



PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA

THE HUMAN RIGHTS SITUATION OF THE CONFLICT-AFFECTED POPULATION IN GEORGIA

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INTRODUCTION

Seven years have passed since the end of the August 2008 war. But while the fighting has stopped, Georgian, Ossetian and Abkhazian citizens residing in conflict zones are still suffering from the devastating effects of the war. This is reflected in the deprivation of life, destruction of livelihoods and the increasing frequency of illegal detentions along the administrative boundary lines. Thousands of people remain unable to return to their homes, hundreds of families are deprived of the right to access their property and family and community ties have been disrupted by wire fences.

During the 2015 reporting period, the Public Defender and his staff carried out intensive monitoring of the human rights protection of victims of the conflict residing near the administrative boundary lines, as well as in communities located in the occupied territories. A number of meetings were held with members of the local population, civil society activists and representatives of local and central government bodies. This report was prepared based on meetings with those individuals and groups.

The documented human rights violations listed in this chapter are proof that there are no alternatives to a policy of peace and conflict transformation. Adequate protection of human rights is the best available mechanism for preventing further conflict and violence. Ignorance of human rights issues increases the prevalence of attitudes that result in escalated tension and destabilization.

The Public Defender's Office regrets that international human rights organizations still have no access to the conflict regions. The international community must intensify its efforts, including its attempts to influence the Russian authorities, to ensure the presence of international representatives in the conflict areas. For their part, the Georgian authorities should ensure maximum flexibility to develop human rights monitoring and protection mechanisms in the conflict regions.

The Public Defender and his staff actively participate in the confidence building process and in educational projects, along with the involvement of Georgian, Abkhazian and Ossetian human rights advocacy organizations and civil society representatives. We also welcome other formats that aim to bring closer the communities currently divided or separated due to the conflict.

THE HUMAN RIGHTS SITUATION OF THE POPULATION RESIDING NEAR THE ADMINISTRATIVE BOUNDARY LINES

SOCIO-ECONOMIC CONDITIONS

Based on the Constitution of Georgia and relevant International Treaties, the Georgian Government has undertaken the obligation to protect the social and economic rights of persons who lack adequate resources and to take respective efforts for the practical realization of those rights. Fulfilling this obligation is crucial for the realization of social justice in the country. Social assistance to vulnerable groups should be viewed as protecting the basic rights of citizens and not an act of discretion or “charity” by the State.

Significant projects have been implemented in villages near the administrative boundary line in order to ensure the protection of these rights. Infrastructure works for gasification were implemented in 50 villages from 2013–2015. Irrigation water wells and drinking water reservoirs were installed; 29 public schools were rehabilitated and a new school was built; more than 700 students received funding for higher education for the 2015–2016 academic year; and the Ministry of Education provided 345 netbooks to first year students in 30 different schools and 34 notebook computers to principles of the first grades.¹

Two-hundred GEL aid was provided to each family in the villages near the administrative boundary lines for the winter season and 23 ambulances were equipped with additional medical personnel. An Emergency Center is being built in the village of Tkviavi in Gori Municipality.² A new 220 bed multi-profile university hospital is being built in the village of Rukhi in Zugdidi Municipality.

Regardless of these crucial social projects, the socio-economic conditions of citizens affected by the conflict, especially those residing near the administrative boundary lines in Shida Kartli and Samegrelo, are still grave. Local residents complain about the lack of irrigation and drinking water, kindergartens, roads, schools and hospitals. However, the key problem facing local residents remains the difficulty of finding sources of income; due to the wire fences and lack of irrigation water, the population can no longer pursue traditional agricultural activities.

Only a few NGOs are currently implementing projects focused on creating sources of livelihood in the conflict-affected communities. This is insufficient as the situation requires more attention from the Government. There are no formal barriers for the conflict-affected population to participate in state-funded entrepreneurship programs implemented by the Ministry of Economy and the Ministry of Agriculture. However,

- 1 The State Minister of Georgia for Reconciliation and Civil Equality Letter dated February 1, 2016 # 198 to the Chairperson of the Human Rights and Civil Integration Committee of the Parliament of Georgia.
- 2 Emergency Hospital is being built in village Tkviavi, “Interpressnews”, 08.02.2016, information available on the webpage: <<http://www.interpressnews.ge/ge/sazogadoeba/365288-sofel-tyviavshi-gadaude-beli-dakhmarebis-samedicino-klinika-shendeba.html?ar=A>> [last seen 26.02.2016].

people living in villages near the administrative boundary lines cannot partake in these programs for two main reasons: these programs are centralized and there is no information available at the local level; and for projects in which co-funding is required, local farmers and entrepreneurs do not have adequate resources and have no access to bank loans due to the fact that they live in high-risk areas. In addition, a large majority of the population has not registered their agricultural lands as their legal property, which is an additional barrier for carrying out entrepreneurial activities. It is thus necessary to create programs specifically tailored to the needs and capabilities of the conflict-affected communities.

Also worth mentioning is that the draft “State Strategy of Socio-economic Development of Conflict affected Regions”, prepared a year ago by the Office of the State Minister of Georgia for Reconciliation and Civil Equality, has not yet been approved by the Government. The State Minister’s Office has yet to develop an implementation action plan for this strategy. Delaying the implementation process hampers mobilization of state policy and resources.

Rehabilitation works and the issuance of compensation for homes damaged during the 2008 war were carried out on an intensive basis immediately following the war. However, there is still a sector of the population in Shida Kartli that by 2015 has still not received aid from the state. The village of Zardiaantkari in Gori Municipality warrants special mention. This village was occupied until 2012. Despite the Georgian Government regaining control over the territory, residents are still unable to return to their homes and are instead living in shelters in various regions, with relatives or in Gori kindergarten #1. Their living conditions are grave. Certain works were launched in 2013–2015, including gasification and drinking and irrigation water recovery, among others. However, the residents refuse to return until their residences are rehabilitated similar to those of other victims.

The Public Defender applied to the Co-Chairs of the Government Commission for Response to the Needs of the Affected Population Living in the Villages of the Administrative Boundary Lines (“State Commission”) on July 17, 2015 with a specific proposal on the above-mentioned issue. The proposal emphasizes that the village remains one of those most damaged by the conflict in Shida Kartli and if problems are not addressed in a timely manner, its economic viability will be threatened. Violations of housing and property rights were revealed in the course of the evaluation of the Public Defender.

The International Covenant on Economic, Social and Cultural Rights, in particular Article 11, protects the right of everyone to an adequate standard of living for himself/herself and his/her family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The Committee on Social, Economic and Cultural Rights defines the Article’s substance. Based on this definition, the “right of everyone to an adequate standard of living” should not be understood in the narrow sense that applies only to providing a shelter – which could mean no more than a roof. In reality, the definition refers to the right to live in safe, peaceful and respectful conditions. In order for housing to be considered adequate, it must meet the following requirements:

respective infrastructure; legal guarantees on the property; suitability for living; and a proper location from where to work and receive basic services.³

It's important to make clear that a lack of resources does not exempt the State from its obligations under the International Covenant on "Economic, Social and Cultural Rights", including the right to adequate housing and fulfilment of the above minimum conditions. According to the Covenant, the most vulnerable groups in society should be provided with adequate support even in cases of extreme shortage of state resources.

The issue described above is still unresolved, and the Public Defender has not received a comprehensive explanation from the Co-chairs of the Commission in response to the submitted proposal.

CITIZEN T.T.'S CASE

Citizen T.T., who cannot return to the village of Zardiaantkari, applied to the Public Defender. The village was occupied until 2012, and since the Georgian Government renewed control over the territory the applicant's house has been rented by the Ministry of Interior. According to citizen T.T., his house was heavily damaged during the war and during the time it has been rented. Moreover, it is located adjacent to the post of the Ministry of Interior Special and Emergency Measures Center. This gives the impression that the house is part of the post's infrastructure. It also increases the security risks for the applicant and his family members for returning to the house. Regardless of all the above mentioned, citizen T.T. has not received compensation from the State.

The Public Defender studied the case and addressed the Ministry of Interior with a recommendation outlining the number of international agreements that guarantee the right to adequate housing. The Public Defender believes that in this particular case the right to adequate housing has been violated. In order to restore the violated rights, the Public Defender recommended that the Ministry ensure alternative living space or compensation to citizen T.T. until a police post is located next to his house.

In response to the recommendation, the Public Defender was informed by the Ministry of Interior that damage to the house was not caused by the Ministry and that the economic and infrastructural issues raised in the recommendation are beyond the Ministry's competence.⁴ Accordingly, the Ministry of Internal Affairs did not follow the Public Defender's recommendation.

Both in 2014 and 2015 members of the local population raised the issue of clean drinking water. According to these citizens the local drinking water, which is supplied by wells, has high mineralization and lacks filtering. This has resulted in an increased frequency of kidney disease among the population.⁵ Again in 2015, the Public Defender

3 General Comments of the Committee of UN on Economic, Social and Cultural Rights # 4, par 8.

4 Letter of the Ministry of Interior to the Public Defender of Georgia. Letter # 314942. February 2, 2016.

5 Laboratory tests conducted by the National Food Agency in 2014 prove that drinking water is polluted in Shida Kartli region, including the dividing line villages and settlements, Public Defender's Annual Report of 2014, p. 820.

issued recommendations to the Government Commission for Response to the Needs of the Affected Population Living in the Villages on the administrative boundary line: conduct regular maintenance of drinking water systems and entrust these measures to the responsible authorities; ensure effective decontamination of water; and keep the population informed regarding water quality.

The right to clean drinking water is one of the most important components of the right to health. It is also directly linked to adequate housing standards. In accordance with international norms, drinking water should be safe, acceptable, sufficient and physically accessible.⁶ The state is obliged to provide safe drinking water to the population and carry out a number of necessary activities in this regard. Those include the periodic safety inspection of water reservoirs and the timely identification and elimination of problems and potential threats.⁷

Based on information provided by the staff of the State Minister on Reconciliation and Civil Equality, the chlorination of wells was completed in late 2015 in nine villages surrounding the administrative boundary line (Koshka, Zardiaantkari, Gugutiantkari, Didi Khurvaleti, Kveshi, Ditsi, Knolevi, Atotsi and Tsagvli). Chlorination will improve water quality.⁸

The fact that since 2015 the population has been supplied with natural gas should be evaluated positively. However, there are problems with the billing process. According to local residents, meter indicators are taken on a monthly basis but households do not receive bills for the consumed gas. Local citizens are worried that their debt will accumulate and result in seizure of the gas supply. Problems with payments are also related to the lack of payment machines in the village. This necessitates traveling to the administrative center to pay the bill.

THE SITUATION IN THE VILLAGE OF TSAGHVLI IN KHASHURI MUNICIPALITY

Residents of the village of Tsaghvli raised the issue of an existing alternative kindergarten during a meeting with representatives of the Public Defender's Office. Based on their statement, the local kindergarten does not meet the needs of village residents. Specifically, unlike in standard kindergartens, children spend four hours each day in the alternative kindergarten. This creates an inconvenience for parents, and due to that, many do not bring children to the kindergarten.

