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24 de febrero a 20 de marzo de 2020

Tema 4 de la agenda

Situaciones de derechos humanos que requieren la atención del Consejo

Carta de fecha 21 de febrero de 2020 dirigida a la Presidenta del Consejo de Derechos Humanos por el Representante Permanente de Georgia ante la Oficina de las Naciones Unidas en Ginebra

Tengo el honor de transmitirle, adjunto a la presente carta, el informe de recopilación de 2019 sobre las violaciones de los derechos humanos cometidas en los territorios de Georgia bajo ocupación rusa, elaborado por el Ministerio de Relaciones Exteriores de Georgia (véase el anexo).

En este sentido, le agradecería que tuviera a bien hacer distribuir la presente carta y su anexo* como documento del 43^{er} período de sesiones del Consejo de Derechos Humanos, en relación con el tema 4 de la agenda.

(Firmado) Victor **Dolidze**
Embajador
Representante Permanente

* Se reproduce como se recibió, en el idioma en que se presentó únicamente.



Annex to the letter dated 21 February 2020 from the Permanent Representative of Georgia to the United Nations Office at Geneva addressed to the President of the Human Rights Council

2019 Compilation Report on the human rights violations in the Russia-occupied territories of Georgia

I. Introduction

1. The Report contains information on the human rights violations in the territories of Georgia under Russia's occupation (Abkhazia and the Tskhinvali regions) for the year 2019. The Report is mostly based on the findings of International Organizations and aims to contribute to the provision of regular and updated information to the international community on the human rights situation in the occupied territories of Georgia.

II. Occupation and responsibility of the occupying power

2. In full disregard for international law and in violation of Article 2(4) of the UN Charter, which states that "all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations",¹ the Russian Federation as the power exercising effective control over the occupied Abkhazia and Tskhinvali regions of Georgia, has intensified steps towards their factual annexation, seeking full incorporation of these territories into its military, political and economic systems. As the occupying power, the Russian Federation bears full responsibility for violations of human rights and fundamental freedoms in the occupied Abkhazia and Tskhinvali regions of Georgia.

3. On 2 May 2019 the Committee of Ministers' Deputies of the Council of Europe at its 1345th session adopted yet another Decision on the agenda item "Council of Europe and the Conflict in Georgia." According to the Decision "... more than ten years after the conflict between the Russian Federation and Georgia, the Russian Federation continues to impede the peaceful conflict resolution process and undermines the security and stability in the region through its continuing military presence in the Georgian regions of Abkhazia and Tskhinvali region/South Ossetia, increased military exercises and infrastructure reinforcements, the implementation of the so-called treaties on alliance and strategic partnership/integration, incorporation of military units of the Tskhinvali region of Georgia into the armed forces of the Russian Federation, the creation of a so-called "joint group of armed forces" in the Abkhazia region, establishment of so-called "joint information and co-ordination centres of law enforcement agencies", as well as the functioning of so-called "customs points" in both Georgian regions, aimed at the integration of these regions respectively into the customs sphere of the Russian Federation." Furthermore, in the Decision, the CoE Member States reiterated that "any illegal act by the Russian Federation aimed at changing the status of the Georgian regions, including through issuing Russian passports and so-called residents' permits, thus establishing a so-called status of foreign residents, have no legal effect and further complicate the situation on the ground." The CoE Member States "called upon the Russian Federation to stop and reverse this illegal process and to comply with its international obligations and commitments, including under the EU mediated 12 August 2008 ceasefire Agreement, in particular with regard to the withdrawal of military and security forces from the Georgian regions of Abkhazia and Tskhinvali region/South Ossetia and allowing the establishment of an international security mechanism on the ground." Moreover, according to the Decision "Georgia, as the only sovereign State under international law over its regions of Abkhazia and Tskhinvali region/South Ossetia, is still prevented from exercising the

¹ Article 2(4) of the Charter of the United Nations.

legitimate jurisdiction over these regions due to the continuous impediments put by the Russian Federation, including its continuing military presence therein.”²

4. Parliamentary Assembly of the Organization for Cooperation and Security in Europe passed the Resolution on the “Security and Human Rights Situation in Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia” on 8 July 2019. In the Resolution the Parliamentary Assembly expressed serious concern “over the fact that Georgia is deprived of the option to exercise the legitimate jurisdiction over its territory due to the Russian Federation’s illegal occupation and steps towards de facto annexation of Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia ...” and herewith stressed the “primary responsibility of the Russian Federation, as an occupying power, for grave violations of human rights and fundamental freedoms on the ground.” Furthermore, the Parliamentary Assembly called “upon the Russian Federation to implement the EU-mediated 12 August 2008 Ceasefire Agreement, inter alia, to withdraw its military and security forces from Georgian territory” Moreover, in the Resolution OSCE PA strongly condemned the “deterioration of security, human rights and the humanitarian situation in the occupied territories of Georgia due to the Russian Federation’s illegal actions, including intensified military build-up and military exercises”³

5. The responsibility of the Russian Federation as the occupying power was once again underlined in the Resolution on “the state of EU-Russia political relations” adopted by the European Parliament on 12 March 2019. Particularly, according to the Resolution the European Parliament “demands that the Russian Federation cease its occupation of the Georgian territories of Abkhazia and Tskhinvali Region/South Ossetia and fully respect the sovereignty and territorial integrity of Georgia.” Moreover, the Resolution “stresses the need for the Russian Federation to unconditionally fulfil all the provisions of the ceasefire agreement of 12 August 2008, in particular the commitment to withdrawing all its military forces from the territory of Georgia.”⁴

6. “Human Right and Democracy Report 2018” by the United Kingdom’s Foreign and Commonwealth Office published on 5 June 2019, speaks about the occupied territories of Georgia. In particular, according to the Report “2018 marked the tenth anniversary of the Georgia-Russia conflict. Russian influence in Abkhazia and South Ossetia, the breakaway regions of Georgia, continued to contribute to infringements of human rights.”⁵

7. In “an Act to support the independence, sovereignty, and territorial integrity of Georgia, and for other purposes (Georgia Support Act)” approved by the US House of Representatives on 22 October 2019, the United States of America reaffirmed its policy to “not recognize territorial changes effected by force, including the illegal invasions and occupations of Georgian regions of Abkhazia and Tskhinvali Region/South Ossetia by the Russian Federation.” Moreover, in the document the United States of America urged “the Russian Federation to fully implement the European Union-mediated ceasefire agreement of August 12, 2008.”⁶

² Decision on the agenda item “Council of Europe and the Conflict in Georgia”, adopted at the 1345th session of the Committee of Ministers’ Deputies of the Council of Europe, 2 May 2019, available at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680943a23>.

³ Resolution of the Parliamentary Assembly of the Organization for Co-Operation and Security in Europe (OSCE PA) on the “Security and Human Rights Situation in Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia”, 8 July 2019, available at <<https://www.oscepa.org/documents/annual-sessions/2019-luxembourg/3882-luxembourg-declaration-eng/file>>.

⁴ Resolution on “the state of EU-Russia political relations”, European Parliament, 12 March 2019, available at <http://www.europarl.europa.eu/doceo/document/TA-8-2019-0157_EN.html>.

⁵ “Human Right and Democracy Report 2018”, the United Kingdom’s Foreign and Commonwealth Office, 5 June 2019, available at <<https://www.gov.uk/government/publications/human-rights-and-democracy-report-2018/human-rights-and-democracy-the-2018-foreign-and-commonwealth-office-report>>.

⁶ “An Act to support the independence, sovereignty, and territorial integrity of Georgia, and for other purposes (Georgia Support Act)” US House of Representatives, 22 October 2019, available at <<https://www.congress.gov/116/bills/hr598/BILLS-116hr598rfs.pdf>>.

