



ALTERNATIVE REPORT:

**Russian Federation - Responsibility under
CERD with respect to Occupied Regions of Georgia**

by

National Institute for Human Rights & Georgian Young Lawyers' Association

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Committee on Elimination of Racial Discrimination
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I. Introduction

National Institute for Human Rights (NIHR) and Georgian Young Lawyers Association (GYLA)¹ are pleased to present this alternative report to UN Committee on the Elimination of Racial Discrimination (“Committee”) in respect of responsibilities and obligations of Russian Federation in occupied territories of Georgia, which derive from International Convention on Elimination of Racial discrimination (“ICERD” or “Convention”). The objective of the report is to address specific violations of the Convention that took place and on continued basis take place in Abkhazia, Georgia and Tskhinvali Region/South Ossetia, Georgia.

The information included in the alternative report was gathered from national data, studies and cases pending before international courts, as well as through conversations with the communities and national stakeholders.

II. Extra-territorial Application of ICERD

The Convention does not contain any provision that would limit the spatial scope of the conventional obligations as the jurisdictional aspects are only mentioned in articles 3 and 6 in general terms. Namely, article 3 of the Convention obliges state parties to “eradicate all practices of this nature in the territories under their jurisdictions”. In its General Recommendation XIX on Article 3, the Committee stressed that there is an obligation to eradicate the consequences of such practices [racial discrimination] imposed by [state] forces outside the state.² Though, the General Recommendation is silent of the practical examples, the Committee has further explained its position on the matter while examining the situation in the occupied Palestinian territories. Similarly, article 6 of the Convention obliges States Parties to provide effective remedies and protection against acts of racial discrimination to everyone within its jurisdiction.

As for articles 2,4 and 5 of the Convention, nothing in the text hints towards restrictive jurisdictional application of these provisions.

The Committee has also stressed the fact that the conventional obligations should be interpreted in good faith, in accordance with the ordinary meaning to be given to its terms in their context, in light of its object and purpose.³ The Committee has found its jurisdiction in concluding observations to call on states for performing their obligations under Convention

¹ Information regarding the NGOs is available below:

- Georgian Young Lawyers’ Association - <http://www.gyla.ge/>
- National Institute for Human Rights - <http://www.nihr.freeuni.edu.ge/>

² UN Committee on the Elimination of Racial Discrimination, Forty-seventh session (1995), General recommendation XIX on article 3 of the Convention. Para. 2.

³ Report of the Committee on Elimination of Racial Discrimination, General Assembly, Sixty-Second Session, Official Records, Supplement No. 18 (A/62/18) (2007), para. 225;

outside their territory.⁴ In its concluding observation committee encouraged the State party [United States] to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in the State party which negatively impact on the enjoyment of rights of indigenous peoples in territories outside the United States.⁵ The Committee also assessed that the Convention is applicable both to citizens and noncitizens.⁶ Concluding observation on Israel has unequivocally showed the Committee's position in respect to applicability of ICERD in occupied territories and in territories under effective control of state party.⁷ The Committee has even affirmed the position of the International Court of Justice and by other international bodies.⁸

The extraterritorial jurisdiction has been widely acknowledged by other UN Human Rights Treaty Bodies, such as Human Rights Committee established under the International Covenant on Civil and Political Rights. Namely, in its General Comment 31 the Human Rights Committee has stressed that jurisdiction is not limited to its own territory, but also applies to those within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, including the instances of occupation.⁹

The UN Court, shares this view in respect of ICERD. In the provisional measures in *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russia)* the court found "that these provisions of CERD generally appear to apply, like other provisions of instruments of that nature, to the actions of a State party when it acts beyond its territory".¹⁰

Therefore, NIHR and GYLA assert that ICERD does not contain any provision that would impose a spatial limitation upon the obligations it creates. On the contrary, the Committee's position's and practice along with the human rights oriented interpretation, i.e.

⁴ UN Committee on the Elimination of Racial Discrimination, Concluding observation Israel, CERD/C/ISR/CO/14-16, 3 April 2012.