It is important for the community to have a kindergarten that can provide full preschool education to its students. According to representatives of the school, the alternative kindergarten currently has nine children; that number will increase to 40 if it reopens as an ordinary kindergarten. It is also worth mentioning that there is no other kindergarten in Tsaghvli, an area that comprises eight villages. The Public Defender's Office sent a

6 UN Committee on Economic, Social and Cultural Rights. General Committee # 15 (2002) par. 3.

7 Council of Europe Committee of Ministers' Recommendation 14, (2001), principle 8-10.

8 Letter # 198 of the the State Minister on Reconciliation and Civil Equality dated February 1, 2016, to the Human Rights and Civil Integration Committee Chair of the Parliament of Georgia.

letter explaining the issue to the Khashuri Municipal Governor. In response, the Office received notification that the Municipality would not be able to open a fully-functioning kindergarten in the village.⁹

Opening such a kindergarten in Tsaghvli is crucially important for preschool children who need to receive education. According to local residents, inadequate conditions in the village have resulted in a significant increase in emigration.

CONDITIONS IN THE VILLAGES OF ZEMO NIKOZI AND ZEMO KHVITI IN GORI MUNICIPALITY AND THE VILLAGE OF KNOLEVI IN KARELI MUNICIPALITY

In July 2015 a new law was adopted “on the Development of Mountainous Regions.” The law aims to ensure social and economic support for people residing in Georgia’s mountainous regions, including a number of benefits and aids. The status of “high mountainous region”, which qualifies communities to receive this aid, will be granted to settlements located at altitudes of 1500 meters or higher. However, the Government of Georgia, taking into consideration other circumstances, is also entitled to expand this status to settlements located at altitudes higher than 800 meters.

The list of high mountainous regions was approved at the end of 2015.¹⁰ The list includes several settlements higher than 800 meters in Shida Kartli near the administrative boundary line. However, the villages of Zemo Nikozi and Zemo Khviti in Gori Municipality, as well as the village of Knolevi in Kareli Municipality, do not appear on the list. The respective populations of these villages have requested revisions to the list to have them classified as high mountainous regions.¹¹ Citizens point to the fact that the situations in these villages are grave and emigration is high, so it is vital that they receive special status as well.

According to the law, the following bodies are entitled to submit nominations to the list: The Ministry of Regional Development and Infrastructure, the respective municipality, the relevant state governor and the Government of the Autonomous Republic of Adjara. The deadline for submitting nominations was set at April 1, 2016 during the December 2015 session of the Mountain Development National Council.¹² The Mountain Development National Council will discuss submitted nominations at the April session and if it deems it appropriate will address the Government of Georgia with a relevant proposal.

9 Letter N1587 of the Public Defender’s Office, dated October 13, 2015, to the Governor of Khashuri Municipality.

10 Resolution №671 of the Government of Georgia, dated December 30, 2015 on the approval of the list of high mountainous regions.

11 Residents of Nikozi request to be included in the list of regions with high mountainous status, „Trialeti“, 17.02.2016, information available at the web page: <<http://trialeti.ge/?menuid=2&lang=1&id=4264>> [last seen 09.03.16]; Village that did not appear in the list of village with high mountainous region status, “Ibernews”, 7.02.2016, information available at the web page: <http://iberianewss.blogspot.com/2016/02/blog-post_7.html> [last seen 09.03.16].

12 Protocol # 2 of the Mountain Development National Council session. December 14, 2015.

According to information available to the Public Defender, the Kareli district administration has already applied to the Council regarding the village of Knolevi. The Gori Municipality administration rejected similar requests submitted for the following villages: Zemo Nikozi, Nikozi and Zemo Khviti, citing the position that these villages do not comply with the criteria envisaged in the law and by the protocol of the Council session.¹³

HOUSEHOLD WASTE PROBLEM IN VILLAGES NEAR THE ADMINISTRATIVE BOUNDARY LINE

The Public Defender's Office conducted monitoring and revealed that household waste is not being removed from the villages near the administrative boundary line in Shida Kartli. This is a serious problem for the local population, as garbage accumulates and leads to insanitary conditions. The Public Defender learned that this problem is prevalent in the following villages: Tsitelubani, Kordi, and the village of Knolevi in Kareli Municipality. Garbage bins are available in only a few villages.

The Public Defender's Office notified the Gori municipal governor of this problem in 2014 (letter # 01-6/14561 22.10.2014). The governor stated in his response that the purchase of garbage bins was planned within the 2015 budget. This would ensure the removal of household waste in all villages in the municipality (letter N530/15 12.02.2015). Indeed, 21 garbage bins were placed in Tsitelubani. Garbage bins were also placed in the village of Kveshi in Gori Municipality within the framework of the 2015 village support program. However, the problem remains in a number of villages along the administrative boundary line in Shida Kartli.

SECURITY PROBLEMS

Military exercises in the occupied territories and illegal detentions near the administrative boundary lines continue to be serious problems affecting the security of local residents.¹⁴ During the 2015 reporting period, members of the population were extremely concerned about the increasing number of military exercises and the constant shooting near the administrative boundary line, in particular coming from the direction of so called South Ossetia (hereinafter referred to as "South Ossetia"). These citizens live in constant fear and regularly hear explosions and gunfire, thus reliving the trauma of the 2008 war. This is confirmed by the head of the EU Monitoring Mission, who said the following:

"For the past years [...] mission observed increased number of intensified military trainings [...] not only in terms of quantity, but also in terms of used modern technology

13 Article 2(1) of the Law on High Mountainous Region Development; Mountain development National Council, Protocol # 2, Annex 1, December 14, 2015.

14 Public Defender's Office representatives met and received information from the residents of the following villages: Flavi, Kveshi, Kirbali, Akhalsopeli, Tsielubani, Khurvaleti, Zemosobisi, Bershueti, Sakorintlo, Dvani, Mejvriskhevi, Jariasheni, Ditsi, Kvemo Artsevi.

and armaments. Some of the military bases in Abkhazia and South Ossetia are located in the immediate surrounding area of the administrative boundary line and the local population continuously hears the noise.”¹⁵

As for detentions, official statistics state that 163 persons were detained in 2015 at the administrative boundary line with South Ossetia (this figure was 142 in 2014), among them 18 women and seven juveniles. On the Abkhazian boundary, there were 341 detentions (in 2014, the figure was 380). Among the detainees were 39 women and 15 juveniles.¹⁶ However, the actual number of detention cases on the Abkhazian administrative boundary line is much higher due to the population of Gali region. The Georgian Security Service is unable to register cases in this region. Based on Abkhazian and Russian sources, 2,400 persons were detained in 2015.¹⁷

Local residents state that cases often occur where Russian border guards cross the boundary and detain people on their own property, on the village roads and in cemeteries (Shida Kartli villages: Flavi, Bershueti, Zemo Sobisi, Kirbali). Detentions tend to increase during religious holidays, when members of the local population traditionally visit churches and cemeteries located at the village edges. For example, on January 4, 2016, Russian border guards arrested two young men who, according to their families, went to church to light candles. This happened in the village of Bershueti in Gori municipality. It is worth mentioning that the church is located on Georgian-controlled territory and therefore the young people could not have crossed the administrative boundary line.

Detainees are released upon the payment of fines. The amount collected by so South Ossetia is 2,000 Rubles (roughly 70 GEL), in Abkhazia it varies from 1000-30000 Rubles (25–500 GEL).¹⁸ However, there was no receipt of payment or official decision of the *de facto* court in either of the cases discussed with representatives of the Public Defender’s Office.

Residents of Shida Kartli have asked for help, as many detainees are socially vulnerable and income constraints make it extremely difficult for their families to pay the fines. This particularly applies to cases when two members of the same family are detained. During the Public Defender’s monitoring period there were several cases when single financial aid payments were allocated by the local municipality to socially vulnerable detainees.¹⁹

15 Monitoring Mission in Georgia regarding the existing situation “Radio Freedom”, 17.02.2016, information available on web page: <<http://www.radiotavisupleba.ge/content/eumm-state-of-play-and-future-perspectives/27558020.html>> last seen 26.02.2016].

16 Letter of Georgian Security Service to Public Defender’s Office. Letter # 383603. February 16, 2016.

17 Abkhaz-Georgian border crossing points should be reduced, Information Agency “Sputnik Abkhazia” 17.03.2016. information available at Russian webpage: <<http://sputnik-abkhazia.ru/Abkhazia/20160317/1017555465.html#ixzz439N4TnYk>> [last seen 18.03.2016].

18 Parliamentary Report 2014 of the Public Defender of Georgia. Pg.839.

19 Decree # 5 of Gori Municipality Administration, January 5, 2015. Decree on Approving the Rules of Allocation of Social Aid from the Local Budget.

CITIZEN I.T. CASE

On July 23, 2014, citizen I.T. was detained in his own garden in a village near the administrative boundary line in Kareli region. He was detained for illegally crossing the border and was sentenced to one year's imprisonment. He was released in May 2015. According to his statement, he was the victim of inhumane treatment for up to one year. He was subjected to torture by the prison guards. Specifically, he was beaten; nails were removed; his fingers were crushed between a wall and a closed door; his teeth were broken; he was accused of espionage; and he was threatened with 10–25 years of imprisonment. Moreover, in conversation with the Public Defender's representative the prisoner described inadequate prison conditions and mentioned that he was fed with food that other prisoners in the same cell received from relatives. He did not receive any care while he was ill. The Public Defender's Office referred the citizen to the Georgian Center for Psychosocial and Medical Rehabilitation of Torture Victims (GCRT), and psychological assistance was subsequently provided to him.

INCIDENT IN THE GORI MUNICIPALITY VILLAGE OF KHURVALETI

On July 11, 2015, Russian border guards moved the administrative boundary line once again to make it closer to the central highway that connects east and west Georgia. The move has worsened the already fragile security situation and aggravated the socio-economic problems of Georgian citizens. Once this information became public, a demonstration was organized by journalists and NGO representatives that inspired a strong reaction from the local population. When speaking with representatives of the Public Defender, members of the local population mentioned that after similar demonstrations the security situation became even worse. It has become dangerous not only for residents to come near the administrative boundary line, but also to the surrounding agricultural land plots. Similar incidents illustrate the intolerability of everyday life for the population near the administrative boundary line, both in terms of security and poor social conditions. According to the evaluation of the Head of the EU Monitoring Mission, similar incidents may create "new hotspots."²⁰

Meetings continue to be regularly held in Ergneti within the framework of the Incidents Prevention and Response Mechanism (IPRM). Local security issues are being discussed with the participation of all relevant parties. This forum was created within the framework of the Geneva international discussion format and provides a space for negotiation on security issues for the population affected by the conflict and living near the administrative boundary line. However, there have been efforts to politicize the IPRM. This ultimately hampers the resolution of humanitarian issues such as the drinking and irrigation water supply, the release of prisoners and freedom of movement, among other things.

20 Monitoring Mission in Georgia on existing situation "radio Freedom", 17.02.2016, information available on the web page: <<http://www.radiotavisupleba.ge/content/eumm-state-of-play-and-future-perspectives/27558020.html>> [last seen 26.02.2016].

PROGRAMS IMPLEMENTED IN VILLAGES NEAR THE ADMINISTRATIVE BOUNDARY LINE AND THE REPORT ON IMPLEMENTATION OF THE PUBLIC DEFENDER'S RECOMMENDATIONS

The Public Defender's 2014 Report identified a number of problems. Among those identified, the Public Defender emphasized the problem of registration and recognition of property rights on agricultural lands in villages near the administrative boundary lines. Due to unorganized household books, the lack of proper documents and the prevalence of informal agreements, it remains difficult to register and recognize lands in the villages surrounding the administrative boundary lines. Even those citizens who have relevant documents often cannot afford to pay the amounts due for legalization due to financial constraints. This amount is at least 150 GEL. Not only are the lands not registered, but the houses and other buildings on these lands are also unregistered.

