



საქართველოს სახალხო დამცველი
PUBLIC DEFENDER (OMBUDSMAN) OF GEORGIA

SUBMISSION TO THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR), PURSUANT TO THE HUMAN RIGHTS COUNCIL RESOLUTION 37/40 ENTITLED “COOPERATION WITH GEORGIA”

May 14, 2018

The Office of the Public Defender of Georgia, as a National Human Rights Institution in full compliance with the Paris Principles (‘A’ status) and operating under a broad mandate provided by the Organic Law of Georgia on Public Defender, is empowered to monitor the human rights situation in the country. The Office of the Public Defender’s core activities are monitoring the human rights of persons deprived of their liberty and working to prevent and eradicate torture and ill-treatment.

The present submission focuses on the human rights and humanitarian situation in Georgia’s occupied regions of Abkhazia and South Ossetia/Tskhinvali region, as well as human rights issues in the rest of Georgia’s territory.¹ The local communities in the occupied regions of Georgia face a long list of day-to-day human rights violations, including: violation of the rights to liberty, security and mother-tongue education; being subject to inhuman and degrading treatment; and restrictions on freedom of movement and expression.

Right to Fair Trial

1. The independence of the courts is problematic as it is not guaranteed institutionally. Internal checks and balances within the judiciary are lacking and, therefore, further reform and improvement is vital. The high number of delayed examinations of cases in appeals courts and frequent changes in bench compositions are problematic. There were occurrences of the breach of the principle of fairness in 2017; additionally, problems regarding the use of inadmissible evidence and reasoning of court decisions were also identified.²

Investigation of Torture and Other Cruel, Inhuman or Degrading Treatment

2. Effectively fighting against torture and other forms of ill-treatment remains one of the most important challenges facing the country, as both practice and legislation remain problematic. In *practice*, investigation never ends with charges. Over 2013-2017, the Public Defender submitted 72 proposals requesting investigation of incidents of alleged ill-treatment by police officers and prison staff. In none of these cases did the prosecutor’s office identify alleged perpetrators.³ As for *legislation*, current law does not provide for an independent investigative mechanism. A draft law is being prepared, according to which the Office of the State Inspector will be created within the Office of the Personal Data Protection to investigate instances of torture and inhuman and degrading treatment committed by public officials. However, the draft law is deficient and contains several gaps which will prevent effective functioning of the mechanism.⁴

¹ The Public Defender of Georgia’s submission to OHCHR in 2017 pursuant to Human Rights Council resolution 34/37 entitled “Cooperation with Georgia” is available at: < <https://goo.gl/wR5mM5> > Accessed [03.05.2018].

² Detailed information is available in the Annual Report of the Public Defender of Georgia for 2017, pp 100-117. The Georgian version is available online at: < <https://goo.gl/Bp9Zey> > Accessed [03.05.2018].

³ The same relates to the overall number of investigations instituted against police officers on torture, inhuman and degrading treatment, abuse of official power and other provisions. Out of 238 criminal cases registered in 2017, prosecution was initiated in only three cases.

⁴ Supra note 2, The Annual Report of the Public Defender of Georgia for 2017, pp 85-87.

Social Economic Rights in Georgia

3. Workplace safety remained a pressing issue during the reporting period. Workplace accidents occurring in 2017 resulted in the deaths of 47 individuals and the injuries of 106 others. However, adoption of the Law of Georgia on Occupational Safety, which introduces a mechanism to enforce obligations related to workplace safety, shall be assessed as a step forward. The Public Defender welcomes the supervisory body being given authority to impose sanctions in cases when violations are detected. However, a problem remains in the extension of the law to cover work that is hard, harmful and dangerous. Moreover, the supervisory body lacks a mandate covering unconditional access to employers.

4. During the reporting period, the Office of the Public Defender was regularly approached by persons who claimed to be denied a subsistence allowance. These persons often argued that their rating points had been increased without any change in their socio-economic situation. It should be noted that these persons perceived the procedure to be vague and questionable. The analysis of applications yields the impression that the current methodology for assessing the socio-economic situation of families does not allow for accurate identification of vulnerable groups. Moreover, some of the data unreasonably increases the beneficiaries' rating points. The lack of realization of the right to adequate housing is a systemic problem that remains unabated from year to year. In particular, the following problems have been identified in recent years: a deficient legislative framework; limited budgetary and infrastructural resources; a lack of uniform and municipality databases; a lack of support programmes for persons held in shelters; and low awareness about rights.