⁵ U.N. Committee on the Elimination of Racial Discrimination, Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, U.N. Doc. CERD/C/USA/CO/6 (8 May 2008), para 30.

⁶ *Ibid*, para. 24.

⁷ UN Committee on the Elimination of Racial Discrimination, 80th session (2012), Concluding Observation, Israel. CERD/C/ISR/CO/14-16.

⁸ *Ibid*. para. 10.

⁹ General Comment N. 31 (80), Nature of the General Legal Obligation Imposed on State Parties to the Covenant (hereinafter General Comment 31), CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 10; Kaelin, *Arbitrary Detention*, pp. 32-33; GA Resolution 45/170, 18 December 1990; Resolution 46/135, 7 December 1991; Report on the Situation of the human rights in Kuwait under Iraqi Occupation, UN Doc. E/CN.4/1992/26, reproduced by W. Kaelin (ed.), *Human Rights in Times of Occupation: the case of Kuwait*, Berne 1994, paras. 8-94 & 160-165; Israel Report, CCPR/CO/78/ISR (2003), para. 11; Similar position shared in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion - I.C.J., General List N. 131, 9 July 2004;

¹⁰ *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v Russian Federation)*, Provisional Measures, Order of 15 October 2008 [2008] ICJ Rep 353, para 109.

“spirit of the of the ICERD” support position that conventional obligations follow state extraterritorially when the state is in control of the territory and/or carries out administration of the territory.

III. Occupation of Abkhazia, Georgia and Tskhinvali Region/South Ossetia, Georgia

At the present time, the whole territory of Tskhinvali Region/South Ossetia, Georgia remains under Russian occupation. Additionally, the Russian Federation occupy the whole territory of Abkhazia, Georgia including the Upper Abkhazia / Kodori Gorge region following the August War 2008.¹¹ Therefore, Russian Federation bears positive and negative obligations stemming from the Convention in both regions of Abkhazia, Georgia and Tskhinvali Region/South Ossetia, Georgia.

After 2008 August war between Russian Federation and Georgia, Russia had deployed military bases in Abkhazia, Georgia and Tskhinvali Region/South Ossetia, Georgia. In each occupied region Russian troops are present.¹² In 2015 Russia signed so called “Treaty on Alliance and Integration” with *de facto* authorities of Tskhinvali which strengthened Russia’s influence and constituted laying ground for annexation¹³, because “Treaty” includes integration of Ossetian military groups into Russian military force. Furthermore, Russia provides both economic and political support to Abkhaz and Ossetian *de facto* authorities.¹⁴ In this regard, situation is pretty similar to Cyprus, leading the Committee to express concerns about violations article 5(d)(i) and (v) of ICERD by Turkey due to occupation.¹⁵

It is deplorable that the European Union Monitoring Mission (EUMM) in Georgia is prevented from monitoring inside the occupied regions, as provided by the mandate. OSCE has stressed this fact along with another challenge that the occupying power, exercising effective control, has been preventing numerous international organizations, including humanitarian to access the regions and carry out their activity.¹⁶

¹¹ See United Nations Report of the Secretary-General on the situation in Abkhazia, Georgia, 3 October 2008, S/2008/631; Statement of Mr Alasania of Georgia to the United Nations Security Council, 5953rd Meeting, 10 August 2008, S/PV.5953; Council of Europe Parliamentary Assembly, Monitoring Committee Report, ‘The implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia’, 17 December 2008, AS/Mon(2008)33rev;

¹² National Committee on American Foreign Policy and the Institute for the Study of Human Rights, “Implementation Review: Six Point Ceasefire Agreement between Russia and Georgia”, August 2011, p. 3.

¹³ “European Parliament Resolution on the Conclusion of the Association Agreement with Georgia”, 18 December 2014, European Parliament, paragraph 11.

¹⁴ Forbes, Andrei Sedakov, *South Ossetia, Budget without Bottom*, 14 June 2011.