The Public Defender addressed the Ministry of Justice to speed up the land and property registration process on the administrative boundary lines. This should enable members of the population affected by the installation of wire fences to use legal mechanisms to protect their rights.

Based on information provided by the National Agency of Public Registry (the Public Registry), the Public Registry has been inquiring into the situation of lands near the administrative boundary lines since 2013. The Public Registry conducted a study of a 600-900 meter wide section of land along the administrative boundary line. Satellite photos and documents protected in archives have been studied, the materials and documents protected in the Public Registry were digitalized, and a pilot project was implemented. Within the framework of this project, sixty-two land plots were studied at one part of Ditsi City Council. The study showed that in more than half of the cases the documents were in order (36 plots), the rest (26 plots) did not have any legal documentation that could prove property rights.

These documents as well as those documents protected in the Public Registry were digitalized, and the Public Registry elaborated recommendations within the framework of this project and based on the revealed problems. These recommendations envisaged exempting residents of these villages from land registration fees. The project also identified the need to legalize land ownership certification documents that were issued in violation of legislation.²¹

Despite the implementation of important works, according to the Public Defender's information the process has not moved forward since implementation of the pilot project. This has been confirmed by the non-governmental organizations working in the field and by members of the local population. According to the Public Registry, the process is ongoing and cannot be sped up.²²

However, an important development was the approval of a package of legislative amendments aimed at simplifying the registration process in the country to make it

21 Ministry of Justice of Georgia, National Public Registry Agency, Letter of May 27, 2015. N128615.

22 Ibid.

more accessible to citizens. According to the Minister, the initiative, among other things, includes the delivery of certain services free of charge.²³

In addition, the Public Defender's 2014 Report outlined a number of important initiatives by the Government. Implementation of these initiatives was delayed and prevented realization of the rights of the population. For example, the decision to finance university studies for the 2014-2015 school year for students affected by the conflict was made in October 2014; however, funds were only transferred at the end of the academic year. Due to this, several students faced the risk of suspension from student status. The Public Defender addressed the Minister of Education and Science requesting that it ensure that universities be informed on the funding of students residing in the occupied territories and surrounding areas. This funding was provided from the state social aid program, and would prevent suspension of student status for these persons. The Public Defender recommended analyzing, revealing and eliminating in a timely manner the bureaucratic barriers. However, the same problem occurred in academic years of 2015–2016, as the decision on financing was adopted by the State Commission in November 2015 and by January 2016 the amount was still not allocated.

Launching the construction of a public school in the village of Atotsi in Kareli Municipality should also be evaluated positively. The Public Defender of Georgia, in his 2014 Annual Report, addressed the grave situation of the school in Atotsi. In particular, the school building in which 51 students studied was in a dilapidated condition and the access road was fully amortized. The Public Defender addressed the Temporary Commission with the proposal to build a school in Atotsi and described the other needs of the population affected by the conflict in surrounding villages.²⁴ Demolition of the old building and new construction works were launched in October 2015. School students currently attend the school near their village in the village of Bredzi. They are provided with transportation. Teachers made clear that the education process had not been disrupted.

23 See the statement of the Ministry of Justice regarding the initiative: <<https://www.youtube.com/watch?v=nqkrgCLkMVw>>; barriers for registering lands in private ownership shall be abolished, Ministry of Justice, 15.03.2016. Information available at the webpage: <<http://justice.gov.ge/News/Detail?newsId=5133>> [last seen 26.02.2016].

24 Proposal of the Public Defender of Georgia of July 17, 2015 (N 01-6/5821) "Need to carry out effective measures for realization of social rights of the population affected by the conflict."

THE HUMAN RIGHTS SITUATION OF THE POPULATION RESIDING ON THE OCCUPIED TERRITORIES

Taking into consideration international and European human rights standards, it is the obligation of the governments of Georgia, the Russian Federation and the *de facto* governments to protect human rights on the territories of South Ossetia and Abkhazia.

The Russian Federation, which maintains effective control and occupation of Abkhazia and South Ossetia, is immediately responsible for human rights violations committed on those territories. Georgia, as the state of the territory on which the human rights violations take place, despite the fact that it cannot exercise effective control still carries the positive obligation to restore its jurisdiction and to take all necessary measures, including legal and diplomatic measures, to effectively address human rights violations in these regions.²⁵

Despite the fact that the *de facto* governments are not subject to international law, they have the obligation to respect internationally-recognized human rights and freedoms. This commitment derives from two main sources: a) significant part of the Universal Declaration of Human Rights is recognized as customary law, which means universal recognition of certain norms; and b) the *de facto* governments, as non-state entities controlling territory and populations, are obliged to respect the rights of the populations under their control.

There are continuous instances of violation of right to life, health care, education and movement in Abkhazia and South Ossetia, as well as regular ethnic decimation, illegal detention and other problems. The state of civil and social rights was grave throughout the reporting period.

RIGHT TO EDUCATION

The right to education is guaranteed by international human rights law. It is enshrined in the United Nations and the Council of Europe's respective binding conventions. According to international law, education shall be physically and economically accessible to everyone without discrimination and shall be provided in acceptable conditions. This means that the form and substance of education, including the curriculum and teaching methods, shall be appropriate, culturally relevant and of good quality for students and parents.²⁶ In addition, according to the Convention on the Rights of the Child, education should aim at promoting respect for the culture, language and values of the child and his/her parents.²⁷

25 European Court of Human Rights. Decision as of October 19, 2012 (*Catan and Others v. Moldova and Russia*) par.109, 145.

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

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

Problems regarding the right to education in one's native language as well as access to it is particularly acute in the Gali district, where access to education in the Georgian language became even sparser in the academic year of 2015–2016. Until 2015, among the 31 schools²⁸ in Gali district, 11 schools in the so-called “lower zone” maintained instruction in Georgian language. However, based on the decision of the *de facto* government, the first to fourth classes of these schools accepted instruction in Russian language since the 2015–2016 academic year. Teaching in Georgian language was reduced for the rest of the classes. In addition, each following first class will study in Russian language.²⁹ Accordingly, teaching in Georgian language will be terminated in Gali district schools in the near future, finalizing the process that was launched in 1995, which aimed to substitute education in Georgian language with that in Russian language in Gali district.³⁰

Schools belonging to Oчамchire and Tkvarcheli regions had to change their language of instruction to Russian over 1995–2015 (11 schools in total). Schools in the Gali “upper zone” (nine schools in total) introduced teaching in Russian language in a gradual manner, following the “first class” principle. This meant that each new class would start the education process in Russian language. Accordingly, education has been administered in Russian language since 2005, except for in the “lower zone” of Gali region. In addition, the number of hours dedicated to teaching Georgian language and literature has been gradually reduced.³¹

This policy has been protested several times by school administrators as well as by parents. They addressed the *de facto* government but with no result. According to the Public Defender, several families had to leave the territory and move their children onto the territory controlled by Georgia in order to enable their children to receive education in Georgian language. In September–December of 2015, the Accreditation Commission of the Ministry of Education and Culture of Abkhazia recognized the education of 54 students received on the occupied territories, based on parents' applications. These were students who wished to continue their studies beyond Enguri.³² In the documents submitted to the Public Defender, several parents stated openly that the change of school was motivated by the change to Russian language study.

It must be mentioned that other ethnic minorities are able to receive education in Abkhazia in their native languages. Ethnic Georgians cannot exercise the same rights or their ability to exercise this right is reduced every year. This must be evaluated as discrimination on an ethnic basis.

28 Reference is made to previous boarders of Gali, including 10 schools belonging to *de facto* government in Tkvarcheli and 1 school belonging to Oчамchire region. Gali region is also divided in “upper” and “lower” zones.

29 In all schools of Gali region education process is administered following the standards of Ministry of Education of Abkhazia . Information available in Russian language: <<http://www.apsnypress.info/news/vo-vsekh-shkolakh-galskogo-rayona-obuchenie-budet-vestis-po-standartam-minobrazovaniya-abkhazii/>> [last seen 15.01.2016]; Interviews with the contact persons, September – October (2015).

30 “Living in Limbo”, Human Rights Watch, 2011, pg. 48.

31 See the Public Defender's Special Report of 2015, “Right to Education in Gali Region: 2015–2016 academic years' novelties and consequent problems”.

32 Ministry of Education and Culture of Abkhazia, Gali Resource Center.

Switching to studies in Russian language seriously reduced the quality of education in Gali district as well as in the village of Ochamchire and Tkvarcheli villages in the former Gali district. Students have difficulties learning in Russian language, while teachers have difficulties teaching in it; an absolute majority of these persons are ethnic Georgians and the teachers have received education in Georgian language.

Statistics prove this trend: of the 190 students who registered from national exams from Gali region, only 11 received a state grant for receiving a high score. This is 6% of all students who registered for the exams.³³ That indicator is 13% for Zugdidi municipality and 16% across the country.³⁴

Crossing the administrative boundary line in order to reach school continues to be a problem for the local population living near the administrative boundary line. The number of children who must cross the administrative boundary line has reduced in comparison to previous years:

- Five students had to cross the line between the Zugdidi Municipality village of Khurcha to the Gali Region village of Nabakevi during the academic year of 2015–2016. Up until 2011, this number was as many as 40.³⁵

- Eleven students crossed the administrative boundary line from the Gali Region village of Saberio to the Tslenjikha Municipality village of Tskhoushi (4-9 grades). The village of Pakhulani – 12 students (9–11 grades) in the 2015-2016 academic year; whereas, in 2014, 18 students (9-11 grades) crossed the line to go to Tskhoushi school and 48 students in 2014. Thirteen students crossed the line to go to Pakhulani school in 2013.

- Currently, 15 students travel from village Otobaia in Gali Region to Zugdidi Municipality village Ganmukhuri (7–11 grades). The number of students in 2014 was 18 and in 2013 it was 34.

In addition to this, only those students who are included in a special list used by the Russian border guards are able to cross the administrative boundary line. First year students do not appear in this list. At the end of October, Russian border guards requested new lists of students. Students were not allowed to cross the line during four days while the new list was being compiled. Three students were unable to be included in the list for the academic year of 2015–2016 and thus were not able to start their studies.³⁶

Persons who are unable to cross the administrative boundary line in this way sometimes attempt to do it by finding bypass roads. There were several cases of juveniles being detained in 2015, including a case in which Russian border guards detained students of

33 Ministry of Education and Culture of Abkhazia Autonomous Republic, Gali Resource Center.

34 Among 1024 school undergraduates of Zugdidi municipality education resource center, 135 received state grant. This was 13 % of total registered persons. Country wide – among registered 40076 undergraduates, 6742 received the grant. This is 16% of registered undergraduates. Letter of the National Center of Evaluation and Exams. February 4, 2016 MES 3 16 00097362.