8. On 3 July 2019 the Amnesty International issued the Report “Behind barbed Wire, Human Rights Toll of “Borderization” in Georgia.” According to the Report “ten years since the end of the Georgia-Russia war in 2008, Russia continues to exercise overall effective control in Abkhazia and South Ossetia/Tskhinvali Region via its significant military presence there and considerable financial contributions to the regions’ budgets. Consequently, Russia has the primary responsibility to ensure that the international human rights and humanitarian laws in these territories are fully respected and protected.”⁷

9. Yet another attempt by the Russian Federation as the occupying power to legitimize the ethnic cleansing of Georgians in the occupied Abkhazia and Tskhinvali regions and the occupation and forceful change of sovereign borders of Georgia, was the so-called “parliamentary and presidential elections” held respectively in Tskhinvali and Abkhazia regions in 2019. The so-called “elections” in the occupied territories of Georgia, was condemned by the international community. For instance, on 12 June and 26 August 2019 the co-rapporteurs of the Parliamentary Assembly of the Council of Europe on Georgia called “elections” in the occupied Tskhinvali⁸ and Abkhazia regions “neither legal nor legitimate.”⁹ On 14 November 2019 the European Union issued an official Statement on the Secretary General's 20th Consolidated report on the conflict in Georgia. According to the statement “the EU does not recognize the legitimacy nor the outcome of the so-called “presidential elections” held in Abkhazia on 25 August 2019 and 8 September 2019 and the so-called “parliamentary elections” held in South Ossetia on 9 June 2019.” Furthermore, the EU called “on the Russian Federation to fully implement the 12 August 2008 agreement and the Implementing Measures of 8 September 2008”¹⁰

III. Occupation line and restriction of the freedom of movement

10. The right to freedom of movement is the cornerstone of the personal liberty of the individual that in case of restriction results in many cases in the deprivation of many cognate freedoms. According to Article 13(1) of the Universal Declaration of Human Rights “everyone has the right to freedom of movement and residence within the borders of each State.”¹¹ The same aspect is enshrined in Article 2 of the Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms and in Article 12 of the International Covenant on Civil and Political Rights, in particular “everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”¹² In violation of the right of freedom of movement the citizens of Georgia are restricted to enter Russia-occupied Abkhazia and the Tskhinvali regions of Georgia. Thus the occupation line with these regions separates the occupied territories of Georgia and Georgian citizens from the rest of the Georgian territory.

11. On 24 January 2019 the Parliamentary Assembly of the Council of Europe adopted the Resolution 2261. In the Resolution PACE expressed concern over the “illegal works by the Russian Federation in the Tskhinvali region of Georgia with the aim of installing artificial barriers along the occupation line adjacent to the village of Atotsi, Georgia.” Moreover, PACE “calls on the authorities of the Russian Federation to ... immediately stop the installation of barbed wire fences and artificial obstacles along the occupation lines in the

⁷ Amnesty International Report on “Behind barbed Wire, Human Rights Toll of “Borderization” in Georgia”, 3 July 2019, pg: 6, available at <<https://www.amnesty.org/download/Documents/EUR5605812019ENGLISH.PDF>>.

⁸ “Monitoring rapporteurs react to so-called elections in the Georgian region of South Ossetia” 12 June 2019, available at <<http://assembly.coe.int/nw/xml/News/News-View-en.asp?newsid=7522&lang=2>>.

⁹ “PACE monitors react to so-called ‘elections’ in the Georgian region of Abkhazia” 26 August 2019, available at <<http://assembly.coe.int/nw/xml/News/News-View-en.asp?newsid=7593&lang=2>>.

¹⁰ The EU Statement on the Secretary General's 20th report on the conflict in Georgia, 14 November 2019, available at <https://eeas.europa.eu/delegations/council-europe/70445/node/70445_lo>.

¹¹ Article 13 (1) of the Universal Declaration of Human Rights.

¹² Article 2 of the Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 12 of International Covenant on Civil and Political Rights.

Abkhazia and Tskhinvali regions and to abide by the norms and principles of international law.”¹³

12. On 22 March 2019 the UN Human Rights Council adopted the Resolution 40/28 on “Cooperation with Georgia.” The Resolution expressed serious concern “at the continuous process of installation of barbed wire fences and different artificial barriers along the administrative boundary line in Abkhazia, Georgia and Tskhinvali region/South Ossetia, Georgia.”¹⁴

13. According to the Decision of the Committee of Ministers' Deputies, the CoE Member States “expressed further profound concern that the human rights situation in the Georgian regions of Abkhazia and Tskhinvali region/South Ossetia has been further deteriorating, including concerns with regard to ... the right to freedom of movement” Furthermore, the CoE Member States “expressed particular concern over the intensified discrimination of Georgians on the grounds of ethnicity in both Georgian regions of Abkhazia and Tskhinvali region/South Ossetia, particularly in Gali and Akhagori districts, through additional restrictions to freedom of movement” Moreover, the CoE Member States “reiterated their call to the authorities exercising effective control to remove any impediment, restriction or limitation to the right to freedom of movement across the administrative boundary lines (ABLs), ...” and “... to re-open the “crossing points”.”¹⁵

14. In the Resolution on the “Security and Human Rights Situation in Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia” the OSCE PA strongly condemned “... installation of razor wire fences and artificial barriers along the occupation line.”¹⁶

15. On 24 April 2019 the Committee of Ministers' Deputies of the Council of Europe discussed the Secretary General's 19th Consolidated Report on “the Conflict in Georgia.” According to the Report “serious concerns were raised in particular in connection with the closure for an unprecedented period of the Administrative Boundary Line by the de facto authorities in Abkhazia and South Ossetia in January 2019”¹⁷ Moreover, “as regards the so-called “borderisation” process, the delegation received information about partial fencing and the reconstruction of an observation tower in the village of Khurvaleti in January 2019 as well as installation of metal poles in the village of Atotsi in November 2018 leading to further restrictions on freedom of movement and potential loss of livelihoods for the local population” reads the Report.¹⁸

16. On 13 November 2019 the Committee of Ministers' Deputies of the Council of Europe discussed the Secretary General's 20th Consolidated Report on “the Conflict in Georgia.” The so-called “borderisation” and restriction of the freedom of movement in the occupied territories of Georgia still remain “unfortunately a major issue affecting thousands of people,” reads the document.¹⁹ According to the Report “new “borderisation” activities, involving the installation of new fences in the village of Gugutiantkari were reported on 7 August and resumed on 20 August.”²⁰ Furthermore, “the negative effects of “borderisation” became

¹³ Resolution 2261 on “the progress of the Assembly's monitoring procedure (January-December 2018) and the periodic review of the honouring of obligations by Iceland and Italy”, Parliamentary Assembly of the Council of Europe (PACE), 24 January 2019, available at <<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25427&lang=en>>.

¹⁴ UN Human Rights Resolution (UN HRC) 40/28 on “Cooperation with Georgia”, 22 March 2019, available at <https://digitallibrary.un.org/record/3806786/files/A_HRC_RES_40_28-EN.pdf>.

¹⁵ See footnote 2.

¹⁶ See footnote 3.

¹⁷ 19th Consolidated Report on the Conflict in Georgia, Secretary General of the Council of Europe (SG of the CoE), 24 April 2019, Paragraph 16, available at <[http://coe.mfa.gov.ge/WorkingDirectory/ROOT/Shared/Council%20of%20Europe/Council%20of%20Europe%20Secretary%20General's%2019th%20consolidated%20report%20on%20the%20conflict%20in%20Georgia%20\(October%202018%20-%20March%202019\).pdf](http://coe.mfa.gov.ge/WorkingDirectory/ROOT/Shared/Council%20of%20Europe/Council%20of%20Europe%20Secretary%20General's%2019th%20consolidated%20report%20on%20the%20conflict%20in%20Georgia%20(October%202018%20-%20March%202019).pdf)>.

¹⁸ Ibid, Paragraph 49.

¹⁹ 20th Consolidated Report on the Conflict in Georgia, Secretary General of the Council of Europe (SG of the CoE), 13 November 2019, Paragraph 36, available at <[http://www.mfa.gov.ge/getattachment/News/2019-clis-13-noembers-evropis-sabchos-ministrta-mo/SG_Inf\(2019\)32E.pdf.aspx](http://www.mfa.gov.ge/getattachment/News/2019-clis-13-noembers-evropis-sabchos-ministrta-mo/SG_Inf(2019)32E.pdf.aspx)>.

²⁰ Ibid, Paragraph 46.

evident in the recent serious escalation of tensions in the Tsnelisi-Chorchana area in the Khashuri municipality. As reported to the delegation, in August 2019, further to earlier “borderisation”-type occurrences conducted within the territory controlled by the central Georgian government, a build-up of security personnel and equipment was observed in the area” indicated the document (49). According to the Report in connection with these developments “the de facto authorities of South Ossetia closed without prior notification two so-called crossing points on the ABL, including the main one in Odzisi-Mosabruni allegedly for security reasons. The measure was initially applied on 4 September, following which it was temporary lifted but was reintroduced on 9 September and reportedly remains effective to date” (52).