¹⁵ UN Committee on the Elimination of Racial Discrimination, Concluding observation of Cyprus, 1094th meeting, 15 March 1995. Section d.

¹⁶ “Human Rights in the War-Affected Areas Following the Conflict in Georgia”, OSCE/ODIHR, 27 November 2008, p. 72.

In 2009 the European Union's Fact-Finding Mission confirmed that South Ossetia, Georgia was under Russia's "de facto control" prior to the commencement of the ethnic cleansing in August 2008.¹⁷ European Parliament passed various documents and resolutions confirming occupation of Georgian territories by Russia.¹⁸ Notably, European Parliament's resolution of 17th November 2011 confirmed that Russia continues to occupy the Georgian regions of Abkhazia and the Tskhinvali Region/ South Ossetia, in violation of the fundamental norms and principles of international law and ethnic cleansing and forcible demographic changes have taken place in the areas under the effective control of the occupying force, which bears the responsibility for human rights violations in these areas.¹⁹

In 2012 OSCE has pointed out Tskhinvali region, Georgia and Abkhazia, Georgia as occupied territories while expressing its concern about denial of the right to return of displaced persons.²⁰ The same view has been shared by the European Commission²¹ and Parliamentary Assembly of the Council of Europe.²² The EU reiterated its concern about the continuing Russian illegal military presence, increased military exercises and infrastructure reinforcements in the Georgian regions of Abkhazia and Tskhinvali region/South Ossetia.²³

Notably, UN Human Rights Committee referred to this issue in its Concluding Observation with respect to Russian Federation in 2015, where it called on Russia to ensure the application of Covenant [ICCPR] in respect of acts perpetrated by armed groups and proclaimed authorities of "South Ossetia" to the extent that it already exercises influence over these groups and authorities which amounts to *effective control* over their activities.²⁴

¹⁷ Independent International Fact-Finding Mission On the Conflict in Georgia, Report Vol. II (September 2009), p. 133. GWS, Vol. III, Annex 121.

¹⁸ Report containing the European Parliament's recommendations to the Council, the Commission and the EEAS on the negotiations of the EU-Georgia Association Agreement (2011/2133(INI)) Section F; European Parliament resolution of 17 November 2011 containing the European Parliament's recommendations to the Council, the Commission and the EEAS on the negotiations of the EU-Georgia Association Agreement (2011/2133(INI)). Section 1 (g), (h); European Parliament resolution of 6 February 2014 on the EU-Russia summit (2014/2533(RSP)) para. 22; European Parliament resolution of 17 April 2014 on Russian pressure on Eastern Partnership countries and in particular destabilization of eastern Ukraine (2014/2699(RSP)) subsection L.

¹⁹ European Parliament resolution of 17 November 2011 containing the European Parliament's recommendations to the Council, the Commission and the EEAS on the negotiations of the EU-Georgia Association Agreement (2011/2133(INI)). Section 1 (g), (h).

²⁰ OSCE -Resolution on the Situation in Georgia. para 4. 9 July, 2012.

²¹ European Commission, Report from the Commission to the European Parliament and the Council, Brussels, 15.11.2013 COM(2013) 808 final. p.6.

²² Parliamentary Assembly of the Council of Europe, Resolution 1647 (2009) "Implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia", para. 7.

²³ *Ibi.*

²⁴ UN Human Rights Committee, Concluding observations on the seventh periodic report of the Russian Federation, (CCPR/C/RUS/CO/7), 28 April 2015, para. 6.

The UN Human Rights Council has expressed serious concern at the human rights and humanitarian situation in these regions of Georgia.²⁵ It also expressed serious concern over the repeated denial of access to international and regional monitors, including United Nations human rights mechanisms.²⁶

In its provisional measure's order regarding *Application of the International Convention on the Elimination of all Forms of Racial Discrimination*, the International Court of Justice ordered Russia to do all in its power to ensure that public authorities and public institutions under its control or influence do not engage in acts of racial discrimination against persons, groups of persons or institutions.²⁷ Given the binding nature of the ICJ's provisional measures,²⁸ the Russian Federation has an obligation to do all in its power to ensure good faith implementation of ICERD.