35 In 2014 – 7 students were crossing the line, in 2013 – 13; in 2012 – 22.

36 Ministry of Education and Culture of Abkhazia Autonomous Republic, Gali Resource Center.

the 10th and 11th grades (girls) and intimidated them. They were forced to temporarily miss their studies as a result.³⁷

We believe that similar violations of the right to education is problematic for several reasons. First and foremost, children are deprived of the right to receive education in their native language. The latter is guaranteed in the UN Convention on the Rights of the Child (Article 29c). In addition to that, parents are deprived of the right guaranteed by the European Convention of Human Rights that the state shall respect the right of parents to ensure that education and teaching is in conformity with their own religious and philosophical convictions (Article 2 of Protocol 1).³⁸

Restrictions on movement across the administrative boundary line violates students' right to access to education, as it is not accessible in a physically safe area. In addition, juvenile detention on grounds of "illegal crossing of the border" is a violation of their rights, as the detention of juveniles is permissible only due to extreme necessity³⁹ and as a last resort. Russian border guards use these detentions to guarantee payment of the fine.

Also problematic is the situation faced by Gali teachers, who are under a fragile security situation and at high risk of human rights violations. Security problems arise when teachers attempt to teach Georgian language to students in secret. There are frequent inspections at schools and if such facts are revealed, the teachers are subject to dismissal from their places of work.⁴⁰ There were instances of school heads and teachers being dismissed for organizing events in Georgian language, including using Georgian language and symbols.⁴¹

The Public Defender was notified that in April 2015 the *de facto* authorities held meetings with the directors of the school. These persons were openly forbidden to enter territory controlled by Georgia.⁴² In addition, constant inspections are organized when teachers are not in place or when they have left Enguri. In the conversation with the Public Defender's representatives, the directors and teachers explained that academic personnel are extremely tense due to these inspections and restrictions, which has negative effects on the education process.⁴³

In October-December 2015, Tkvarcheli and Ochamchire region school teachers and technical staff, as well as the rest of population, were prohibited from crossing the

37 Information collected by the Public Defender. Village Khurcha of Zugdidi municipality, village Tskoushi of Tsalenjikha municipality. October 2015.

38 See the International Covenants of UN Economic, Social and Cultural Rights. Article 13. paragraphs 3 and 4.

39 UN Convention on the Rights of the Child. Art. 37.

40 „Living in Limbo“, „Human Rights Watch“, 2011, pg. 49.

41 “Human Rights Watch” wrote about similar cases in the report of 2011. School director, deputy and two teachers were dismissed from work when they found the memory disc with Georgian students singing Georgian anthem and relevant video. “Living in Limbo“, „Human Rights Watch“, 2011, pg. 56.

42 Information submitted to the Ombudsman by the contact person.

43 Interview with the Public Defender of Georgia.

administrative boundary line without holding passes issued in the regional centers. As a result, these people were unable to go beyond Enguri, not only for educational purposes, but also to receive medical services or attend to other personal issues.⁴⁴

Gali region and its local population can play a special role in the normalization of Georgian-Abkhazian relations, which is of vital importance for regional peace and stability. All parties should work to improve education processes in Gali region without attempting to politicize it, and should attend to it only in the context of human rights.

The situation has not changed in the occupied region of Akhgori in comparison to last year. Among 11 schools in the region, six are Georgian and five are Russian. Students have no problem receiving education in their native language. The situation has not been fundamentally altered since the occupation in 2008.

FREEDOM OF EXPRESSION

Freedom of expression is one of the core values of a democratic society. International human rights law protects the freedoms of expression, assembly and association. According to the assessment of the Special Rapporteur of the UN Human Rights Committee, the right to freedom of association is a driver for realization of other rights, and the state of its protection speaks volumes about the protection of other rights.⁴⁵ Restrictions of this right should be in such a way that does not interfere with its substance.

The situation is not favorable in this regard in Abkhazia and South Ossetia, where there are several active non-governmental organizations. These organizations often suffer from pressure exerted by the *de facto* authorities. This violates their freedom of expression, freedom of assembly and freedom of association. Pro-opposition journalists are also subject to pressure.

The situation is particularly difficult with regard to freedom of expression in South Ossetia. According to the assessment of “Freedom House” in 2015, this region appears in the list of “not free” territories with 6.5 points (1 being the best, 7 being the worst). The 2015 report states that South Ossetia’s *de facto* authorities control non-governmental organizations to a large extent.⁴⁶

Organizations and civil activists who participate in Georgian-Ossetian meetings are subject to pressure. According to the Public Defender, a number of civil society representatives changed their minds and decided not to participate in public events due to interference and warnings from the South Ossetian security service.⁴⁷ This kind

44 Information submitted to the Ombudsman by the contact person.

45 Special Rapporteur of the UN on the Rights to Freedom of Peaceful Assembly and Association Maina Kiai, A/HRC/20/27, par. 12.

46 „South Osetis, Freedom in the World”, (2015), “Freedom House”, information available on the web page: <<https://freedomhouse.org/report/freedom-world/2015/south-ossetia>> [last seen 03.02.2015].

47 Information provided by the Public Defender’s contact person.

of interference in the activities of the civil sector restricts the right to free assembly and prevents the development of civil society in the region.

The situation in this region is even more complicated since 2014, when the *de facto* South Ossetian Parliament, following a Russian Federation practice, adopted the Law on NGOs. This law imposes additional accountability on NGOs that receive foreign funding, requiring that they provide state bodies with their financial expenditures.⁴⁸

Due to this pressure, two of the most respected and experienced non-governmental organizations (the Socio-economic and Cultural Development Agency and the Association of South Ossetian Women for Democracy and Human Rights) decided to liquidate their organizations in October 2015. According to them, this was their reaction and protest to the situation with regard to non-governmental organizations.⁴⁹

The adoption of legislation restricting the activities of non-governmental organizations in South Ossetia has nearly paralyzed the civil society. The same law that was adopted in Russia was negatively assessed by international governmental and non-governmental organizations.⁵⁰ The Special Rapporteur of the UN Human Rights Committee has defined in its report that organizations must have access to resources and funding, which are important and integral components of freedom of association.⁵¹ As it is said in South Ossetia, sources of funding for non-governmental organizations are already scarce and this legislation does not correspond to reality.⁵² Accordingly, the situation created in South Ossetia violates the freedom of association.

As a result, South Ossetia is completely closed to international organizations.⁵³ *De facto* authorities have been refusing to allow OSCE, Council of Europe, UN High Commissioner for Human Rights and other delegations into the country for years already. Even the small connection that international non-governmental organizations already had with Ossetian organizations ended in 2015. For example, South Ossetian security services sent an official alert to an employee of the British non-governmental organization International Alert regarding the inadmissibility of her actions. According to the South Ossetian security services, the employee intended to implement projects ignoring national legislation and against the national interests of South Ossetia.⁵⁴ The

48 Draft law "on Non Commercial Organizations" (South Ossetia) 28.04.2014, internet edition "Kavkazki Uzel" information is available on Russian web page: < <https://www.kavkaz-uzel.ru/articles/241580/> > [last seen 03.02.2015].

49 „Self liquidation, as new form of protest” 05.10.2015, Radio “Echo Kavkaza”, information is available on Russian web page: <http://www.ekhokavkaza.com/content/article/27289604.html> > [last seen 03.02.2015].

50 Opinion of Human Rights Commissioner on the legislation of the Russian Federation on Council of Europe standards, CommDH(2013)15.

51 Report of the UN Special Rapporteur on the right to assembly and association, Maina Kiai, A/HRC/20/27, par. 67.

52 „Are considered as “foreign agent”, Radio Caucasus, 22.07.2013, information is available in Russian language at the following webpage: <<http://www.ekhokavkaza.com/content/article/25053756.html> > [last seen 03.02.2016].

53 Red Cross International Committee is the only body that continues to work in Tskhinvali.

54 „What did agent Sotieva commit?”, Murat Gukemukhov, Radio Echo Caucasus 26.06.2015, information is available in Russian language on the following webpage: < <http://www.ekhokavkaza.com/content/article/27095841.html> > [last seen 03.02.2015].

organization issued a statement in response to the accusations which referred to them as groundless.⁵⁵

An example of pressuring journalists and attempting to discredit them is an article published by law enforcement agencies regarding journalist Irina Kelekhseeva. The article accused “Ekho Kavkaza” and Irina Kelekhseeva of violating ethics and morality. Kelekhseeva considered this article to be defamatory and decided to argue in court to restore her rights. The *de facto* Court did not share her position.⁵⁶

The situation is relatively better in Abkhazia, where local and international organizations have more space to work. Freedom House assessed Abkhazia as “partly free” with a score of 4.5 points. The report notes that non-governmental organizations have considerable influence on the *de facto* Government.⁵⁷ However, there were examples of interference in the work of journalists. In October 2015, Sukhumi and Gali journalists preparing a report in the Gali region village of Tagiloni were asked by Russian border guards to show special passes for being in a “border zone.” The journalists were detained for a couple hours before being released after issuing an “administrative violation” act.⁵⁸

In accordance with the European Convention on Human Rights, interference in the freedom of expression shall be clearly prescribed by the law, necessary to achieve legitimate means and shall be proportional.⁵⁹

Any interference in the work of journalists that does not satisfy the above mentioned requirements is in violation of freedom of expression. The above described incident was an arbitrary and illegal interference in the work of journalists by Russian border guards, as there was no predefined rule to restrict journalists’ presence at that particular place.

PASSPORTIZATION AND RELATED PROBLEMS

Abkhazia and South Ossetian citizenship documents or passports issued by the *de facto* authorities are not recognized as legal documents by Georgia or by the international community. However, possession of these documents is related to a number of basic rights for the residents of these territories.

55 „Alert International denies accusations by Security Service “, 10.07.2015 information is available in English, webpage: <<http://www.international-alert.org/news/international-alert-refutes-allegations-south-ossetian-security-services#sthash.6TztSHqb.dpbs>> [last seen 22.03.2016].

56 Tskhinvali Court did not grant the journalist’s complain against Ministry of Interior“, Internet edition “Kavkazski Uzel“, 23.01.2015, information available at Russian webpage:< <http://www.kavkaz-uzel.ru/articles/256091/>> [03.02.2015].

57 “Abkhazia” Freedom in the World” (2015), “Freedom House”, information available at the webpage: <<https://freedomhouse.org/report/freedom-world/2015/abkhazia> >[last seen 03.02.2015].

58 Place, where you cannot relax, October 30, 2015. Information is available in Russian language at the following webpage: <<http://www.sukhum-moscow.ru/index.php/kontekst/item/2554-intsident-na-gruzino-abkhazskoj-granitse>> [03.02.2015].

59 See also UN Covenant on Civil and Political Rights, Art. 19(3).

According to the *de facto* Abkhazian law, all persons having “Abkhazian nationality (Abaza)” are considered to be citizens of the *de facto* Abkhazia Republic regardless of his/her citizenship, except in cases when he/she fought against the Abkhazian civil order through “anti-constitutional means.” Abkhazian citizenship is also granted to those persons who had lived on the territory of Abkhazia for more than five years continuously until 1999.⁶⁰ In addition, dual citizenship is only allowed along with citizenship of the Russian Federation.⁶¹

These requirements on citizenship both directly and indirectly discriminate against ethnic Georgians living in Abkhazia. Those ethnic Georgians living in Gali region that left Abkhazia in 1992–93 due to the war are not considered citizens of Abkhazia. Also, the majority of the Gali population are citizens of Georgia. This precludes the possibility of having Abkhazian citizenship according to the *de facto* legislation.