17. In the Statement on the Secretary General's 19th Consolidated report on the conflict in Georgia delivered on 24 April 2019, the EU expressed deep concern “over continued obstacles to freedom of movement, in particular in connection with restrictions to crossings and closures of crossing points for an unprecedented period in January/February 2019, which has created an extremely difficult humanitarian situation for the local population, while hampering people-to-people contacts.” Furthermore, the EU “calls on the de facto authorities to ensure that residents of the Georgian regions concerned are not deprived of any basic rights, such as the freedom of movement”²¹ In another Statement with regard to the Secretary General's 20th Consolidated report on the conflict in Georgia the EU expressed deep concern over “... closures of crossing points on the administrative boundary lines (ABLs), in particular the Odzisi crossing point, which remains closed since early September 2019.” Moreover, the EU “calls for the immediate re-opening of all crossing points on the ABL with South Ossetia.”²²

18. On 21 May 2019 the Report (A/73/880) of the UN Secretary-General on “status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia” was issued. In line with other problems the Report touched upon the obstacles restricting the freedom of movement in the Russia-occupied territories of Georgia. In particular, “it is important to note that the concerns regarding limitations on basic rights, including freedom of movement, increased following the signing in 2015 of two so-called laws: the “Law on the Legal Status of Foreigners in Abkhazia” and the “Law on Procedures of Exit from the Republic of Abkhazia and the Entry into the Republic of Abkhazia”. Similar new “laws” were also introduced by the authorities in control in South Ossetia. The “laws” provide for the issuance of documentation to the population who are thereby defined as “foreign” or “stateless” reads the Report.”²³ According to the document the Secretary-General remained “concerned by the decision of the authorities in control in Abkhazia to no longer allow the ethnic Georgian population the use of de facto Abkhaz “travel documents” since January 2019 and to no longer accept the use of previous Soviet passports, while ethnic Georgians have not yet been able or willing to avail themselves of the “foreign resident permit”. Those circumstances led to a situation in which, by the end of the reporting period, several thousands of ethnic Georgians had not been able to cross the administrative boundary line.”²⁴ Furthermore, according to the Report “in addition, as a result of the establishment of a customs clearance post at the crossing point, crossing the administrative boundary line to the Akhagori district has become more difficult, in particular for traders. The temporary closure of the crossing points in early 2019 had a negative impact on the population of South Ossetia” (20) and “in the context of freedom of movement, the lack of proper documents, the continuing “borderization” process and the closure of four of the six crossing points during 2016 and 2017 further restricted the ability of some in Abkhazia, in particular those living in the area adjacent to the aforementioned crossing

²¹ EU Statement on the Secretary General's 19th Consolidated Report on the conflict in Georgia, 24 April 2019, available at <https://eeas.europa.eu/delegations/council-europe/61537/local-eu-statement-secretary-generals-19th-consolidated-report-conflict-georgia_en>.

²² See footnote 10.

²³ Report (A/73/880) of the UN Secretary-General on the implementation of the resolution on “Status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia”, 21 May 2019, Paragraph 16, available at <https://digitallibrary.un.org/record/3806905/files/A_73_880-EN.pdf>.

²⁴ Ibid, Paragraph 19.

points, to cross the administrative boundary line” (27) thereby, “regrettably, the so-called “borderization” measures along the administrative boundary lines with both South Ossetia and Abkhazia continued throughout the reporting period. Further obstacles to the freedom of movement continued to be observed along the administrative boundary lines, including the so-called “state border signs”, watch posts and surveillance equipment” reads the Report (26). Moreover, the Secretary-General concluded that “the issue of freedom of movement across the administrative boundary line has security, humanitarian and human rights dimensions and remains of utmost importance to the local population. Developments during the reporting period were marked by two trends: enhanced control and limitations and further formalization of the documentation conditioning the ability to cross the administrative boundary line” (47). Hence, the Secretary-General remained concerned “by the continued negative trends related to the so-called “borderization”, restrictions on the freedom of movement ...” and “about the imposition of restrictions on crossing points along the “dividing lines” for an extended period” (63).

19. On 20 August 2019 the Report (A/HRC/42/34) of the United Nations High Commissioner for Human Rights on “Cooperation with Georgia” was issued. According to the document “restrictions on freedom of movement, mainly around the Administrative Boundary Lines, remained of serious concern in both Abkhazia and South Ossetia and adjacent areas during the reporting period.”²⁵ Moreover, “various reports indicated the severe impact of the closures on the affected population in and around both regions, which aggravated its socioeconomic situation and isolation. Concerning Abkhazia, OHCHR received information of a 90 per cent decline in daily crossings during that period” reads the document.²⁶ Furthermore, the Report stressed that “the measures related to the so-called “borderization”, the temporary closure of the Administrative Boundary Lines, the limited availability of functioning crossing points and ambiguities about the identity and other documents necessary to cross have continued to exacerbate the isolation and vulnerability of the local population” (62).

20. On 29 October 2019 the Congress of Local and Regional Authorities of the Council of Europe issued the Report on “the role of local and regional governments in protecting internally displaced persons (IDPs).” According to the explanatory memorandum of the Report “the continuing Russian illegal military presence in the two Georgian regions is cause for restriction of freedom of movement by the so-called “borderisation” process.”²⁷

21. According to the “Human Right and Democracy Report 2018” by the United Kingdom’s Foreign and Commonwealth Office “with the majority of crossing points closed and increased fencing along the Administrative Boundary Line, restrictions on freedom of movement continued” to the occupied territories of Georgia.²⁸

22. In its Report on “Behind barbed Wire, Human Rights Toll of “Borderization” in Georgia”, the Amnesty International concluded that ““borderization” negatively affects communities on both sides of the ABL, limiting freedom of movement and liberty, eroding living standards, and entrenching discriminatory attitudes and measures.” Furthermore, according to the Report “constraints on rights to liberty and freedom of movement are compounded by uncertainty with, and lack of information about, policies regarding the crossing of the ABL and its location in unmarked parts. So, for example, residents may be detained by Russian servicemen for allegedly crossing the “state border”, or solely for being in the vicinity of the ABL, even though they often do not know where it actually lies.” Moreover, ““Borderization” also negatively impacts the already poor social and economic conditions of local residents, as it deprives hundreds of access to their pastures, farmlands

²⁵ Report (A/HRC/42/34) of the United Nations High Commissioner for Human Rights on “Cooperation with Georgia”, 20 August 2019, Paragraph 51, available at <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/246/33/PDF/G1924633.pdf?OpenElement>>.

²⁶ Ibid, Paragraph 54.

²⁷ Report on “the role of local and regional governments in protecting internally displaced persons (IDPs)” of the Congress of Local and Regional Authorities of the Council of Europe, 29 October 2019, Paragraph 29, available at <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168097f950>>.

²⁸ See footnote 5.

and orchards which are the main source for their food and livelihoods,” reads the Report.²⁹ The Amnesty International calls upon the Russian Federation to “uphold the right to freedom of movement of civilians, including by ending arbitrary restriction on movement across the South Ossetian/Tskhinvali Region and Abkhazian ABL, and ensuring that any restrictions are strictly necessary and proportionate.”³⁰

23. During the reporting year the Co-Chairs of the Geneva International Discussions issued eight statements concerning the situation in the occupied territories of Georgia. In their recent statement of 11 December 2019, they point out that “since August 2019, there are serious security challenges in the Chorchana-Tsnelisi area. People continue to suffer hardship. Restrictions to freedom of movement have been imposed on several occasions at crossing points with both Abkhazia and South Ossetia. Crossing points on the South Ossetian Administrative Boundary Line (ABL) have been closed for more than five months this year.” Moreover, the GID Co-Chairs reiterate their calls “for participants to reduce tensions on the South Ossetian ABL, for all crossing points to be reopened ...”³¹

IV. Denial of access

24. In complete disregard for grave humanitarian and human rights situation in the Georgia’s occupied Abkhazia and Tskhinvali regions, where the local population remains deprived of minimal safeguards for their lives, the Russian Federation as the occupying power still prevents International Organizations from entering the occupied territories of Georgia. The situation has become particularly alarming, since no international human rights monitoring mechanisms are allowed therein. Even the European Union Monitoring Mission in Georgia (EUMM in Georgia), an unarmed civilian monitoring mission of the EU, ever since its deployment has been patrolling only in the areas adjacent to the ABLs with Abkhazia, Georgia and Tskhinvali region, Georgia contrary to its mandate, whereby the EUMM shall be operational throughout all of Georgia.³²

25. UN HRC expressed serious concern “at the repeated denial of access to international and regional monitors, including United Nations human rights mechanisms, to both Georgian regions by those in control of those regions” in the Resolution 40/28 on “Cooperation with Georgia.” Furthermore, the Resolution “strongly calls for immediate and unimpeded access to be given to the Office of the High Commissioner and international and regional human rights mechanisms to Abkhazia, Georgia and the Tskhinvali region/South Ossetia, Georgia.”³³

26. According to the Decision of the Committee of Ministers’ Deputies, the CoE Member States “deeply regretted that neither the Commissioner for Human Rights, Council of Europe monitoring bodies, nor the Secretariat delegation preparing the Secretary General’s consolidated reports, have been granted access to the Georgian regions concerned ...” and “called on the Russian Federation to secure immediate and unrestricted access to the territories beyond the control of the Government of Georgia to the Council of Europe bodies.”³⁴

27. In the Resolution on the “Security and Human Rights Situation in Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia” the OSCE PA expressed “grave concern that international human rights monitors continue to be denied access to Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia, by the Russian Federation, exercising effective control over these regions.” Furthermore, the OSCE PA expressed “deep concern that the EU Monitoring Mission, which remains the only international monitoring

²⁹ See footnote 7, pg: 5; 6.