IV. Scope of Legal Obligations Under ICERD

As article 1 (1) of ICERD says "racial discrimination" means any distinction, exclusion, restriction or preference which is based on *inter alia* national or ethnic origin and has purpose or effect of nullifying or impairing exercise of human rights in political, economic or any field of public life.²⁹ The Committee has affirmed the State actions violate ICERD if they have the purpose or the effect of impairing particular rights and freedoms.³⁰ More specifically, the Committee evaluates whether the action has unjustifiable disparate impact upon a group distinguished by race, color, descent, or national or ethnic origin.³¹

Article 2(1) (a) imposes negative obligation on state to not engage in "act or practice of racial discrimination", article 2(1)(b) includes accessory obligation to not "sponsor, defend or support" racial discrimination by any persons or organizations, and lastly article 2(1)(d) provides for positive obligation of the state party to take all appropriate means to bring that racial discrimination to an end. Article 5 gives a non-exhaustive list of rights and freedoms and the state party of the Convention is legally bound to prohibit and eliminate racial discrimination in the enjoyment of such rights in conjunction with the forms obligation mentioned under article 2.³²

²⁵ UN Human Rights Council, *Cooperation with Georgia*, 17 March 2017, A/HRC/34/L.13, preamble, available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/34/L.13&referer=/english/&Lang=E

²⁶ *Ibid.*

²⁷ *Application of the International Convention on the Elimination of all Forms of Racial Discrimination* (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008, p. 391, para. 149.

²⁸ *LaCrand* (Germany v. United States of America), Judgement, I. C. J. Reports 2001, p. 503, para. 102.

²⁹ International Convention on Elimination of Racial Discrimination, article 1 (1).

³⁰ CERD, General Recommendation No. 14: Definition of Discrimination, A/48/18, (22 March 1993) para. 1;

³¹ *Ibid.*

³² CERD, General Recommendation No. 20: *Non-Discriminatory Implementation of rights and freedoms*, A/51/18, 1996, para. 1

Therefore, NIHR and GYLA assert that violation of rights and freedoms guaranteed under article 5 of the Convention is attributable to Russian Federation as:

- Russian Federation is directly responsible for the violation taking place in Abkhazia, Georgia and Tkhinvali Region/South Ossetia, Georgia as they control actions of the *de facto* authorities through effective control of territory and overall administration of the *de facto* government institutions;
- In addition, Russian Federation is responsible due to the fact that it has sponsored, defended or supported the acts and policies of discrimination by the Abkhaz and Ossetian *de facto* authorities and their militia;
- And in any event, Russian Federation bears duty of due diligence to stop ongoing discrimination and hold persons responsible for racial discrimination.

In addition, Article 3 of ICERD obliges state parties not only to prevent and prohibit but also to “eradicate” all practices of racial segregation in the territories under their jurisdiction, i.e. going beyond the wording of article 2(1)(d) and creating the obligation of result.

V. Right to Property and Freedom of Movement

During the 2008 war the right to liberty of movement and freedom to choose residence was violated for thousands of Georgian nationals. They were forced to leave their permanent homes and have been prevented from returning back since then.³³

The affected population are Georgian citizens, lawfully living in the territory of Georgia. During the war they were forced to leave their houses and home village after the destruction of their property as a result of the occupation of their villages by the Russian Federation. The continued presence of Russian armed forces and South Ossetian military and paramilitary in Tskhinvali Region, Georgia still prevents them from travelling freely to their home, their native village/s and the whole of the area controlled by *de facto* authorities. As a result of this denial of access to their homes and right to choose their residence, the affected population have been forced to live in temporary accommodations elsewhere in Georgia. No remedy of any kind has been provided by the Russian Federation in response to these violations.³⁴