Combating Discrimination

5. In 2017, the Public Defender considered 162 newly-submitted cases alleging discrimination. Of those cases, discrimination or incitement to discrimination was established in 26 of them, while 113 cases were terminated on various legal grounds.⁵ The largest share of the complaints concerned alleged discrimination on the grounds of: disability (11%); gender (9%); ethnicity (9%); differing opinion (9%); religion (7%); sexual orientation and gender identity (7%); citizenship (3%); and political opinion (3%). The most vulnerable groups in terms of realization of the right to equality remain women, persons with disabilities, children, representatives of the LGBT+ community and religious minorities. Discrimination is most frequently alleged in the area of pre-contractual and labor relationships. Discrimination has also proved to be a problem in the process of receiving social benefits.

6. Realization of the right to equality remains a challenge in Georgia. Insufficient legislative guarantees, harmful opinions deeply rooted in society and the lack of state-imposed measures to ensure equality impede the effective enforcement of existing regulations. To eliminate shortcomings in the legislation, the Public Defender of Georgia submitted its so-called "first wave draft amendments" to the parliament in 2015.⁶ These amendments were designed to improve the mechanism for enforcing the antidiscrimination law in the private sector and to extend the term for filing complaints with courts on alleged cases of discrimination. These amendments would, in turn, positively impact the effectiveness of the Public Defender as an institution protecting equality. The timely adoption of amendments is crucial, especially considering that discrimination is a frequent phenomenon in the private sector.⁷ Moreover, the current law does not acknowledge *harassment*, *sexual harassment* and *denial of reasonable accommodation* as forms of discrimination.

Gender Equality and Combating Domestic Violence

7. As in previous years, women's participation in cabinet positions remains low for 2018: only three ministers out of 14 are women. While women comprise the majority of employees at the ministries, their share of managerial positions

⁵ A number of cases were terminated because discrimination was not established; some cases were terminated because the complainants filed complaints with a court; other cases were terminated because defendants represented by physical/legal persons in private law failed to provide relevant information requested by the Public Defender.

⁶ A public statement of the Public Defender of Georgia: < <https://goo.gl/f4gxpT> > Accessed [03.05.2018].

⁷ As many as 26 percent of complainants claim that they were discriminated against by physical and legal entities in private law.

is insignificant – 19%.⁸ Only one ministry has an advisor on gender issues; eight ministries do not have such a position at all; in six ministries, the gender advisory function is performed by other officials as an additional responsibility.⁹ Women’s participation in implementing local self-governance also remains a problem. Gender analysis of the 2017 local elections demonstrated the low number of women candidates both from single seat constituencies and on party lists.¹⁰ As a result, the share of women’s representation in the Municipal Councils is only 13.46%. Among 64 elected mayors, only one is a woman.¹¹

8. According to the data of the Chief Prosecutor’s Office of Georgia, in 2017, investigations were launched into 26 cases of killings of women (including 14 cases involving evidence of domestic violence) and 15 attempted killings of women (including cases involving evidence of domestic violence).¹² The Public Defender identifies a link between the high number of cases of femicide and the absence of a system for monitoring violence against women, domestic violence and risk assessment. In 2017, the Gender Equality Department of the Office of Public Defender examined cases of femicide/attempted femicide where incidents of alleged domestic violence had been reported to the Interior Ministry before the crimes were committed.¹³

Human Rights in the Occupied Territories of Georgia

A. Freedom of Movement, Illegal Detentions along the Administrative Boundary Lines (ABLs)

9. Infringement of freedom of movement and illegal detentions by Russian FSB Border Guards along the Administrative Boundary Lines (ABLs) remains one of the key security challenges facing local communities on both sides of the ABLs. In 2017, 514 residents were detained along the South Ossetian ABL and 1,000 along the Abkhazian ABL.¹⁴ The Public Defender’s Office documented several cases of physical violence against detainees in detention facilities on the Occupied Territories. According to information provided by the Georgian State Security Service, between 2014 and 2016, 37 citizens reported physical abuse during and after being detained (26 persons on the Abkhazian ABL and 11 on the South Ossetian ABL).