³⁰ Ibid, pg: 46.

³¹ Press communiqué of the Co-Chairs of the Geneva International Discussions, 11 December 2019, available at <<https://dppa.un.org/en/press-communiqué-of-co-chairs-of-geneva-international-discussions-december-2019>>.

³² Information about the mandate of the European Union Monitoring Mission in Georgia (EUMM in Georgia), is available at <https://eumm.eu/en/about_eumm/mandate>.

³³ See footnote 14.

³⁴ See footnote 2.

mechanism in Georgia ... is continuously being denied access to the occupied regions, in breach of its mandate, which covers the entire territory of Georgia within its internationally recognized borders.” Moreover, the OSCE PA “urges the Russian Federation to allow access by international human rights mechanisms, including the relevant OSCE executive structures, to Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia.”³⁵

28. “Despite continued efforts, the Secretariat was not given authorisation to visit Abkhazia and South Ossetia for the purpose of this consolidated report,” read the 19th and 20th Consolidated Reports “on the Conflict in Georgia” of the CoE SG.³⁶ Furthermore, the documents stressed that regrettably, no progress has been made in terms of access of international human rights monitoring mechanisms, including those of the Council of Europe, to the occupied territories of Georgia.³⁷

29. Respectively, in its Statements on the 19th and 20th Consolidated Reports “the EU regrets that the delegation of the Secretariat, the monitoring bodies and the Council of Europe Human Rights Commissioner have not been granted access to the Georgian regions of Abkhazia and South Ossetia and calls on the authorities exercising effective control to facilitate access to these regions for the relevant bodies of the Council of Europe.” Moreover, the EU “calls on the Russian Federation ... to provide the EU Monitoring Mission with access to the whole territory of Georgia.”³⁸

30. In his Report (A/73/880) on the “Status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia” the UN SG indicated that “since the conflict in August 2008, the United Nations has regrettably lacked operational access to South Ossetia” Furthermore, the UN SG encouraged “the relevant stakeholders to help to actively facilitate unhindered regular access to South Ossetia to allow humanitarian and development agencies to provide assistance to the population and support the particularly vulnerable among those displaced”³⁹ Moreover, the UN SG called “upon all relevant parties to ensure unimpeded access for all categories of personnel of all United Nations agencies and international humanitarian NGOs” to the occupied Abkhazia region.⁴⁰ The UN SG also reiterated his “previous calls upon the participants to grant unfettered access for the Office of the United Nations High Commissioner for Human Rights to be able to assess human rights protection needs, support related mechanisms on the ground and contribute to confidence-building with a view to enhancing the protection of the human rights of the affected population” (10).

31. “During the reporting period, however, no progress was made regarding access for OHCHR to Abkhazia or South Ossetia pursuant to Human Rights Council resolution 40/28,” reads the Report (A/HRC/42/34) of the UNHCHR on “Cooperation with Georgia.”⁴¹ The High Commissioner therefore “reiterates the call for unfettered access for her Office and United Nations human rights mechanisms to Abkhazia and South Ossetia.”⁴²

32. The Report of an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on “Visit to Georgia” was issued on 15 May 2019. According to the Report “during his visit, the Independent Expert ... was unable to assess the situation in Abkhazia or the Tskhinvali region/South Ossetia.”⁴³

33. “The presence of humanitarian and human rights organizations is limited both in the Gali region of Abkhazia and South Ossetia/Tskhinvali Region,” stated the Amnesty

³⁵ See footnote 3.

³⁶ See footnotes: 17 and 19, Paragraph 5.

³⁷ Ibid, Paragraphs: 35 and 32.

³⁸ See footnotes: 10 and 21.

³⁹ See footnote 23, Paragraph 21.

⁴⁰ Ibid, Paragraph 57.

⁴¹ See footnote 25, Paragraph 35.

⁴² Ibid, Paragraph 93.

⁴³ Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity distributed the Report on “Visit to Georgia”, 15 May 2019, Paragraph 1, available at <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/139/35/PDF/G1913935.pdf?OpenElement>>.

International in its Report on “Behind barbed Wire, Human Rights Toll of “Borderization” in Georgia.” Furthermore, the Report reads as follows: “South Ossetia/Tskhinvali Region is even more closed for humanitarian and human rights workers. It is Amnesty International’s understanding that only the ICRC has a presence in and regular access to South Ossetia/Tskhinvali Region and the de facto authorities have denied other organizations the right to enter and operate in the region.”⁴⁴

V. Violation of right to life; Torture and ill-treatment

34. Article 5 of the Universal Declaration of Human Rights, being part of international customary law, Article 7 of the International Covenant on Civil and Political Rights and Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms clearly determine that no one should be subjected to torture, to inhuman or degrading treatment or punishment.⁴⁵ Nevertheless, the tragic incidents of the past years prove that even the fulfillment of peremptory norms of international law, such as prohibition of torture is not guaranteed in the occupied territories of Georgia by the Russian Federation as the occupying power. Furthermore, overview and incidents of the reporting period also demonstrate arbitrarily deprivation of inherent right to life in the territories of Georgia under the Russia’s occupation, further deteriorating the situation in terms of accountability of human rights violators.

35. Tragic incidents of the past years were followed by the death of the Georgian citizen Irakli Kvaratskhelia in 2019 at the illegally stationed Russian military base in the occupied Abkhazia region after being illegally detained by Russian FSB troops.

36. Up to this point the perpetrators have not been held accountable for the cases of torture, inhuman treatment and murder of Georgian citizens: Davit Basharuli, Giga Otkhazia, Archil Tatunashvili and Irakli Kvaratskhelia. This leaves the residents of the Russia-occupied Abkhazia and Tskhinvali regions of Georgia, especially ethnic Georgians extremely vulnerable.

37. Parliamentary Assembly of the Council of Europe in its Resolution 2252 adopted on 22 January 2019, welcomed the fact that “the Parliament of Georgia has recently adopted a resolution which establishes a sanctions list of perpetrators of serious human rights violations and persons responsible for covering them up on Georgian territory that is currently not under the effective control of the Georgian authorities (the “Otkhazia-Tatunashvili list”), and supports the measures proposed in the European Parliament resolution on Georgian occupied territories ten years after the Russian invasion (2018/2741(RSP)).”⁴⁶

38. In the Resolution 40/28 on “Cooperation with Georgia” the UN HRC expressed serious concern “at various forms of reported discrimination against ethnic Georgians, violations of the right to life,”⁴⁷

39. In the Decision of the Committee of Ministers' Deputies, the CoE Member States expressed “grave concern over impunity around the deaths of Georgian IDPs, David Basharuli, Giga Otkhazia and Archil Tatunashvili, and expressed concern over the recent case of arbitrary detention and death of another Georgian citizen – Irakli Kvaratskhelia under unclear circumstances.” Furthermore, the CoE Member States expressed “further profound concern that the human rights situation in the Georgian regions of Abkhazia and Tskhinvali region/South Ossetia has been further deteriorating, including concerns with regard to the right to life”⁴⁸

⁴⁴ See footnote 7, pg: 12.

⁴⁵ Article 5 of the Universal Declaration of Human Rights; Article 7 of the International Covenant on Civil and Political Rights; Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

⁴⁶ Resolution 2252 on “Sergei Magnitsky and beyond – fighting impunity by targeted sanctions”, Parliamentary Assembly of the Council of Europe, 22 January 2019, available at <<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25352&lang=en>>.

⁴⁷ See footnote 14.

⁴⁸ See footnote 2.