As noted in the Public Defender’s 2014 report, the passportization policy of Gali region’s population changed in 2014 by the removing of “illegally issued” passports.⁶² It was decided that those in the Gali region who declared to be holding Georgian citizenship would be able to obtain residence permits. Those desiring to obtain Abkhaz citizenship would have to present a document certifying their renouncing of Georgian citizenship. For this purpose, the *de facto* local administration conducted a public opinion poll in 2015 in Gali region. They requested members of the local population to reveal the personal numbers on their Georgian citizenship documents. The population followed this instruction.⁶³ According to reports, the issuance of new passports and residence permits will launch in March 2016.⁶⁴

New regulations will be enforced starting in April 2016 for persons not holding Abkhazian citizenship. Along with other issues, this will regulate preconditions for receiving residence permits.⁶⁵ According to the regulations, a person shall have the right to receive a residence permit if he/she has a temporary residence permit and there is “legal basis for it.”⁶⁶ However, it is not clear what the term “legal basis” means; this provision thus may be used for making arbitrary decisions.

In accordance with this regulation, it is necessary to receive a temporary residence

60 „Law Republic of Abkhazia on Citizenship”, Article 5. Information available on Russian language, webpage: <<http://mfaapsny.org/council/citizen.php>> [last seen 03.02.2016].

61 „Law n Republic of Abkhazia on Citizenship” Article 6. Information available on Russian language, webpage: <<http://mfaapsny.org/council/citizen.php>> [last seen 03.02.2016].

62 State of Human Rights Protection for Persons Affected by the Conflict in Georgia, the Public Defender, (2014), pg. 27-28.

63 Information received from the contact point.

64 „Change of passports will be launched in March in Abkhazia”, Elena Zavodskaja, Radio “echo Caucas” 05.02.2016 Information available on Russian language, webpage: <<http://www.ekhokavkaza.com/content/article/27534861.html>> [last seen 08.02.2016].

65 „Signed the law “the state of rights of foreign citizen in Abkhazia” information available in Russian language at the web page: <http://presidentofabkhazia.org/about/info/news/?ELEMENT_ID=3531> [last seen 05.02.2016].

66 Law on Abkhazia Republic “Rights of Foreign Citizens Residing in Abkhazia”, information is available on Russian language, webpage: <<http://bit.ly/1VVIDPB>> [last seen 26.02.2016] Article 10(1) and (2).

permit before obtaining a residence permit.⁶⁷ This permit is only issued to persons who were born on the territory of Abkhazia and have been permanent residents there for at least 10 years.⁶⁸ The residence permit must be renewed every five years.⁶⁹ Upon enforcement of the law, persons holding residence permits will have to report to the authorities, on an annual basis, regarding their residence and place of employment and income as well as if leaving the territory of Abkhazia.⁷⁰

In accordance with the same law, citizens of foreign countries will have neither active nor passive rights to participate in elections and referendums, neither will they be allowed to participate in local government elections.⁷¹ Persons having no Abkhazian citizenship will have no right to work in the “public service”.⁷²

The above mentioned regulations immediately affect those members of the Gali population that don't hold Abkhazian passports. It is likely that many of them will fail to satisfy not only the Abkhaz citizenship requirements, but also the criteria set for receiving residence cards, and may be forced to leave their permanent residences. For example, a person may be refused a residence permit or have their existing permit annulled if they have been outside of Abkhazia for a period of six months.⁷³ This is problematic for Gali region residents who study abroad or study on the territory controlled by Georgia.

Other grounds used to refuse residents permits are also problematic. For example, in cases when a person is deemed to have acted against the “independence and state sovereignty of Abkhazia” or “with his/her activities threatens the security of Abkhazia”, or “assisted the occupation regime during the war in 1992–1993.”⁷⁴ These regulations might be used to issue arbitrary decisions against residents of Gali region.

Of particular concern is the grounds for refusing resident permits to “the drug addicted persons” or to persons who do not have certification that they do not have “disease caused by the human immunodeficiency virus”.⁷⁵ This restriction is clearly discriminatory against drug addicts as well as against persons infected with HIV.

There are special regulations in Abkhazia on transactions regarding residence spaces. It is prohibited to donate or sell residence space to a foreign citizen.⁷⁶ Only in cases when a person holds an Abkhazian passport is he/she is entitled to own property or receive an inherited property. Accordingly, the ambiguous status of the Gali population adversely affects the protection of their property rights to a large extent.

The Public Defender learned about one Gali resident who had to pay a bribe in order to register the ownership of a newly-purchased house. A Human Rights Watch report

67 *ibid*, Article 10(4).

68 *ibid*, Article 7(2)(14).

69 *ibid*, Article 10(5).

70 *ibid*, Article 10(8).

71 *ibid*, Article 17.

72 *ibid*, Article 18(1)(1).

73 Article 11 (10).

74 Article 11 (1), (2).

75 *ibid*, Article (12).

76 Civil Code of De facto Abkhazia, Article 546 and 563.

also pointed out several cases when persons had problems receiving their inheritance because they did not have an Abkhazian passport.⁷⁷

Gali region's population near the administrative boundary line may face additional problems. According to the information provided to the Public Defender, Russian and Abkhazian border guards told the population residing within one kilometer from the administrative boundary line that they might have to give up their lands and premises below the Enguri river, as it is "the state border" and it is impermissible that people live there.⁷⁸

As for South Ossetia, the possession of South Ossetian passports for the Akhagori population, similar to the situation in Gali, brings opportunities for employment, social benefits and freedom of movement. Akhagori residents who are interested in receiving Ossetian passports need to apply to the Akhagori passport unit and, along with other documents, bring a statement denying Georgian citizenship.

Until 2014, it was relatively easy to receive an Ossetian passport in Akhagori. Since 2014, issuance of passports has been gradually terminated. The Gali case is now being considered in Tskhinvali as an analogy. So far, there has been no final decision on the issue, however, according to non-official data, approximately 40–50% of Akhagori's population already hold Ossetian passports.⁷⁹

WOMEN RIGHTS AND DOMESTIC VIOLENCE IN THE OCCUPIED TERRITORIES

The number of applications to the Public Defender's Office regarding gender-based violence increased in 2015. Case study and additional research results revealed that domestic violence is one of the most difficult and taboo problems in society.

There are no reliable statistics on trends of violence against women in the conflict zones. However, according to the Public Defender's inquiry as well as unofficial information, there were 129 domestic violence cases, including five murders and the disappearance of one victim last year in Gali region.⁸⁰ Residents also speak about the psychological problems of children in relation to domestic violence. NGOs and civil activists also speak about the frequency of early marriages.

These problems which are prevalent on the occupied territories are caused by a number of factors: facts about domestic violence are almost never known outside the family and the victim almost never applies to the law enforcement authorities. Due to taboos and economic hardships, the victims often continue to live together with the offenders. In addition, there is no legal system and no shelters to protect victims on the occupied

77 "Living in Limbo", „Human Rights Watch", 2011, pg. 39-40.

78 Information submitted to the Public Defender by the contact person.

79 Information submitted to the Public Defender by the contact person.

80 Information submitted to the Public Defender by the contact person.

territories. One of the residents of Akhagori region told the Public Defender that she cannot even apply to local police regarding her domestic violence case, as she will be laughed at and ridiculed by the entire population of Akhagori.

Non-governmental organizations work with minimal resources. They mostly focus on raising public awareness and delivering legal consultations and healthcare services. There was one shelter functioning in Gali region at one of the offices of local NGO. This shelter could accommodate 3-15 victims at any one time. However, due to financial problems, the shelter was closed down.

The same is true about the problem of early marriages. Law enforcement agencies do not respond to such incidents and justice remains in the hands of families. In the majority of cases families are against girls returning home because they consider it to be in violation of family dignity and honor.

The prohibition of abortion in Abkhazia should be assessed as disturbing. In December 2015, the *de facto* Parliament of Abkhazia adopted a law which absolutely prohibits abortion on the territory of Abkhazia, even in cases when the fetus threatens the mother's health.⁸¹ According to the authors, the purpose of this regulation is to improve the demographic situation in Abkhazia and to protect human life from the very beginning. The only female member of the *de facto* Parliament in Abkhazia voted against the adoption of this regulation. The media in Abkhazia criticized the process of adoption of the law due to the lack of preliminary study of the views of the population at large and of medical personnel;⁸² despite this the regulation entered into force on February 9, 2016.⁸³

International experience proves that the prohibition of abortion does not solve demographic problems but leads to increases in the number of illegal abortions and, respectively, the number of deaths among the female population.⁸⁴ The use of other, more effective measures such as the improvement of the social conditions of families, support for single mothers and other policies are better for the regulation and improvement of demographic problems. According to statistics, one of the main causes of female mortality in countries where abortion is prohibited is unreliable abortion practices.⁸⁵ As is mentioned in the statement of the UN Committee on the Elimination

81 „Abortions are prohibited, the agreement is signed“, Helena Zavodskaja, Radio “Ekho Kavkaza” 18.12.2015, Information is available in Russian language on the website: <<http://www.ekhokavkaza.com/content/article/27436256.html>> last seen on 11.01.2016].

82 „Phatima Kharzalia: „MPs shall get familiar with international practice“, Helena Zavodskaja, Radio “Ekho Kavkaza”, 21.12.2015, Information is available in Russian language on the website: <<http://www.ekhokavkaza.com/content/article/27441072.html/>> [last seen on 11.01.2016].

83 „The law on prohibiting abortion in Abkhazia entered the legal force“, Internet publication „Cavkas-ki Uzel“ 10.02.2016, Information is available in Russian language on the website: <<http://www.kavkaz-uzel.ru/articles/277361/>> [last seen on 10.02.2016].

84 „Facts and results: Legitimacy, frequency and security of abortion, in the World“, Susan A. Cohen, “Guttmacher Policy Review”, fall 2009, volume 12, issue 4, Information is available in Russian language on the website: <<https://www.guttmacher.org/pubs/gpr/12/4/gpr120402.html>> [last seen on 11.01.2016].

85 „Application of the Convention on Elimination of All Forms of Discrimination against Women for the Advocacy of Reproductive Rights“, „Global Justice Center“, Information is available in English language

of Discrimination against Women in 2014, safe abortion constitutes part of the right to sexual and reproductive health. In the same statement it is argued that unsafe abortion is a leading cause of maternal mortality and morbidity and as such, governments should legalize abortion at least in cases of sexual violence, incest, threats to the life and/or health of the mother, or severe fetal impairment.⁸⁶ Prohibition of abortion in such circumstances represents a violation of women's rights to health and privacy and, in certain cases, to freedom from cruel, inhumane and degrading treatment.⁸⁷

Female political participation in the entire region, including the occupied territories and the rest of Georgia, is problematic. As a result of *de facto* parliamentary elections in 2012 only one (2.8% of the total) female MP entered the 35-seat Parliament of Abkhazia (in the previous years the number of female MPs was between two and four).⁸⁸ Among the 12 ministers in the *de facto* government there are three women, or 25% of the total. Women hold the positions of Minister of Culture and Historic Heritage Protection, Minister of Finance and Minister of Justice of Abkhazia.⁸⁹

The data looks better in South Ossetia, where during the last two parliamentary election cycles⁹⁰, among 34 MPs six were women (17.6%). As for the government in 2015 out of 12 ministers 4 were women (33.3%).⁹¹ This data is more favorable than that of Abkhazia and Georgia.⁹² A female candidate, Ala Jojieva, ran for president during the 2011 presidential election in South Ossetia and, according to the *de facto* Election Commission of South Ossetia, won the election,⁹³ but due to the political events that developed after the election Ala Jojieva failed to become president.⁹⁴

on the website: <http://www.globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=171&cf_id=34> [last seen on 11.01.2016].