In the days of 2008 August war, representatives of international NGOs witnessed terrifying scenes of destruction in four villages that used to be populated exclusively by ethnic Georgians.³⁵ One of the Russian intelligence officer confessed in one of the interviews to the

³³ Council of Europe Parliamentary Assembly, Report of Committee on Migration, Refugees and Population, ‘The humanitarian consequences of the war between Georgia and Russia’, 12 January 2009, Doc 11789; See sections IV & V of Report by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, ‘Human Rights in Areas Affected by the South Ossetia Conflict –Special Mission to Georgia and Russian Federation’, 8 September 2008; ODIHR, Human Rights in the War-affected Areas Following the Conflict in Georgia cited above, p. 24, 47-50.

³⁴ *Ibid*

³⁵ Human Rights Watch, ‘Georgian Villages in South Ossetia Burnt, Looted’, 13 August 2008.

media, that they burned houses to make sure that Georgian could not return to their homes.³⁶ Military commander of the Russian troops in South Ossetia, Colonel Tarasov has not denied the knowledge of the desire among the South Ossetian militia to expel ethnic Georgians from the region.³⁷ Satellite images provided by UNOSAT clearly demonstrate the damage inflicted upon several Georgian villages.³⁸ Former leader of Ossetian *de facto* authority - Eduard Kokoity publicly declared that the goal of the ethnic cleansing was to purge Georgian enclaves in Tskhinvali region, Georgia so as not to allow ethnic Georgians to return to their home.³⁹

The process of so called “borderization” started in 2008 and separated Georgia from its two regions of Abkhazia and South Ossetia. Currently, the total length of razor wire and barbed wire fences and other artificial obstacles along the occupation line in Tskhinvali Region is nearly 52 km.⁴⁰ The process intensified in April-May 2011 and then was halted for a certain period. The construction resumed in February 2013 and continues periodically up to date.

According to the information of the Ministry of Infrastructure of Georgia given to GYLA on 28 March 2014, the construction of boundaries had affected 24 villages of the Gori, Kareli, Kaspi and Tsalenjikha regions at the material time. These villages include Sakorintlo, Tvaurebi, DidiKhurvaleti, Ditsi, Mereti, Arbo, KvemoKhviti, Jariasheni, Mejvriskhevi, Bershueti, Ergneti, Kvemo and ZemoNikozi, Dvani, Dirbi, Knolevi, Avlevi, Tseronisi, Atotsi, Ghogheti, Koda, Pakhulani and Mujava. From November 2016, the Russian FSB officers restricted freedom of movement of resident of ethnic Georgian villages Akhalubani, Adzvi, and Jariasheni, Gori district.⁴¹ They also installed two additional markings - so called “state border” in the vicinity of Georgian village Avlevi, by which agricultural plots of lands being in private possession of local residents and access to these lands was blocked for owners.⁴² Recently, on 4th of July 2017, the Russian forces illegally installed yet another border sign in the area of Bershueti village.⁴³

³⁶ The Economist, ‘A Caucasian journal’, 22 August 2008.

³⁷ Special Press Release of Human Rights Centre “Memorial” and Demos Centre, Humanitarian consequences of the armed conflict in the South Caucasus, par. 12. Available at: <http://www.memo.ru/2008/11/05/0511081.htm>

³⁸ <http://unosat.web.cern.ch/unosat/>

³⁹ Interview with the South Ossetian Separatist leader Eduard Kokoity with Russian newspaper “Kommersant” from 15.08.08; No144, and Interview with the Speaker of South Ossetia Separatist parliament Znaur Gasiev with newspaper “Komsomolskaia Pravda” from 22.08.08. <http://www.kommersant.ru/doc.aspx?fromsearch=ef093ba1-b275-41da-8576-5d73596075da&docid=1011783> and <http://kp.ru/daily/24150/366813>

⁴⁰ Ministry of Foreign Affairs of Georgia, Fourth Quarterly Report (October - December 2016) of the Ministry of Foreign Affairs of Georgia on the Human Rights Situation in the Occupied Regions of Georgia, para. 8.