40. In the Resolution on the “Security and Human Rights Situation in Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia” the OSCE PA strongly condemned “the deterioration of security, human rights and the humanitarian situation in the occupied territories of Georgia due to the Russian Federation’s illegal actions, including ... ethnic discrimination against Georgians residing in Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia, among them proven instances of murder, torture, ill treatment.” Furthermore, the OSCE PA strongly condemned “the murder of Georgian citizens - Archil Tatunashvili, Giga Otkhзорia, and Davit Basharuli - by representatives of the Russian occupation regimes in Sokhumi and Tskhinvali, and the recent death of detained Georgian internally displaced person (IDP) Irakli Kvaratskhelia at the Russian military base illegally stationed in the occupied Abkhazia region of Georgia.” Moreover, the OSCE PA urged the Russian Federation, as the power exercising effective control in the occupied territories of Georgia “to cease its illegal actions and human rights violations, including deprivation of life, ... torture, and ill treatment” and “to remove all obstacles to ending the impunity in the cases of murder of Georgian citizens and bringing the perpetrators to justice.”⁴⁹

41. In his Report (A/73/880) on the “Status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia” the UN SG regreted “the unfortunate cases of detention and, in particular, the tragic loss of life across the “dividing lines” in February 2018 and March 2019.”⁵⁰

42. “The death of one individual in custody during the reporting period is of serious concern. The case concerned an ethnic Georgian, Irakli Kvaratskhelia, who died in March 2019, while reportedly in detention in a facility of the Russian border guards in connection with his attempt to cross the Administrative Boundary Line with Abkhazia,” reads the Report (A/HRC/42/34) of the UNHCHR on “Cooperation with Georgia.”⁵¹ Furthermore, the document stressed that “during the reporting period, justice has not been delivered in the case, nor in the alleged unlawful death or killing of Giga Otkhзорia and David Basharuli.”⁵² Moreover, “OHCHR calls on all relevant parties to exert their utmost efforts to clarify the facts in these deaths and to prevent any further arbitrary loss of life in and around both regions” reads the Report (49).

43. According to the 20th Consolidated Report on “the Conflict in Georgia” of the CoE SG “the fact that justice has not been served in cases concerning tragic loss of life, which have regrettably recently occurred across the ABL, continues to undermine human security perceptions and more broadly the climate of trust.”⁵³

44. In the statements on the CoE SG’s 19th and 20th Consolidated Reports the EU reiterated “its call for a proper investigation into the tragic deaths of Georgian nationals Archil Tatunashvili, Giga Otkhזורia and Irakli Kvaratskhelia” and for justice to be applied.⁵⁴

45. “Georgia Support Act” by the US House of Representatives condemned “the recent killings of Georgian citizens Archil Tatunashvili, Giga Otkhזורia, and Davit Basharuli.” Moreover, the Act imposed sanctions “on persons complicit in or responsible for serious human rights abuses, including right to life in Georgian regions of Abkhazia and Tskhinvali Region/South Ossetia occupied by Russia.”⁵⁵

46. According to the Report on “Behind barbed Wire, Human Rights Toll of “Borderization” in Georgia” of the Amnesty International “locals told Amnesty International that their fear about safety when working in their orchards and farms near the ABL drastically increased after the deaths of two civilians, one in Abkhazia and one in the South

⁴⁹ See footnote 3.

⁵⁰ See footnote 23, Paragraph 65.

⁵¹ See footnote 25, Paragraph 47.

⁵² Ibid, Paragraph 48.

⁵³ See footnote 19, Paragraph 35.

⁵⁴ See footnotes: 10 and 21.

⁵⁵ See footnote 6.

Ossetia/Tskhinvali Region, in 2016 and 2018 respectively.”⁵⁶ According to the Report “incidents of ill-treatment in detention have also been reported. Amnesty International spoke to Amiran Gugutishvili, a 71-year-old farmer in the village of Gugutiantkari near the South Ossetian/Tskhinvali Region ABL. He described how Russian servicemen detained him in February 2017 while he was working in his plot of land, next to the ABL. He said the servicemen entered his garden, detained him and subjected him to ill-treatment. His relatives also confirmed to Amnesty International delegates that he had bruises all over his body when he returned to Tbilisi-controlled territory after five days of detention. The Tbilisi-based NGO Rehabilitation Center for Victims of Torture provided pre-admission assessment of Amiran Gugutishvili in 2017 when he was released from detention and transferred to the Gori hospital. The NGO stated that Amiran Gugutishvili suffered post-traumatic stress disorder and “depression accompanied by memory loss resulting from physical and psychological methods of torture.” The Amnesty International “calls upon the Russian government and the relevant de facto authorities in South Ossetia/Tskhinvali Region and Abkhazia, to ... protect anyone deprived of their liberty from torture and other ill-treatment.”⁵⁷

VI. Arbitrary detentions

47. Deprivation of liberty and security of person have historically been means for impairing the enjoyment of other rights.⁵⁸ Arbitrary detention is prohibited by Article 9 of the Universal Declaration of Human Rights, Article 9 of the International Covenant on Civil and Political Rights (ICCPR) and Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Moreover, Paragraph 1 of Article 9 of the ICCPR requires that deprivation of liberty must not be arbitrary, and must be carried out with respect for the rule of law.⁵⁹ Considering the occupation of Abkhazia and Tskhinvali regions of Georgia by the Russian Federation, any decision by the occupation regimes therein are considered null and void and any detention by the Russian occupation forces as illegal.

48. Illegal detentions of Georgian citizens by the Russian occupation forces restrict freedom of movement and exacerbate already grave situation in the occupied territories, as well as along the occupation line.

49. Illegal detention of the Georgian physician and traumatologist, Dr. Vazha Gaprindashvili by the occupying power on 9 November 2019, was one of the recent cases of arbitrary detentions. Dr. Gaprindashvili was later sentenced to two months of pretrial detention on the allegation of illegal crossing of so-called “border.” Despite the efforts of the Government of Georgia and the international community, Dr. Gaprindashvili remained in the so-called “custody” in Russia-occupied Tskhinvali region of Georgia until 28 December 2019. The present case, as well as arbitrary detentions of the Georgian citizens by the Russian occupation forces represent a clear attempt to further destabilize already severe security, humanitarian and human rights situation in the Russia-occupied Abkhazia and Tskhinvali regions of Georgia.

50. On 19 November 2019 the OSCE Secretary General, Thomas Greminger reacted to the illegal detention of Dr. Vazha Gaprindashvili and stated that “humanitarian approach to all detention cases is of utmost importance.” On 20 December 2019 the European External Action Service of the EU demanded immediate release of Dr. Vazha Gaprindashvili.⁶⁰

⁵⁶ See footnote 7, pg: 35.

⁵⁷ Ibid, pg: 31 and 47.

⁵⁸ General Comment No. 35, Article 9 (Liberty and security of person), UN Human Rights Committee, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en.

⁵⁹ Article 9 of the Universal Declaration of Human Rights; Article 9 of the International Covenant on Civil and Political Rights; Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

⁶⁰ Statement of the European External Action Service of the EU on the case of Georgian citizen Vazha Gaprindashvili, 20 December 2019, available at

51. In the Resolution 40/28 on “Cooperation with Georgia” the UN HRC expressed serious concern at “... deprivation of liberty, arbitrary detentions and kidnappings ... in both Georgian regions.”⁶¹

52. In the Decision of the Committee of Ministers' Deputies, the CoE Member States “expressed grave concern over the recurrent and continued arbitrary detentions of local inhabitants along the administrative boundary lines (ABLs).” Moreover, the CoE member States “reiterated their call to the authorities exercising effective control to cease arbitrary detentions of persons, including in the context of so-called “illegal border crossing””⁶²

53. In the Resolution on the “Security and Human Rights Situation in Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia” the OSCE PA “calls upon the Russian Federation, as the power exercising effective control in Georgia’s occupied territories, to cease its illegal actions and human rights violations, including ... abductions, illegal detentions”⁶³

54. According to the 19th and 20th Consolidated Reports “on the Conflict in Georgia” of the CoE SG, ABL crossings continued to result in detentions and those apprehended are released after paying a “fine”, however recurrent “violations” reportedly still result in the levelling of “administrative charges” and longer detention periods.⁶⁴ Moreover, “the delegation’s attention was drawn to an incident affecting seven people who were detained while visiting a graveyard on the other side of the ABL on 17 August near the village of Artsevi. They were later released” reads the 20th Consolidated Report “on the Conflict in Georgia” of the CoE SG.⁶⁵

55. In the Statements on the CoE SG’s 19th and 20th Consolidated Reports the EU expressed its profound concern by the lack of progress and ongoing violations of human rights “in other areas”, including arbitrary detentions.⁶⁶ Furthermore, “the EU calls on the *de facto* authorities to ensure that residents of the Georgian regions concerned are not deprived of any basic rights, such as the right to ... liberty and security,” according to the EU statement on the CoE SG’s 20th Consolidated Report.⁶⁷

56. According to the UN SG Report (A/73/880) on the “Status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia” “increased surveillance by border guards of the Russian Federation and strict detention practices were also reported.”⁶⁸

57. “OHCHR continued to receive reports of cases of deprivation of liberty in connection with the crossing of the Administrative Boundary Lines Most cases reportedly involved short-term detentions of up to several days, while long-term detentions of up to several years continued to occur. Many of the persons apprehended or detained were requested to pay considerable fines in order to be released,” reads the Report (A/HRC/42/34) of the UNHCHR on “Cooperation with Georgia.”⁶⁹ The High Commissioner made recommendations “to all relevant parties in the context of the situation in Abkhazia and South Ossetia ... to put an end to the practice of detention in connection with the crossing of the Administrative Boundary Lines.”⁷⁰

58. “Ongoing detentions, kidnappings, and other human rights violations committed in the Georgian regions of Abkhazia and Tskhinvali Region/South Ossetia forcibly occupied by

<https://eeas.europa.eu/headquarters/headquarters-homepage/72521/statement-spokesperson-case-georgian-citizen-vazha-gaprindashvili_en>.