86 Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights, 57th Committee Session, February 10-28, 2014 Information is available in English language on the website: <<http://www.ohchr.org/Documents/HRBodies/CEDAW/Statements/SRHR26Feb2014.pdf>> [last seen on 11.01.2016].

87 INFORMATION SERIES ON SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS, ABORTION, Information is available in English language on the website: <http://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf> [last seen on 08.02.2016].

88 For detailed analysis please see Gender and political representation in the de facto states of the Caucasus: women and parliamentary elections in Abkhazia by Karolina Ó Beacháin Stefańczak & Eileen Connolly; CCaucasus Survey“ 3:3, 258-268.

89 „Structure of Abkhazia Cabinet of Ministers“, Information is available in Russian language on the website: <<http://www.km-ra.org/index.php/ru/struktura>> [Last seen on 11.01.2016].

90 „Members of Parliament of Vth Parliament of South Ossetia Republic“, Information is available in Russian language on the website: <http://www.parliamentso.org/node/42> [Last seen on 11.01.2016].

91 „Ministries, the Government of South Ossetia Republic“, Information is available in Russian language on the website: <<http://rso-Government.org/struktura-pravitelstva-respubliki-yuzhnaya-oseitiya/ministerstva-i-vedomstva/ministerstva-ryuo/>> [Last seen on 11.01.2016].

92 Among 19 ministers in the Government of Georgia 3 are women (15.7%) and among 150 MPs 17 are women (11.3%).

93 „Central Election Commission of South Ossetia: Jojieva received 57% of votes during the Presidential Elections, 87% of ballots is counted“, Internet publication “Cavkaski uzel“, 28.11.2011, Information is available in Russian language on the website: <<http://www.kavkaz-uzel.ru/articles/196577/>> [Last seen on 9.03.2016].

94 „Supreme Court of South Caucasus: The Election Results are Void“, Radio “Ekhokavkaza” 29.11.2011,

In Abkhazia and South Ossetia, as in the rest of Georgia, women are more active in the civil sector, education and healthcare services.

CITIZEN J.T.'S CASE

Citizen of Georgia J.T. applied to the Public Defender in 2015. She lives in South Ossetia and suffers from physical and psychological abuse by her husband, due to which her health condition has significantly worsened. It became known to the Public Defender that the husband of J.T. is an employee of the law enforcement authority in South Ossetia and he does not allow his wife to cross the administrative boundary line to return to her parents, who live in Shida Kartli region. Their young children (seven and nine years old) are also in a difficult psychological condition due to the family situation.

The Public Defender's Office applied by letter to the international and non-governmental organizations working in South Ossetia. They affirmed that J.T. required medical and psychological assistance. But their involvement and interest worsened the condition of the victim. Despite the fact that local police were informed about her condition, their response was not effective or sufficient to eliminate the violence. They did not take any measures to isolate the victim from the abuser or to provide her with relevant assistance.

The central authorities of Georgia who provide services to the victims of domestic violence cannot assist people living on the occupied territory until they reach the territory controlled by Georgia.

RESPONSE MECHANISMS TO HUMAN RIGHTS VIOLATIONS

The lack of effective mechanisms, nonexistence of the rule of law, widespread corruption and undemocratic regimes are factors contributing to the difficult human rights situation on the occupied territories. All these factors cause fear and hesitance among the population and discourage them from exercising their rights.

The Public Defender became familiar with several instances of human rights violations during the reporting period but the victims hesitated to apply to the government, courts or international human rights mechanisms for help, because they were afraid it would cause more damage to them and their families.

On December 17, 2014 law enforcement officials arrested eight residents of Gali region on grounds of participating in the war in Abkhazia in 1992-93. They were released from custody after 10 days; they were then escorted to Enguri Bridge and forced to leave, with their right to return restricted.⁹⁵ According to the information received from the

Information is available in Russian language on the website: <<http://www.ekhokavkaza.com/content/article/24406138.html>> [Last seen on 9.03.2016].

95 8 Georgians arrested in Gali were released and entry into Abkhazia for them is prohibited, "Rezonansi" 31.12.2014. Information is available on: <http://www.resonancedaily.com/index.php?id_rub=2&id_artc=23159> [Last seen on 12.03.2015].

victims they are not aware of concrete charges against them. They did not receive the decision of the court and were not informed regarding the length of the prohibition on returning. All of them have families in Gali region and currently live on the territory of Georgia with the help of relatives. The Public Defender offered the victims assistance in communicating with Abkhazian, Georgian and international organizations, who can provide legal assistance at the local and international levels, but the victims abstain from the use of such measures of protection due to the fact that their families remain on the occupied territory.⁹⁶

Persons whose family members' rights to life, education, and health have been violated also refuse to receive legal assistance. They indicate that the use of international legal means would force them to leave the occupied territories and go to live on the territory controlled by Georgia.⁹⁷ Therefore, both the Public Defender as well as Government institutions lack the opportunity to react directly to human rights violations on the occupied territories.

According to the information received by the Public Defender, instances of arrest of young people as well as physical and/or verbal abuse significantly increased in 2015. Armed people in masks patrol the streets and stop young people, arresting those who don't have Abkhazian passports and family members are not informed about the arrests or detentions for a certain period of time.⁹⁸

The case of the beating of two young people arrested in Gali on charges of theft was a highly resonant case. The suspects suffered severe bodily injuries caused by the beating and were moved to Gali hospital. According to the prosecutor's statement, the victims were so harshly beaten that they were not able to testify.⁹⁹ A criminal case was commenced for the beating and the employees of the Criminal Investigation Unit of Gali police were temporarily terminated. The family members of the victims protested in Sokhumi in front of the residence of the President of Abkhazia, the Ministry of Interior Affairs and the Prosecutor's office. According to the information available to the Public Defender, the young people were acquitted due to the fact that their charges were not proven and the law-enforcement officers suspected of the beating were removed from their positions.

Access to effective legal remedies is a fundamental human right. This right is enshrined in Article 13 of the European Convention on Human Rights and Freedoms. According to this article, anyone who has their rights and freedoms set forth in the Convention are violated shall have access to an effective remedy before a national authority, notwithstanding whether the violation was committed by persons acting in an official capacity. In compliance with the case law of the European Court of Human Rights, the

96 Information submitted to the Public Defender by the contact person.

97 Information submitted to the Public Defender by the contact person.

98 Information submitted to the Public Defender by the contact person.

99 Incident in Gali Region, 27.05.2015, Information Agency "Abkhazia-Inform", Information is available in Russian language on website: <<http://abkhazinform.com/item/769-intsident-v-galskom-rajone>> last seen on 03.02.2015].

legal remedies shall be “effective”, both legally as well as in practice and state agencies shall not obstruct their enforcement.¹⁰⁰ As the given facts reveal, Gali residents do not have access to effective legal remedies, which is a violation of their rights.

The right to apply to the European Court of Human Rights is also protected (Article 34 of the ECHR). In the case of *Popov v Russia*, the Court reiterated the importance of free application of an individual to the European Court of Human Rights by concluding the following: “it is of the utmost importance that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure, direct or indirect, from the authorities to withdraw or modify their complaints”.¹⁰¹ Accordingly, hindering in any way the right to apply to the European Court of Human Rights is considered to be a grave violation of the European Convention on Human Rights. This right is especially important for people residing on the occupied territories who have limited access to effective legal remedies and legal institutions, and often European Court of Human Rights is the only available institution which they can appeal to restore their infringed rights.

PROBLEM OF FREE MOVEMENT

As in previous years, movement across the administrative boundary line was still limited in 2015.¹⁰² People residing in Abkhazia are allowed to move onto the territory controlled by Georgia only with Abkhazian passports and when passing through the check points; in addition, they need a permit from the Security Agency of Abkhazia, which is issued only once per month. The circumstances are different for residents of Gali region, who are not required to have the permit and are allowed to use the check points in case they have an Abkhazian passport, but part of the population do not have Abkhazian passports and are forced to cross the administrative boundary line by avoiding the check points. This increases their risk of arrest.

As it became known to the Public Defender in November-December 2015, people residing in Ochamchire and Tkvarcheli regions were required to obtain permits in the regional centers. They were asked to visit the local security service personally and apply in writing for the permit, receiving a decision two weeks later. According to the information submitted to the Public Defender, nearly 90% of applicants were refused permits and, due to this fact, people were forced to pay a certain amount of money to cross the administrative boundary line to arrive in Zugdidi.¹⁰³ This is an additional

100 European Court of Human Rights May 25, 1998 Decision on Case of *Kurt v. Turkey*, par.139.

101 European Court of Human Rights; July 13, 2006 Decision on Case of *Popov v. Russia*, 26853/04 par. 246.

102 Since the war in 2008, the Russian Federation signed an agreement with the de facto governments of Abkhazia and South Ossetia, according to which Russia takes the responsibility for all technical and financial resources required for the administration of borders. Currently Russia has around 1200 border guards on four border bases and around 100 observation points at the 350 km dividing line of South Ossetia and 900 Russian Border Guards and 12 border points on the 120 km dividing line of Abkhazia.

103 Information provided by the contact person.

indicator of how difficult and risky it is for those people residing in the occupied territory to get onto territory controlled by Georgia.

As for the residents of South Ossetia, the administrative boundary line is entirely closed for them except for three exceptions: the administration in Akhlagori issues permits for residents of Akhlagori allowing them to cross the administrative boundary line at the Akhmaji-Mosabruni crossing point (even in this case permits were not issued for all residents); residents of village Kardzmani in Java region also have the right to free movement and can use the crossing point at village Perevi in Sachkhere municipality; and in 2015 according to the information of the administration cross-border movement has been simplified at the crossing point in village Zardiaantkari in Gori Municipality for those residents, who have South Ossetian passports. There are only 17 such residents who already had the right to cross the administrative boundary line.¹⁰⁴

In addition, permission to cross the administrative boundary line was granted to 10 residents from Georgian-controlled territory based on a special list created for the occasions of weddings and funerals; since January 2016, this has also been prohibited.¹⁰⁵

Priest Isaiah for more than three years has been prevented from leaving Akhlagori due to his not having a permit. According to the information available to the Public Defender, when he entered Akhlagori he had a form #9 but after the document expired he was refused an extension or a new permit, and thus cannot leave Akhlagori because he will not be admitted back.¹⁰⁶

The practice of arresting residents of territory controlled by Georgia as well as residents of the occupied territories continues to be a problem at both the administrative boundary lines of Abkhazia and South Ossetia. The Public Defender reviewed instances of arrest of infants and their parents, school children, medical patients and seniors.

Two deadly cases were brought to the attention of Public Defender in 2015 – the deaths of two persons crossing the administrative boundary line with Abkhazia. In January 2015 a young woman who wanted to move onto the territory controlled by Georgia from a village in upper Gali due to medical reasons tried to detour and cross river the Enguri by horse due to her not holding a permit, but she fell into the river and drowned. A 12-year old juvenile died on May 4, 2015 because he was not able to cross the administrative boundary line in time to receive appropriate medical assistance. Due to the lack of special permits, the family tried to bypass the border crossing in order to get onto the territory controlled by Georgia but the child died on the way. Bypassing and detouring by those seeking medical attention is very common and these people are regularly arrested.

