaantkari: Consequences of War and the Burden of Existence", Public Defender of Georgia, December 2014.

[53] January-March 2015.

[54] "Russia's Responsibility for Human Rights in Occupied Regions of Georgia" Submission from the Georgian Young Lawyers' Association (GYLA), National Institute for Human Rights (NIHR) and Human Rights Priority for consideration at the 113th Session of the Human Rights Committee (16 March – 2 April 2015) Russian Federation, p. 5; See GYLA's application at the European Court of Human Rights in the case of Mekarishvili and others v. Russian Federation (Application no. 31726/14).

access to 50 per cent of their agricultural land plots since they are located now on the other side of the occupation line. There are numerous cases of violations of the right to property in the reporting period: for example, information available in the Georgian media and other open sources suggests that on January 20th 2015, in the village of Sida, Gali district, Russian militaries, together with the so called "Abkhazian Special Unit" representatives burned down houses of two ethnic Georgians. This incident took place on a background of shooting. On the same day, in the village of Refi, Gali district, Russian militaries, together with the so called "Abkhazian Special Unit" representatives burned down houses of other two ethnic Georgians.[55] On 23rd January 2015, the Russian militaries raided the villages of Gali district; the aim of the raid was to find out people who had crossed the occupation line to visit the town of Zugdidi. The Russian militaries completely confiscated winter reserve food products and mobile phones of "suspects" of the so called "illegal border crossings";[56] on 29 January 2015, Russian militaries entered with armoured vehicles the village of Achadara (mainly populated by ethnic Armenians) in the vicinity of Sokhumi. Russian militaries attacked 8 ethnic Armenian families and robbed them, namely they forcibly seized money, gold jewelry and food reserves.[57] On 3rd February 2015, Russian FSB border guards did not allow a resident of the village of Jariasheni, the Gori district to carry out agricultural works in his land property because of the erected barbed wires and banner with the text of "Republic of South Ossetia". Confiscation of nuts harvest – the only source of income for local peasants - is commonplace in Abkhazia region.

5.3 Conclusion

Therefore it can be concluded that the situation described in the occupied regions of Georgia and examples provided for the reporting period[58] violate the right to property, namely Article 17 of the Universal Declaration of Human Rights (UDHR); Article 1, Protocol No. 1 of the European Convention on Human Rights (ECHR); and the OSCE commitments[59].

IV. Appeal to the international community

The Ministry of Foreign Affairs of Georgia appeals to the international community, states as well as international intergovernmental and non-governmental organizations:

(a) to continue recognizing extensively and widely the occupation of the territories of Georgia by the Russian Federation;

(b) to continue calling on the Russian Federation to bear responsibility for human rights violations on the occupied regions of Georgia;

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[55] See weekly press review (between 20 January and 25 January 2015) on the human rights violations and current events in Abkhazia, prepared by the Justice Department of Georgia's Autonomous Republic of Abkhazia, January-March 2015, pp. 4-5.

[56] See weekly press review (between 20 January and 25 January 2015) on the human rights violations and current events in Abkhazia, prepared by the Justice Department of Georgia's Autonomous Republic of Abkhazia, January-March 2015, p. 9.

[57] See weekly press review (between 26 January and 2 February 2015) on the human rights violations and current events in Abkhazia, prepared by the Justice Department of Georgia's Autonomous Republic of Abkhazia, January-March 2015, p. 6.

[58] January-March 2015.

[59] The OSCE commitments impose obligation on states to ensure that everyone has the right to enjoy property and that no one may be deprived of properly except under conditions provided for by law. Moscow Document (1991), paragraph 24; Copenhagen Document (1990), paragraph 9.6.

(c) to continue calling on the Russian Federation to stop placing and remove barbed wire fences and other artificial obstacles along the occupation line;

(d) to take additional measures in order to monitor and report on the human rights situation in the occupied regions of Georgia;

(e) to continue calling on the Russian Federation to allow a) access of the international human rights monitoring mechanisms to the occupied regions of Georgia; b) relevant missions of international organizations (e.g. EUMM), including humanitarian organizations, to the occupied regions of Georgia through legal routes;

(f) to continue and intensify condemning violations of human rights such as freedom of movement; freedom from torture and ill-treatment; the right to liberty; and the right to property in the occupied regions of Georgia.