⁴¹ Ministry of Foreign Affairs of Georgia, *Fourth Quarterly Report (October - December 2016) of the Ministry of Foreign Affairs of Georgia on the Human Rights Situation in the Occupied Regions of Georgia*, para. 34.

⁴² Russian Border Guards installed new Banners near the village of Avlevi, “IPN”, 8 June 2016, available at: <http://www.interpressnews.ge/ge/konflikttebi/383443-sofel-avlevis-ganapiras-sheiaraghebulma-pirebma-etssazghvris-aghmnishvneli-banerebi-daamontazhes.html?ar=A>

⁴³ Joint Statement of NGO Community in Georgia: <http://grass.org.ge/statement/statement-of-the-ngos-on-the-illegal-installation-of-a-so-called-border-sign-in-the-vicinity-of-bershueti-village/>

The “demarcation” activities resulted in the loss of access to and control over farmland, homes, property and facilities for the residents in many of the above villages. On 11 April 2014 GYLA lodged application no. 31726/14, *Mekarishvili and others v. Russia* before the European Court of Human Rights on behalf of 19 inhabitants of the village of Dvani, Georgia. The application concerns loss of access to and control over farmland and houses by the applicants, as a result of the construction of barbed wire fences to mark the "border" of de facto South Ossetia.

After the 2008 war, till this day 20,272 individuals remain in displacement whose return is denied by Russian military forces and *de facto* authorities under direct subordination of Russian Federation.⁴⁴ All of these displaced persons are denied to access their property in occupied region of Tskhinvali, Georgia.

VI. Right to Security

Detentions along the occupation line are among the most serious problems faced by local communities on both sides of the occupation line for years.⁴⁵ During and after the August War of 2008, numerous cases have been reported from the occupied regions of Georgia of torture and ill-treatment.⁴⁶ Individuals detained in Russian-occupied South Ossetia who later returned to undisputed Georgian territory reported incidents of mistreatment and abuse in detention centers. Mistreatment included inflicting cigarette burns and beatings.⁴⁷

Cases of arbitrary detention of ethnic Georgians are very common; in addition, the Russian FSB border guards regularly carry out arbitrary detentions for so called “illegal border crossing” along the occupation line. The following number of arbitrary detentions took place by the Russian border guards in the years 2011-2014: 184 detainees in 2011; 301 detainees in

⁴⁴ UN General Assembly, "Status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/ South Ossetia, Georgia" 7 May 2014, para. 19.

⁴⁵ “Information Bulletin of Public Defender of Georgia: On Human Rights of Conflict Affected Population”, Public Defender of Georgia, 2014, p. 4.

⁴⁶ “Human Rights in the War-Affected Areas Following the Conflict in Georgia”, OSCE/ODIHR, 27 November 2008, pp. 24-25, p. 36, p. 59, 74; “August Ruins”, Report of the Georgian Non-Governmental Organizations on Violations of Fundamental Human Rights and International Humanitarian Law, August War, 2008, Tbilisi 2009, p. 40; “Russia’s Responsibility for Human Rights in Occupied Regions of Georgia” Submission from the Georgian Young Lawyers’ Association (GYLA), National Institute for Human Rights (NIHR) and Human Rights Priority for consideration at the 113th Session of the Human Rights Committee (16 March – 2 April 2015) Russian Federation, p. 3 and 9.

⁴⁷ Georgia 2015 Human Rights Report, U.S. Department of State, published in 2016, p. 6, Available at <http://www.state.gov/documents/organization/253061.pdf>

2012; 441 detainees in 2013; 307 detainees in 2014.⁴⁸ Abductions of ethnic Georgians continue as of February and March of 2017⁴⁹.