104 „Only 17 residents of Zardaantkari are allowed to cross the border“, Information Agency “Sputnik South Ossetia”, 15.10.2015. Information is available in Russian Language on the webpage: <http://sputnik-ossetia.ru/South_Ossetia/20151015/723311.html> [Last seen on 02.02.16].

105 „Neither death nor wedding“, Murat Gukemukhov, Radio “EkhoKavklaza” 05.02.2016, Information is available in Russian Language on webpage: <<http://www.ekhoKavklaza.com/content/article/27534878.html>> Last seen on 02.03.2016].

106 „Modern Heroism of Priest Isaiah is that he is devoted to his clergy“, Manana Nozadze, 22.04.2015, Information Agency “For.ge”, Information is available on webpage: http://www.for.ge/view.php?for_id=40130&bloger_id=22&cat=12 [Last seen on 29.03.2016].

Such instances should be considered violations of the right to health. The right to health has been acknowledged by certain international law documents, including Article 12 of the International Covenant on Economic, Social and Cultural Rights, which states that everyone has the right to enjoyment of the highest attainable standard of physical and mental health. The right to health includes access to healthcare, which is an absolute right and accordingly requires special protection.

The practice of detaining persons in Russian military bases in the occupied territories also involves the violation of rights. The explanations given by arrested citizens to the staff of the Public Defender's Office revealed the following: there are unacceptable conditions in the basements of the Russian Federation's military bases; detainees are not provided with water and food; and 12 people are placed in one cell despite their gender and age.

EXPLANATION OF CITIZEN E.K.

According to the information provided to the Public Defender by an eye witness in September 2015, E.K. and several other people were crossing onto the territory of Abkhazia by a bypass road. They were arrested by Russian militia near the village of Nabakevi on charges of illegally crossing the administrative boundary line. The detainees were taken to the basement of the Russian military base and put in a cell with 20 other detainees. Later, more people were brought and by the end of the day there were roughly 40 detainees in the cell. According to the eyewitnesses, they were to be moved to the building of the Gali militia but for uncertain reasons that was postponed until morning. Children were among the detainees, the youngest being a four-month old infant. All the detainees were placed in one room. The minimum conditions were not provided to the detainees; there were not enough seats in the room and the detainees were not provided with food or water. The eyewitnesses said that they had a verbal argument with the Russian soldiers after asking for water and food for the children. The children were sleeping on the table at night, the rest were sleeping on the floor and on chairs. On the following morning all the detainees were taken to the Gali Russian Military Base and were released only after the payment of fines.

The rights to freedom and liberty, private and family life, freedom of movement and freedom to choose one's place of residence are acknowledged by international human rights norms and by the Georgian Constitution.

The arrest and detention of Georgian citizens in the conflict zones for violation of the so-called "border regime" represents a violation of freedom and security. The right to freedom of movement is guaranteed by a number of international treaties. The Universal Declaration of Human Rights, Articles 3 and 9, declare that everyone is entitled to the rights to life, liberty and security and no one shall be subjected to arbitrary arrest, detention or exile.

The European Court of Human Rights, in a decision on the case of *Ilaşcu and Others v. Moldova and Russia*, concluded that it involved a violation of Article 5 of the European

Convention on Human Rights (Right to Liberty and Security) because the detention of the applicants was not legitimate and the sentence was not issued by a competent “court”. According to the assessment of the European Court, none of the applicants were convicted by a “court” and a sentence of imprisonment passed by a judicial body such as the “Supreme Court of the MRT” at the close of proceedings like those conducted in the present case cannot be regarded as constituting “lawful detention” ordered “in accordance with a procedure prescribed by law”.¹⁰⁷ According to the standard established by the European Court of Human Rights in the above mentioned case, arrests made on the occupied territories shall be considered violations of the right to liberty and security.

107 Decision of the European Court of Human Rights on the case of *Ilaşcu and Others v. Moldova and Russia*, par. 462.

CRIMES COMMITTED DURING THE 2008 WAR AND THE INTERNATIONAL CRIMINAL COURT INITIATIVE

It has become known that the International Criminal Court authorized the opening of an investigation on January 27, 2016 into alleged crimes against humanity and war crimes committed during the war in 2008. Prosecutor Fatou Bensouda applied to the Pre-trial Chamber 1 for authorization on October 13, 2015.

The prosecution will investigate in the context of the 2008 war such crimes as: murder, deportation or forcible transfer of population and persecution; war crimes involving destruction of property and pillaging; and intentional attacks against the civilian population and peacekeepers. The investigation will also be interested in actions such as: indiscriminate or disproportionate attacks against civilian targets; and sexual and gender-based violence. The investigation covers the period from July 1-October 10, 2008.

The International Criminal Court has had regular communication with the respective Prosecutor's Offices in Georgia and the Russian Federation during last seven years and has observed the process of investigation of crimes committed in August 2008. Neither Georgia nor the Russian Federation completed its investigation and no one has been charged. The Public Defender of Georgia in his 2013-2014 Parliamentary Reports referred to the investigations into crimes committed during the war in August 2008 and the period immediately following it and provided the recommendation to the Prosecutor's Office of Georgia to conduct an investigation into these crimes "effectively and speedily", including those cases involving missing persons.

Georgia ratified the Statute of the International Criminal Court (Rome Statute) on September 5, 2003. Despite the fact that the Russian Federation has not ratified the Statute, citizens of Russia can be held liable for crimes committed on the territory of Georgia. The Court depends on the cooperation of concerned countries during the process of collection of evidence. It is important for representatives of the Prosecutor's Office to enter the territory of South Ossetia in order to investigate the cases of 2008.

The Public Defender welcomes the opportunity for international investigation into crimes committed during and following the war in 2008, which will help to establish the truth, restore the rights of victims and speed up the peace process between the parties to the conflict and the aggrieved population.

In addition, the Public Defender has applied a number of times to the Prosecutor's Office regarding effective and speedy investigation into the cases of three Ossetians who went missing during the 2008 war, but none of the cases have been concluded as of yet. Problems regarding the investigation of these cases were mentioned in a Council of Europe report published in 2010.¹⁰⁸ It is important to note that the International Criminal Court will not investigate the cases of the three missing Ossetians because it happened after October 10, 2008.

¹⁰⁸ Monitoring of Investigations into cases of missing persons during and after the August 2008 armed conflict in Georgia, Strasbourg, and September 29, 2010.

STATE PROGRAMS FOR THE PROTECTION OF RIGHTS OF PEOPLE DAMAGED BY THE CONFLICT AND THE ANALYSIS OF THE ENFORCEMENT OF PUBLIC DEFENDER'S RECOMMENDATIONS

According to the case law of the European Court of Human Rights, the High Contracting Parties shall secure human rights to everyone within their jurisdiction.¹⁰⁹ Jurisdiction is primarily territorial. Even in the absence of effective control over the territory, the state still has a positive obligation to take diplomatic, economic, judicial or other measures in its power and in accordance with international law to secure these rights and eliminate their violation.¹¹⁰ Accordingly, the Georgian Government has a positive obligation to protect and secure the rights of people living on the occupied territories.

The State Strategy and Action Plan regarding the Occupied Territories of 2010 refers to the fact that the Government of Georgia considers the population residing in Abkhazia and South Ossetia to be part of the Georgian community and an inseparable part of its future, and accordingly allows them access to benefits intended for citizens of Georgia, including social benefits, healthcare and education. In addition, the Rules of Acting on the Occupied Territories of Georgia approved by the Government of Georgia¹¹¹ determine that people living on the occupied territories are citizens of Georgia, and it is the State's constitutional obligation to provide access to all benefits that are guaranteed for all citizens of Georgia.

The Government of Georgia implements healthcare and education programs targeted towards the above mentioned goals. According to official data, from 2013-2015 the Government of Georgia spent up to seven million GEL providing healthcare services to the population residing on the occupied territories.¹¹²

One of the most successful programs with regard to the protection of rights to healthcare of people residing on the occupied territories is "the State Program on Referral Services." This program allows residents of the occupied territories to receive free medical services. According to official data, the number of patients using the Program increased by 153%¹¹³ from 2013 to 2015. But the real problem is that people residing on the occupied territory who hold identification as citizens of Georgia are not able to benefit from the Program. The Public Defender referred to this problem in his report of 2014.¹¹⁴ The Public Defender proposed that the Minister of Labor, Health and Social

109 Convention on Human Rights and Fundamental Freedoms; Article 1.

110 Decision of the European Court of Human Rights on the Case of Ilașcu and Others v. Moldova and Russia, par. 331; and Catan and Others v. Moldova and Russia; par. 109, 145.

111 Decree of the Government of Georgia #320 issued on October 15, 2010 on approval of the rules of performance on the occupied territory of Georgia; Article 1.

112 Report of the activities performed by the Staff of the Minister of Georgia for Reconciliation and Civic Equality in 2013-2015; Information is available on webpage: <<http://mes.gov.ge/content.php?id=4791&lang=geo>> [last seen on 10.03.2016].

113 Letter N01/3479 of the Minister Labor, Health and Social Affairs, dated January 18, 2016.

114 Report of the Public Defender of Georgia for 1024 pg. 830.

Affairs to develop a unified approach towards helping all people legally residing on the occupied territories, regardless of their citizenship.¹¹⁵

According to the response received from the Ministry,¹¹⁶ the issue of funding those people who are candidates for the State Healthcare Program and are holders of Georgian ID cards are reviewed by an ordinary commission. The healthcare services of such people might be fully funded in cases when residency on the occupied territory is confirmed. But it is clear according to the statistics that people who both reside on the occupied territory and hold a Georgian ID card are not in an equal position and compose only 2% of all patients residing on the occupied territory, who are funded by the referral program.¹¹⁷ It is important to grant equal access to the “State Referral Program” to all people residing on the occupied territories in order to make the program more accessible to holders of the Georgian ID card.

In addition, the Government of Georgia approved the “State Program on First Phase Measures for Management of Hepatitis C” on April 20, 2015 and offered eligibility to residents of the occupied territories. It is important to note that a pre-condition of involvement in the program is holding the Georgian ID card; this means that the number of patients who reside on the occupied territories but do not hold a Georgian ID card will be minimal. The Public Defender of Georgia applied to the Prime Minister of Georgia on January 28, 2016 with a request to amend the decree to allow people residing on the occupied territories with neutral ID cards to be eligible for the State Program on First Phase Measures for Management of Hepatitis C.¹¹⁸ In response to this request, the Ministry of Labor, Health and Social Affairs clarified that due to security risks regarding the medicines no changes can be made to the program beneficiary list.¹¹⁹

In 2014 the Public Defender proposed to the Prime Minister of Georgia and the Minister of Labor, Health and Social Affairs to improve the access to State social programs for those who reside on the occupied territories and do not hold Georgian citizenship. The beneficiaries of social programs in most of cases were people with Georgian ID cards, which is problematic for those living on the occupied territories because in most cases they do not have such documents. The Public Defender provided an example of a person with a passport issued in South Ossetia who was refused reimbursement for damage caused during the performance of labor duties.¹²⁰ In addition, social rehabilitation and child care services available under state programs cannot be provided to persons with Abkhazian or South Ossetian passports.¹²¹ The proposal of the Public Defender included making amendments to these documents, so that people residing on the occupied

115 Proposal of the Public Defender of Georgia dated September 16, 2014 N01-6/11691.

116 Letter N997/00 of the Minister Labor, Health and Social Affairs.

117 Letter N01/3479 of the Minister Labor, Health and Social Affairs, dated January 18, 2016.

118 Proposal of the Public Defender of Georgia dated January 26, 2016 N01-6/780 on the involvement of people with neutral ID cards in to the State Program on Hepatitis C.