⁶¹ See footnote 14.

⁶² See footnote 2.

⁶³ See footnote 3.

⁶⁴ See footnote 17, Paragraph 41 and footnote 19, Paragraph 40.

⁶⁵ See footnote 19, Paragraph 48.

⁶⁶ See footnotes: 10 and 21.

⁶⁷ See footnote 10.

⁶⁸ See footnote 23, Paragraph 26.

⁶⁹ See footnote 25, Paragraph 63.

⁷⁰ Ibid, Paragraph 94.

the Russian Federation” were notably condemned in the “Georgia Support Act” by the US House of Representatives.⁷¹

59. In the Report on “Behind barbed Wire, Human Rights Toll of “Borderization” in Georgia” of the Amnesty International concern was expressed “that Russian and the de facto authorities are regularly detaining civilians crossing the ABL. Such detentions are arbitrary and constitute violations of the right to liberty and security of a person.”⁷² The Amnesty International “calls upon the Russian government and the relevant de facto authorities in South Ossetia/Tskhinvali Region and Abkhazia, to respect and protect the rights of those seeking to cross the ABL in South Ossetia/Tskhinvali Region and Abkhazia, in particular, cease arbitrary detention of civilians crossing the ABL”⁷³

60. The Co-Chairs of the Geneva International Discussions also reiterated their calls “for participants to reduce tensions on the South Ossetian ABL, ... for all detainees to be released.”⁷⁴

VII. Violation of right to return

61. UN Guiding Principles on Internal Displacement, recognizes the right of internally displaced persons to “... return voluntarily, in safety and with dignity, to their homes or places of habitual residence”⁷⁵ Most recently, on 18 December 2019, the UN General Assembly adopted the Resolution 74/160 on “Protection of and assistance to internally displaced persons.” The Resolution highlights the right of safe and dignified return of internally displaced persons to their homes. In the same document the General Assembly emphasized that voluntary return of internally displaced persons is one of the necessary element of effective peacebuilding process.⁷⁶ Furthermore, in the explanatory memorandum of the Report on “the role of local and regional governments in protecting internally displaced persons (IDPs)” the Congress of Local and Regional Authorities of the CoE emphasized that “in the cases of unresolved conflicts, authorities in effective control over occupied territories bear responsibility for any violation of the fundamental rights of IDPs and refugees for a safe and dignified return to their homes, as well as for human right abuses.”⁷⁷ In violation of this notion and other fundamental human rights, hundreds of thousands of IDPs and refugees are deprived of return to the Russia-occupied Abkhazia and Tskhinvali regions of Georgia.

62. UN Human Rights Council in its Resolution 40/28 on “Cooperation with Georgia” expressed concern that “internally displaced persons and refugees continue to be deprived of the right to return to their homes in Abkhazia, Georgia and the Tskhinvali region/South Ossetia, Georgia in a safe and dignified manner.”⁷⁸

63. In the Decision of the Committee of Ministers' Deputies, the CoE Member States “expressed serious concern that IDPs and refugees continue to be deprived of their fundamental right to return to their places of origin in a safe and dignified manner.” Moreover, the CoE member States “reiterated their call to the authorities exercising effective control to create conditions for the voluntary, safe and dignified return of all IDPs and refugees.”⁷⁹

64. The UN General Assembly adopted the Resolution 73/298 on “status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia” on 4 June 2019. In the Resolution the General Assembly “recognizes the right of return of all internally displaced persons and refugees and their descendants,

⁷¹ See footnote 6.

⁷² See footnote 7, pg: 28.

⁷³ Ibid, pg: 47.

⁷⁴ See footnote 31.

⁷⁵ Principle 28 of the UN Guiding Principles on Internal Displacement.

⁷⁶ Resolution 74/160 on Protection of and assistance to internally displaced persons”, General Assembly of the UN, 19 December 2019, available at <<https://digitallibrary.un.org/record/1661343?ln=en>>.

⁷⁷ See footnote 27.

⁷⁸ See footnote 14.

⁷⁹ See footnote 2.

regardless of ethnicity, to their homes throughout Georgia, including in Abkhazia and the Tskhinvali region/South Ossetia.” Furthermore, the UN General Assembly “calls upon all participants in the Geneva discussions ... to take immediate steps to ensure respect for human rights and create favourable security conditions conducive to the voluntary, safe, dignified and unhindered return of all internally displaced persons and refugees to their places of origin.” The Resolution “underlines the need for the development of a timetable to ensure the voluntary, safe, dignified and unhindered return of all internally displaced persons and refugees affected by the conflicts in Georgia to their homes.”⁸⁰

65. In the Resolution on the “Security and Human Rights Situation in Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia” the OSCE PA reaffirmed support “for the fundamental rights of hundreds of thousands of IDPs and refugees expelled following the multiple waves of ethnic cleansing from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia, to return to their places of origin in safety and dignity.” Moreover, the OSCE PA “urges the Russian Federation to allow the return of hundreds of thousands of IDPs and refugees forcibly expelled from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia, to their places of origin in safety and dignity.”⁸¹

66. According to the “19th and 20th Consolidated Reports on the Conflict in Georgia” of the CoE SG, during the period under review, no progress could be reported as regards the voluntary, safe, dignified and unhindered return of internally displaced persons (IDPs) and refugees on the basis of internationally recognized principles.⁸²

67. According to the UN SG Report (A/73/880) on the “Status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia” “no major changes were observed during the reporting period with regard to internally displaced persons and refugees exercising their right to return”⁸³ In the Report UN SG stressed that “no agreement or timetable for the voluntary return of all refugees and internally displaced persons has been developed” and “Working Group II of the Geneva international discussions could not deal with the issue of voluntary return owing to the continued unwillingness of some participants to discuss the matter.” UN SG further reiterated its call upon all participants in the Geneva International Discussions “to refrain from walking out when the issue of the voluntary return of refugees and internally displaced persons is tabled by the Working Group II.”⁸⁴ Moreover, according to the Report “there is a complex nexus between the individual right to voluntary, safe and dignified return and the establishment of the conditions conducive to such return. The individual’s right to return, in the case of an internally displaced person, derives from the individual’s right to freedom of movement as stipulated in international human rights instruments. It is essential to recognize that return is both a human right and a humanitarian issue and therefore cannot be directly linked to political questions or the conclusion of peace agreements. It must be addressed irrespective of any solution to the underlying conflict” (38).

68. According to the explanatory memorandum of the Report on “the role of local and regional governments in protecting internally displaced persons (IDPs)” of the Congress of Local and Regional Authorities of the CoE “in the case of Georgia, close to half a million IDPs and refugees from the Georgian regions of Abkhazia and Tskhinvali region/South Ossetia expelled during the armed hostilities in the 1990s and during the August 2008 Russo-Georgian war, continue to be deprived of their fundamental right to safe and dignified return to their places of origin.”⁸⁵

⁸⁰ UN General Assembly Resolution (73/298) on “status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia”, 4 June 2019, available at <https://digitallibrary.un.org/record/3808428/files/A_RES_73_298-EN.pdf>.

⁸¹ See footnote 3.

⁸² See footnote 17, Paragraph 55 and Footnote 19, Paragraph 54.

⁸³ See footnote 23, Paragraphs 14.

⁸⁴ Ibid, Paragraph 60.

⁸⁵ See footnote 27.

VIII. Violation of right to health

69. Article 12 (1) of the International Covenant on Economic, Social and Cultural Rights recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”⁸⁶ In general, the right to health is frequently associated with the access to health care and hospitals. However, the sense of this right extends further. In line with other basic rights, the Russian Federation as the occupying power fails to protect the right to health in the occupied territories of Georgia. On the other hand, the Government of Georgia continues to make available healthcare support programmes and services for patients from the Russia-occupied territories of Georgia, including medical transportations to specialized healthcare institutions to the Government controlled territory.