GYLA has submitted five applications against Russia before the European Court of Human Rights on behalf of 17 ethnic Georgians with respect to detentions at the so called “ABL” by Russian and Ossetian militaries, due to “illegal crossing” of the so called “border”, covering period from 2008 till 2012⁵⁰. It should be noted that the applicants in those cases complain of violation of Article 14 (prohibition of discrimination) in conjunction with Articles 3 (prohibition of torture), 5 (right to liberty and security), 6 (right to a fair trial), 8 (right to respect for private and family life) and 13 (right to an effective remedy) of the European Convention. In most cases detentions are followed by fines and later releases. It has been observed that the “detention period varies from several days up to several months or years without due access to procedural guarantees and right to fair trial.”⁵¹

The abusive nature of detention, mistreatment during detention accompanied with lack of adequate procedural safeguards to challenge lawfulness of detention creates security related concerns and risks for ethnic Georgians.

VII. Right to Education

Ethnic Georgians living in the Gali District of Abkhazia, Georgia face problems receiving an education in the Georgian language. Notably, this is the only district in Abkhazia with the remaining ethnic Georgian population and such a discriminatory attitude could largely influenced their decision about whether to stay in Gali or leave.⁵²

⁴⁸ Ministry of Foreign Affairs of Georgia, First Quarterly Report (January-March 2015) of the Ministry of Foreign Affairs of Georgia on the Human Rights Situation in the Occupied Regions of Georgia. para . 3.1.

⁴⁹ On March 1, 2017, local from the village Plavi of Gori municipality was illegally abducted near the occupied village Otrevi: <http://1tv.ge/ge/news/view/152081.html>

On February 2, 2017, two women were kidnapped near the village Atotsi near the occupation line: <http://rustavi2.com/ka/news/67072>

In February 2017, Amiran Gugutishvili, native of Gugutiantkari village of Gori Municipality was gathering woods on his own land plot when armed guards took him in the direction of Tskhinvali: <http://www.interpressnews.ge/en/conflicts/85231-70-year-old-amiran-gugutishvili-detained-by-border-guards-in-gori-municipality.html?ar=A>

⁵⁰ Kobaladze and Others v. Russia, no. 50135/09; Biganishvili and others v Russia, application No. 59827/10; Akhvlediani and Others v. Russia, application no. 57215/11). Midelashvili v. Russia, application no. 56887/14; Lomsadze and others v. Russia, application no.77190/11;

⁵¹ “Russia’s Responsibility for Human Rights in Occupied Regions of Georgia” Submission from the Georgian Young Lawyers’ Association (GYLA), National Institute for Human Rights (NIHR) and Human Rights Priority for consideration at the 113th Session of the Human Rights Committee (16 March – 2 April 2015) Russian Federation, p. 3.

⁵² Human Rights Watch, *Living in Limbo: The Rights of Ethnic Georgian Returnees to the Gali District of Abkhazia*, 15 July 2011, 48.

As first part of the discriminatory policy, Georgian language instruction was being steadily replaced by Russian in Gali schools by order of the *de facto* authorities.⁵³ The process has been implemented gradually: in schools that were divided between Tkvarcheli and Ochamchire, all 11 grades simultaneously moved to Russian; Russian was introduced as the language of instruction in schools of the Upper Zone under a *first grade principle*, meaning that all first graders would start their education in Russian. Consequently, since 2005 to the present, students of the Gali Upper Zone have Russian as their language of instruction.⁵⁴ As for schools in the Lower Zone villages, they managed to keep Georgian as their language of instruction till 2015. However, the academic year 2015-2016 has seen the introduction of Russian as the language of instruction for students attending from the first through fourth grades, and every coming first grade will also have classes in Russian.⁵⁵ Therefore, within 6 years, Georgian, will be completely replaced as the language of instruction and the mother tongue of the Gali district children.⁵⁶

Local communities had either to pay for teachers, arrange for teachers to cross from undisputed Government territory to teach, or send their children across the administrative boundary for Georgian-language lessons.⁵⁷

Secondly, parents are banned to move students through administrative boundary for attending the school in Government controlled areas.⁵⁸ It should be also noted that Georgian language teachers of the schools in the occupied Gali district are banned to cross the occupation line and enter territory controlled by the Government of Georgia: if teacher violates aforementioned ban s/he would be dismissed from the position.⁵⁹ Schoolchildren and teachers are banned from communicating with each other in the Georgian language.⁶⁰ These violent policy has led towards decreased attendance by ethnic Georgian's of Gali district in the schools stationed in the territories controlled by the Government of Georgia.