119 Letter N01/3479 of the Minister Labor, Health and Social Affairs, dated January 18, 2016.

120 Decree of the Government of Georgia #45 on approval of rules on issuing compensation for the damages caused during the enforcement of labor activities; March 1, 2013.

121 Decree of the Government of Georgia #292 on approval of the state program on social rehabilitation and child care, April 14, 2014.

territories would be allowed to benefit from these programs even if they held Abkhazian or South Ossetian passports.

The Ministry of Labor, Health and Social Affairs informed the Public Defender¹²² that the list of beneficiaries of the State program on social rehabilitation and child care increased in 2015¹²³ and now includes not only people with Georgian ID cards but also those with neutral ID cards and travel documents. Accordingly, people residing on the occupied territories are now allowed to receive services under this program in cases when they present neutral ID cards or neutral travel documents. This change is a step forward and must be assessed positively, despite the fact that it does not fully cover the recommendation of the Public Defender.

The National Report of Georgia for Universal Periodic Review (UPR) 2nd Cycle covered the human rights condition on the occupied territories. In addition, in November 2015 the Georgian delegation within the Universal Periodic Review emphasized to the UN Human Rights Council the importance of international monitoring mechanisms for the protection of human rights on the occupied territories of Georgia, which is in compliance with the recommendation issued on several occasions by the Public Defender. Furthermore, the publication of quarterly reports by the Ministry of Foreign Affairs on human rights conditions in the occupied territories is an important initiative.

The Ministry of Education and Science continues to make progressive steps forward with regards to the protection of the rights of students and teachers residing in the occupied territories and conflict zones. The Ministry supports teachers and technical personnel working in the conflict zones, including supporting their efforts to improve their qualifications. Teachers have the opportunity to participate in trainings and programs organized by the Ministry as well as to get familiar with the methodology and literature.

In 2015-2016, the bachelor's degree students residing on the occupied territories received educational grants from the Ministry, among them were 90 students from Abkhazia, 75 students from the former South Ossetian Autonomous Republic (including Kurta, Eredvi and Akhagori Municipalities) and five students from the Sachkhere Municipality village of Perevi. In addition, grants were issued to 50 students who studied during the last three years and have received the certificate proving completion of secondary education in schools in the villages near the administrative boundary line.¹²⁴

Unfortunately, unlike in previous years, Georgian schools in the Gali and Akhagori regions were not provided with Georgian textbooks for the 2015-2016 school years. The Ministry of Education and Science of Georgia informed the Public Defender that delays in the delivery of textbooks were caused by technical factors. The textbooks were purchased by March 2016 and it was planned to have them delivered to the Gali and

122 Letter N997/00 of the Minister of Labor, Health and Social Affairs, December 25, 2015.

123 Decree of the Government of Georgia N138 on approval of the state program on social rehabilitation and child care, 2015.

124 Decree #449 of the Government of Georgia, information is available on the webpage: <<http://mes.gov.ge/content.php?id=4791&lang=geo>> [last seen on 02.02.16]; Similar funding shall be provided to the students in 2014-2015 educational year.

Akhalgori regional schools. In addition, the delivery of textbooks for the next school year has also been planned.

On March 10, 2016 it became known that the Government of Georgia and the authorities of Abkhazia and South Ossetia reached an agreement regarding the release of prisoners in adherence to the “all for all” prisoner exchange principle. This move made possible the release of several persons who had been illegally deprived of their liberty and detained in Tskhinvali and Sokhumi prisons. A total of 18 prisoners were released. Four were released by the Georgian side, 10 by the Sukhumi authorities and four by the Tskhinvali authorities.

In 2014 the Public Defender dedicated a special report¹²⁵ to the situation of detainees and urged the Government to find ways to achieve the release of detainees and prisoners. The Public Defender’s Ossetian Forum as well as local and international non-governmental organizations were actively involved in studying the case. The Public Defender welcomes the dialogue launched between Georgia and the de facto governments on the release of prisoners and believes that the move will promote the restoration of confidence between all parties, contributing to further stability.

The agreement reached at the 35th round of the Geneva talks on March 22-23, 2016 regarding restoration of the Incident Prevention and Response Mechanism in Gali Region is a serious achievement. The Public Defender had repeatedly addressed the delegations participating in the Geneva international discussions with the recommendation to show more flexibility and to take more effective steps for restoration of the Incident Prevention and Response Mechanism in Gali district.

However, despite certain important initiatives, the Public Defender believes that the decision-making process with regard to protection of the rights of people living in the occupied areas is often inflexible and delayed due to disagreement between the relevant agencies and the lack of a unified position.

A unified and coordinated state policy means a policy of conflict resolution where every agency is able to analyze the existing situation and challenges of the breakaway regions within their authority and to make relevant, flexible decisions to protect the rights of the population. This requires in-depth knowledge by members of the Government of the problems of the occupied territories.

According to the opinion of the Public Defender, the resolution of several important issues would support protection of the rights of those who were affected by the conflict, and would help to rebuild trust in a society still divided by the conflict. In particular, along with the visa liberalization process and the issuing of Georgian citizenship identification cards to people residing on the occupied territories, the following actions should be carried out: acceptance of documents issued by the illegitimate authorities; restitution; access to information, healthcare, social services and education, including the western

125 See the special information bulletin of the Public Defender – on the status of prisoners and detainees on the dividing line “(2014). Information is available on the webpage: <<http://www.ombudsman.ge/uploads/other/1/1771.pdf>>.

education for the students residing on occupied territories; and improvement of health and education infrastructure on occupied territories.

In 2015 high ranking officials from several institutions participated in a meeting organized by the State Minister on Reconciliation and Civil Equality and the Ministry of Foreign Affairs in order to discuss these issues. In addition, it was reported by the media that the Georgian Government has created a new inter-agency working group that will focus on current developments in Georgia's conflict zones. The group is led by the Prime Minister.¹²⁶ However, discussions did not continue and above-mentioned issues are still unresolved.

Almost 25 years have passed since the start of armed conflicts in Georgia. It is time for the parties, including political circles and the body politic, to start meaningful discussions about the normalization of relations, which will help to improve the living conditions of people residing on both sides of the administrative boundary lines, protect the dignity and rights of these individuals, shift attitudes among the opposing societies and help heal the wounds left by the war. To achieve all this, it is necessary for state agencies to better coordinate their activities and form a relevant strategy. The benefits meant for Georgian citizens, including healthcare, education and social assistance must be equally available to the Abkhazian and South Ossetian populations in order to ensure the realization of their rights and to develop and reintegrate the conflict-affected communities.

126 Meeting of the Interagency Council, Press Service of the Prime Minister, 07.07.2015, Information is available on the webpage: <http://gov.ge/index.php?lang_id=GEO&sec_id=406&info_id=50222> [last seen on 02.02.16].

RECOMMENDATIONS

TO THE PRIME MINISTER OF GEORGIA:

- Assign appropriate institutions (Ministry of Health, Labor and Social Affairs, State Minister for Reconciliation and Civil Equality, State Security Service of Georgia) to develop mechanisms for the inclusion into the referral programs of persons with Georgian citizenship residing on the occupied territories. Prepare amendments and changes to the Governmental Decree on “Creation of the Commission for Decision-making on Provision of Medical Services within the Referral Services and Determination of the Rules of Operation” in order to ensure a unified policy towards all people residing on the occupied territories regardless of their citizenship.
- To make amendments and changes to Article 2 of the Governmental Decree #169 on “the State Program on First Phase Measures for Management of Hepatitis C” adopted on April 20, 2015, by which the program beneficiary list, in addition to those people holding Georgian citizenship documents, will be extended to all people legitimately residing on the occupied territories and holding neutral ID cards.

TO THE PARLIAMENT OF GEORGIA AND MEMBERS (STATE MINISTER FOR RECONCILIATION AND CIVIL EQUALITY, MINISTRY OF FOREIGN AFFAIRS OF GEORGIA, MINISTRY OF JUSTICE OF GEORGIA, STATE SECURITY SERVICE OF GEORGIA) OF THE DELEGATION OF THE GENEVA TALKS:

- To be flexible during the negotiation process in order to enable the protection of human rights in the conflict regions; to cooperate with Abkhazia and South Ossetia in order to eliminate the politicization of human rights issues.
- To use all available resources in order to ensure uninterrupted movement of ambulances, medical patients and schoolchildren across the administrative boundary lines.
- To use all available resources in order to increase the involvement of international human rights organizations and UN agencies to study human rights conditions on the occupied territories.
- To use all available means to protect the local population’s freedom of movement and to ensure that the parties agree on a mechanism to eliminate the vicious practice of detentions on the administrative boundary lines.
- To use all available political, legal and diplomatic resources in order to protect the right to education of the Gali population, including raising this issue during negotiations and informing the international community, as well as applying international legal mechanisms.

TO THE INTERIM GOVERNMENTAL COMMISSION ON RESPONDING TO THE NEEDS OF POPULATION RESIDING IN THE VILLAGES ALONGSIDE THE ADMINISTRATIVE BOUNDARY LINES AND THEIR INDIVIDUAL MEMBERS:

- To discuss and make decisions on the rehabilitation of houses damaged during the 2008 war, the owners of which not having received any aid from the State. Special attention should be paid to conditions in the village of Zardiaantkari Gori Municipality.
- To discuss and take action in order to improve water quality in the villages near the administrative boundary lines.
- To discuss and assign appropriate authorities (Ministry of Agriculture, Ministry of Economy and Sustainable Development) to study the conditions of the villages alongside the administrative boundary lines and to develop agricultural and entrepreneurial programs adjusted to the needs and opportunities of the conflict-affected communities.

TO THE OFFICE OF THE STATE MINISTER OF GEORGIA FOR RECONCILIATION AND CIVIL EQUALITY:

- To develop and present for approval to the Government a State strategy and action plan for the socio-economic development of regions affected by the conflict.

TO THE MINISTRY OF JUSTICE:

- To finalize with haste the issue of registering land and property in the villages near the administrative boundary lines in order for the population to access legal mechanisms to protect their rights which have been violated by the installation of barbed wire and/or fences.

TO THE MINISTRY OF EDUCATION AND SCIENCE OF GEORGIA:

- To continue and broaden support for schools and their staff in Gali region, including financial support, which might include honorariums and an improved healthcare package.
- To improve and broaden educational programs for children and teachers residing on the occupied territories, tailored to their specific needs.
- To develop exchange and informal educational programs that will allow school children living on the occupied territories to fill gaps during the studies.

TO THE KARELI MUNICIPALITY GOVERNOR:

- To ensure the opening of the kindergarten in Tsagvli community.

TO THE GORI MUNICIPALITY GOVERNOR:

- To ensure removal of household waste from the villages near the administrative boundary line.