70. The death of Margo Martiashvili in October 2019, is a vivid example of the drastic humanitarian implications of the closure of the occupation line and the violation of right to health. Despite the need of urgent evacuation due to severe health problems, Russian occupation forces denied her transfer to the Government controlled territory to receive proper medical treatment in time.

71. Another recent incident of violation of right to health was the case of Tamar Gigauri, who was not allowed to cross the occupation line and get medical treatment on Government controlled territory and who has not been properly treated in a hospital in the occupied Tskhinvali region. As a result, she is still suffering from injuries, which might lead to further deterioration of her health condition.

72. UN Human Rights Council expressed serious concern at the violations of the right to health in the occupied territories of Georgia in the Resolution 40/28 on “Cooperation with Georgia.”⁸⁷

73. In the Decision of the Committee of Ministers' Deputies, the CoE Member States “reiterated their call to the authorities exercising effective control to remove any impediment, restriction or limitation to the right to freedom of movement across the administrative boundary lines (ABLs), including for medical ... purposes.”⁸⁸

74. UN SG Report (A/73/880) on the “Status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia” assessed that “closure of the crossing points by the authorities in control in Abkhazia and South Ossetia early in 2019, using public health concerns as a justification, not only negatively affected the living conditions of affected populations but also limited the transfer of, inter alia, supplementary food supplies, medication and financial support for vulnerable segments of the population.”⁸⁹

75. “The restrictions on freedom of movement reportedly continued to affect the right to health in Abkhazia and South Ossetia. Patients and medical emergency vehicles continued to face difficulties in crossing the Administrative Boundary Lines. These difficulties were particularly serious in the context of the closure of the lines in early 2019. While those in need of medical evacuations were exceptionally allowed to cross in the case of Abkhazia, delays around both regions were reported. In South Ossetia, the closure reportedly resulted, inter alia, in a sharp reduction in the availability of medicine,” reads the Report (A/HRC/42/34) of the UNHCHR on “Cooperation with Georgia.”⁹⁰ Moreover, according to the Report “information received by OHCHR indicates that the medical services, infrastructure and qualifications of medical personnel are poor in both regions.”⁹¹

⁸⁶ Article 12 (1) of the International Covenant on Economic, Social and Cultural Rights.

⁸⁷ See footnote 14.

⁸⁸ See footnote 2.

⁸⁹ See footnote 23, Paragraph 57.

⁹⁰ See footnote 25, Paragraph 66.

⁹¹ Ibid, Paragraph 67.

76. According to the “Human Right and Democracy Report 2018” of the United Kingdom’s Foreign and Commonwealth Office, restrictions on the freedom of movement in the occupied territories of Georgia “affected access to ... healthcare.”⁹²

77. In the statement with regard to the Secretary General's 20th Consolidated report on the conflict in Georgia the EU expressed deep concern “over unprecedented obstacles to freedom of movement, in connection with restrictions to crossings and closures of crossing points on the administrative boundary lines (ABLs) This has created an extremely difficult humanitarian situation for the local population, especially for persons in need for medical assistance and students. The death on 29 October of Ms. Martiashvili, who was in need of urgent medical assistance, is one of the most recent tragic examples.”⁹³

IX. Violation of right to education in native language

78. A number of international and regional human rights instruments recognize the right to education. The element of native language should be seen as one of the basic component for the enjoyment of this right. Article 26 of the Universal Declaration of Human Rights refers the right to education as the right of everyone,⁹⁴ and further recognizes that “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as ... language.”⁹⁵ The same implication is enshrined in Article 28 of the Convention on the Rights of the Child, specifying the right to education, as the right of every child,⁹⁶ further stating that it should be ensured “without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's ... language” under Article 2 of the same convention.⁹⁷ However, the right to education in native language should not be seen only as linguistic or educational right, most primarily, it infringes on the right to dignity, freedom and equality and all the inalienable fundamental human rights.

79. Prohibition of education in native language for the ethnic Georgians in Russia-occupied Abkhazia and Tskhinvali regions of Georgia remains one of the flagrant violation of fundamental human rights by the Russian Federation as the occupying power. The linguistic discrimination is yet another attack against their identity and dignity. This is a part of far-reaching strategy aimed at Russification of the occupied territories of Georgia.

80. In the Resolution 40/28 on “Cooperation with Georgia” UN Human Rights Council expressed “serious concern at the restrictions on education in one’s native language in the occupied territories of Georgia.”⁹⁸

81. In the Decision of the Committee of Ministers' Deputies, the CoE Member States expressed concern over the violation of the right to education in native language in the occupied territories of Georgia. Moreover, the CoE Member States “reiterated their call to the authorities exercising effective control to cease violations of the right to education in schools and preschools, including education in the native Georgian language in both Georgian regions.”⁹⁹

82. In the Resolution on the “Security and Human Rights Situation in Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia” the OSCE PA strongly condemned “the prohibition of education in native Georgian language” in the Russia-occupied territories of Georgia.¹⁰⁰

83. The 19th Consolidated Report on “the Conflict in Georgia” of the CoE SG assessed that “as regards the situation of education in the Georgian language in schools in the Gali district, no major developments have been noted since the last report. Concerns persist on

⁹² See footnote 5.

⁹³ See footnote 10.

⁹⁴ Article 26 of the Universal Declaration of Human Rights.

⁹⁵ *Ibid.*, Article 2.

⁹⁶ Article 28 of the Convention on the Rights of the Child.

⁹⁷ *Ibid.*, Article 2.

⁹⁸ See footnote 14.

⁹⁹ See footnote 2.

¹⁰⁰ See footnote 3.

access to education in the native language, in particular in the schools in Lower Gali in view of the gradual transition of instruction to Russian. Presently, schoolchildren in grades 1-7 are taught fully in Russian with limited access to classes in the Georgian language and literature.”¹⁰¹

84. Violation of right to education in native language was further discussed in the 20th Consolidated Report on “the Conflict in Georgia” of the CoE SG. In particular according to the Report “in addition to the overall drastic reduction in the numbers of Georgian school children who cross to attend school on the opposite side of the ABL, university students appear to be negatively affected too. Due to the recent closure of the ABL applied from 27 June, as noted above, many were unable to attend university entry exams in the Georgian central government-controlled territory.”¹⁰² Moreover, “the delegation’s attention was also drawn to the situation regarding access to education in the native language, due to restrictions imposed on all Georgian schools in the Akhagori since 2017. According to the Georgian authorities, these measures affect around 100 schoolchildren,” reads the Report.”¹⁰³

85. Respectively, in its Statements on the 19th and 20th Consolidated Reports the EU remained particularly concerned about “the lack of progress and reports of ongoing violations of human rights in other areas, including ... restrictions on access to education in one’s native language in both entities.”¹⁰⁴

86. “Many of the submissions that OHCHR received contained information on the ongoing restrictions on the use of Georgian as a language of instruction, which continued to particularly affect the communities identifying themselves as ethnic Georgian in Gali, Abkhazia and Akhagori, South Ossetia,” reads the Report (A/HRC/42/34) of the UNHCHR on “Cooperation with Georgia.”¹⁰⁵ Moreover, according to the document “the multifaceted restrictions on freedom of movement further hampered access to education. OHCHR continued to receive information about children compelled to cross the Administrative Boundary Line with Abkhazia to attend schools in the Georgian language and finding it difficult, if not impossible, to pursue their education due to much longer travel times and other requirements.”¹⁰⁶ Furthermore, the High Commissioner draws attention to the conclusion of “some non-governmental organizations,” which consider that “as a consequence of the above-mentioned situation, ethnic Georgians may forget their mother tongue or otherwise feel compelled to leave the concerned territories” (72).

87. “Human Right and Democracy Report 2018” of the United Kingdom’s Foreign and Commonwealth Office indicated to the restriction of access to education affected by the increased fencing along the Administrative Boundary Line.¹⁰⁷

88. According to the Report on “Behind barbed Wire, Human Rights Toll of “Borderization” in Georgia” of the Amnesty International “access to education is negatively affected by the constraints placed on freedom of movement in the occupied territories of Georgia.”¹⁰⁸

X. Infringement of right to property

89. “No one shall be arbitrarily deprived of his property,”¹⁰⁹ according to Article 17(2) of the Universal Declaration of Human Rights and “every natural or legal person is entitled to the peaceful enjoyment of his possessions,”¹¹⁰ states Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms. Legal Note of

¹⁰¹ See footnote 17, Paragraph 45.