Thirdly, in every school originally belonging to the Gali district, official paperwork is done in Russian language (rather than Abkhazian). Fourthly, Russian is indicated as the native language in school certificates (attestati) with the exception of the Lower Zone schools. Interestingly, in certificates issued to the graduates from other schools in Abkhazia, Georgia the native language corresponds to the ethnic background of a student (i.e. Abkhazian, Armenian, Russian). Presumably, the same practice will be extrapolated to the Lower Zone

⁵³ <https://www.state.gov/documents/organization/265634.pdf>

⁵⁴ Public Defender of Georgia, *Special Report: The Right to Education in Gali District: New Developments and Challenges of the Academic Year of 2015-2016*, October 2015, 19, available at: <http://www.ombudsman.ge/uploads/other/3/3363.pdf>

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ <https://www.state.gov/documents/organization/265634.pdf>

⁵⁸ Second Quarterly Report (April-June 2015) of the Ministry of Foreign Affairs of Georgia on the Human Rights Situation in the Occupied Regions of Georgia

⁵⁹ Second Quarterly Report (April-June 2015) of the Ministry of Foreign Affairs of Georgia on the Human Rights Situation in the Occupied Regions of Georgia;

⁶⁰ Second Quarterly Report (April-June 2015) of the Ministry of Foreign Affairs of Georgia on the Human Rights Situation in the Occupied Regions of Georgia

schools in the Gali district, after the Russian language is introduced as the language of instruction.⁶¹

Notably, such a discriminatory policy is applicable only to ethnic Georgians in Abkhazia, Georgia. For example, according to 2011 unofficial census carried out by the Abkhaz *de facto* authorities 46 000 ethnic Georgians and 42 000 ethnic Armenians reside in Abkhazia, Georgia. Despite the slight difference in favor of ethnic Georgians, the number of Armenian schools is three times higher. In addition, the language of instruction in Armenian schools is Armenian, students study with the books issued in Armenia as well as receive certificates of education in Armenian.⁶² Thus the discriminatory pattern is specifically directed to ethnic population residing in Abkhazia, Georgia.

Hence, the ban on the education in Georgian language for Gali population is part of the discriminatory policy aimed to either force Gali population to leave the district and move to the Georgian Government controlled territory, or to abandon the Georgian language which is closely linked to Georgian ethnic identity.

VIII. Recommendations

Taking into consideration the aforementioned information, NIHR and GYLA claim that Russian Federation has an obligation stemming from the Convention with respect to occupied regions of Abkhazia, Georgia and Tskhinvali Region/South Ossetia, Georgia. Namely:

- To abstain from committing, supporting or defending any discriminatory act/s contrary to article 5 of ICERD with respect to ethnic Georgians either living in occupied regions or displaced in the Georgian Government controlled territory;
- To prevent discrimination, stop on-going acts of discrimination and whenever necessary take adequate measures to eradicate acts of discrimination in light of article 5 of ICERD with respect to ethnic Georgians either living in occupied regions or displaced in the Georgian Government controlled territory;

⁶¹ Public Defender of Georgia, *Special Report: The Right to Education in Gali District: New Developments and Challenges of the Academic Year of 2015-2016*, October 2015, 20, available at: <http://www.ombudsman.ge/uploads/other/3/3363.pdf>

⁶² Restricting right to education in mother language in Gali District: Searching for Solution, Tornike Zurabashvili, Georgia's Reforms Associates (GRASS) available at <http://grass.org.ge/wp-content/uploads/2016/07/GRASS-ganathlebis-uphleba-galis-raionshi1.pdf>