¹⁰² See footnote 19, Paragraph 44.

¹⁰³ Ibid, Paragraph 53.

¹⁰⁴ See footnotes: 10 and 21.

¹⁰⁵ See footnote 25, Paragraph 69.

¹⁰⁶ Ibid, Paragraph 71.

¹⁰⁷ See footnote 5.

¹⁰⁸ See footnote 7, pg: 19.

¹⁰⁹ Article 17(2) of the Universal Declaration of Human Rights.

¹¹⁰ Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.

the Office of the High Commissioner for Human Rights on “belligerent occupation: duties and obligations of occupying powers”, which was published on 24 September 2017, summarized the main duties of the occupying power under international law, stating that “the confiscation of private property by the occupant is prohibited.”¹¹¹ In violation of this notion the ongoing incremental land grabbing practice detrimentally impacts lives of locals, as so called “borderization” splits communities and leads some Georgians to find their property in the Russia-occupied territory overnight.

90. In the Resolution 40/28 on “Cooperation with Georgia” UN Human Rights Council expressed serious concern “at the renewed practice of demolition of the ruins of houses belonging to internally displaced persons in the Tskhinvali region/South Ossetia, Georgia.”¹¹²

91. In the Decision of the Committee of Ministers' Deputies, the CoE Member States “expressed particular concern over the intensified discrimination of Georgians on the grounds of ethnicity in both Georgian regions of Abkhazia and Tskhinvali region/South Ossetia, particularly in Gali and Akhgori districts, through additional restrictions to ... property rights in case of forced registration as foreign residents or demands to change surnames and ethnic identity.” Furthermore, the CoE Member States “expressed deep concern over the demolition of houses of Georgian IDPs in Eredvi, Tskhinvali region/South Ossetia, in violation of property rights.”¹¹³

92. According to the Resolution 73/298 on “status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia” the UN General Assembly “stresses the need to respect the property rights of all internally displaced persons and refugees affected by the conflicts in Georgia and to refrain from obtaining property in violation of those rights.”¹¹⁴

93. In the Resolution on the “Security and Human Rights Situation in Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia” the OSCE PA strongly condemned “restrictions on rights related to ... housing, land and property” “due to the Russian Federation’s illegal actions” in the occupied territories of Georgia.¹¹⁵

94. “No progress was reported on the restitution of, or compensation for, property left behind by internally displaced persons. The effects of the so-called “borderization” and the frequent apprehension of persons crossing the Administrative Boundary Lines continued to hinder and discourage access to property situated across or along the lines,” reads the Report (A/HRC/42/34) of the UNHCHR on “Cooperation with Georgia.”¹¹⁶ Furthermore, according to the document “in Abkhazia, the lack of clarity over the necessary identity documents continued to result in further infringements of the right to property, as the “foreign residence permits” do not confer this right.”¹¹⁷

95. Violation of right to property was further discussed in the 20th Consolidated Report on “the Conflict in Georgia” of the CoE SG. In particular, according to the Report the erection of artificial barriers in the vicinity of the village of Gugutiantkari, Gori Municipality, affected two households of locals “effectively cutting their access to property and agricultural land and forcing them to abandon their homes.”¹¹⁸

96. In the Statements on the 19th and 20th Consolidated Reports, the EU called on the de facto authorities to ensure that residents of the Georgian occupied territories are not deprived of any basic rights, such as property rights.¹¹⁹ Furthermore, the EU remained profoundly

¹¹¹ Legal Note of the Office of the High Commissioner for Human Rights on “belligerent occupation: duties and obligations of occupying powers”, 24 September 2017, available at <<https://www.humanitarianresponse.info/en/operations/whole-of-syria/document/belligerent-occupation-duties-and-obligations-occupying-powers>>.

¹¹² See footnote 14.

¹¹³ See footnote 2.

¹¹⁴ See footnote 80.

¹¹⁵ See footnote 3.

¹¹⁶ See footnote 25, Paragraph 73.

¹¹⁷ Ibid, Paragraph 74.

¹¹⁸ See footnote 19, Paragraph 46.

¹¹⁹ See footnotes: 10 and 21.

concerned “by the lack of progress and reports of ongoing violations of human rights in other areas, including ... on-going installation of razor and barbed wire fences and other artificial barriers on residents’ property, dividing families and communities and resulting in the growing numbers of IDPs,” according to the Statement on the 20th Consolidated Report.¹²⁰

97. “Human Right and Democracy Report 2018” of the United Kingdom’s Foreign and Commonwealth Office stated that increased fencing along the Administrative Boundary Line restricts the access to property.¹²¹

98. Amnesty International in its Report on “Behind barbed Wire, Human Rights Toll of “Borderization” in Georgia” stressed that “according to international humanitarian law, states are prohibited from destruction, removal, or rendering useless objects indispensable to the survival of the civilian population, such as foodstuffs ... for the specific purpose of denying them for their sustenance value to the civilian population... to cause them to move away, or any other motive. In situations of occupation, international humanitarian law specifies that private property must be respected and may not be confiscated, except where destruction or seizure is required by imperative military necessity. Amnesty International is not aware of, nor has it received responses to its relevant questions submitted to Russian and de facto authorities in writing about, any military necessity that could justify seizure of agricultural lands and pasturelands across the ABL and denial of access for the local civilians to their livelihoods.”¹²²

XI. Conclusion

99. The reporting period was marked by the grave and blatant violations of human rights and fundamental freedoms, including but not limited to violations of right to life;¹²³ torture and ill-treatment;¹²⁴ arbitrary detention;¹²⁵ violations of the right to freedom of movement,¹²⁶ right to return,¹²⁷ right to health,¹²⁸ right to property¹²⁹ and right to education in one’s native language.¹³⁰

XII. Appeal to the international community

100. Georgia appeals to the international community and International Organizations:

- to call on the Russian Federation to reverse its recognition of so-called independence of Georgian regions Abkhazia and Tskhinvali;
- to call on the Russian Federation to end the occupation of the Georgian territories;

¹²⁰ See footnote 10.

¹²¹ See footnote 5.

¹²² See footnote 7.

¹²³ Article 3 of the Universal Declaration of Human Rights; Article 6 of the International Covenant on Civil and Political Rights; Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

¹²⁴ See footnote 45.

¹²⁵ Article 9 of the Universal Declaration of Human Rights; Article 9 of the International Covenant on Civil and Political Rights; Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

¹²⁶ Article 13 of the Universal Declaration of Human Rights; Article 12 of the International Covenant on Civil and Political Rights; Article 2 of the Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

¹²⁷ UN Guiding Principles on Internal Displacement.

¹²⁸ Article 12 of the International Covenant on Economic, Social and Cultural Rights.

¹²⁹ Article 17 of the Universal Declaration of Human Rights; Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.

¹³⁰ Article 26 (read in conjunction with Article 2) of the Universal Declaration of Human Rights; Article 2 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms; Article 28 (read in conjunction with Paragraph 1 of Article 2) of the Convention on the Rights of the Child.

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- to call on the Russian Federation to implement the EU-mediated Ceasefire Agreement of 12 August 2008 and withdraw its illegally stationed troops from the occupied territories of Georgia;
 - to call on the Russian Federation to stop violations of human rights in the occupied territories of Georgia;
 - to call on the Russian Federation as the occupying power to ensure the protection of human rights and fundamental freedoms and the removal of barbed and razor wires and other artificial obstacles and banners along the occupation line;
 - to call on the Russian Federation as the occupying power to allow immediate and unimpeded access to the Office of the High Commissioner for Human Rights and international and regional human rights mechanisms to Abkhazia, Georgia and the Tskhinvali region/South Ossetia, Georgia;
 - to call on the Russian Federation as the occupying power to allow immediate and unimpeded access to the European Union Monitoring Mission to both occupied regions of Georgia;
 - to condemn violations of human rights in the occupied territories of Georgia;
 - to take additional measures in order to monitor and report on the human rights situation in the occupied territories of Georgia. More specifically, Georgia appeals to:
 - (i) the OHCHR to continue efforts to access Abkhazia, Georgia and the Tskhinvali region/South Ossetia, Georgia;
 - (ii) the UN Human Rights Council's special procedure mandate holders to take additional measures in order to address and report on human rights situation in Abkhazia and the Tskhinvali regions;
 - (iii) the Commissioner for Human Rights of the Council of Europe to take additional measures in order to address and report on the human rights situation in both occupied regions;
 - (iv) the OSCE and its autonomous institutions, particularly the Office for Democratic Institutions and Human Rights to monitor the human rights situation in both Georgian regions.
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