10. Borderization and restrictions on freedom of movement negatively affect the realization of other rights, such as the rights to education, healthcare, property and others. In 2017, the de-facto authorities in Abkhazia shut down two checkpoints along the Abkhazian ABL and nearly tripled the sanction for what it considers “illegal crossing of the border.” These decisions will negatively affect the local population and reinforce the isolation of communities located along the ABL: several families were forced to relocate in order to allow their children to receive primary and secondary education; patients now need to spend twice as much money and time to travel to medical facilities on Georgian-controlled territory; and children and youth are no longer able to engage in extracurricular activities (trainings, summer camps, competitions, etc.) offered by educational institutions on Georgian-controlled territory. Furthermore, the checkpoint closures have particularly adversely affected farmers who previously transported small amounts of agricultural products to markets on Georgian-controlled territory. It also particularly affects the elderly, who, in addition to maintaining family ties, previously often frequented Georgian-controlled territory to obtain various social and healthcare services.

11. The Public Defender of Georgia believes the checkpoint closures and intensifying of sanctions represent another step backwards in terms of realization of the local residents’ rights. These decisions restrict local residents’ freedom of movement and creates unjustified impediments to obtaining healthcare services and education and maintaining trade and family ties, negatively affecting their economic circumstances. In light of adverse socio-economic conditions

⁸ According to the information provided by the ministries to the Office of the Public Defender, as of February 2018, there are 1,824 men and 425 women in managerial positions across 14 ministries.

⁹ Among existing ministries, only the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia has an advisor on gender issues.

¹⁰ Women comprise a mere 7.62% of members of elected self-government bodies and 1.85% of elected mayors of 54 self-government units.

¹¹ Information is available online at: < <https://goo.gl/25yvrS> > Accessed [03.05.2018].

¹² The letter of the Chief Prosecutor’s Office of Georgia № 13/10053, February 8, 2018.

¹³ Public Defender’s recommendations (27/12/2017; N 08/17745) to the Ministry of Internal Affairs of Georgia concerning ineffective responses to cases of domestic violence.

¹⁴ Supra note 2. The Annual Report of the Public Defender of Georgia for 2017, pp 317-320.

and the dire human rights situation, there is a risk the ethnic Georgian communities on the occupied territories may be forced to leave their permanent residences and resettle on Georgian-controlled territory.

B. Right to Life on the Occupied Territories of Georgia

On February 22, 2018, Georgian citizen Archil Tatunashvili, along with two other Georgian citizens, was arrested at the checkpoint in occupied Akhgori District in South Ossetia/Tskhinvali region. On February 23, the de facto authorities released information about his death in Tskhinvali hospital. The de facto authorities claimed A. Tatunashvili had attempted to resist arrest by the security forces, during which he fell down stairs and sustained injuries. According to the information available to the Public Defender of Georgia, he was already dead when he was taken to hospital, where his body showed the marks of physical injuries. The other two Georgian detainees were released on February 25, though they were deprived of their documents and prohibited from leaving the occupied territory for 20 days. The de facto authorities sent tissue samples from A. Tatunashvili's body to the Russian Federation for forensic examination. However, for nearly a month they refused to transfer his body to his family, who reside on Georgian-controlled territory. Reportedly, the Russian forensic examination indicated injuries on both limbs but concluded he died as the result of a heart attack. A forensic and medical examination is currently underway in the Georgian National Forensic Bureau. However, a Tbilisi-based independent forensic expert who participated in the examination said A. Tatunashvili's body had "multiple [blunt] injuries, scratches and bruises almost all over the body." Later, a lawyer representing his family unveiled information that the body was transferred to the Georgian authorities missing some internal organs, a fact which could hinder the comprehensive forensic examination.

12. In previous years, two other cases of violation of the right to life took place on the occupied territories of Abkhazia and South Ossetia/Tskhinvali region. In 2016, Giga Otkhazia was killed by a so called border guard on the ABL of Abkhazia at Khurcha-Nabakevi checkpoint. Despite the CCTV camera recording of the incident, the perpetrator has not been punished.¹⁵ In 2014 Akhgori resident, David Basharuli disappeared on the territory of South Ossetia/Tskhinvali region and his body was found about half a year later hanging on a tree.¹⁶ Neither of these cases have been investigated.

13. Given that the Russian Federation exercises effective control over the territory of Abkhazia and Tskhinvali region and FSB border guards are stationed at the checkpoint where Archil Tatunashvili was detained; besides, Russian FSB border guards stationed on the ABLs completely control the division line, including the Khurcha-Nabakevi checkpoint where Giga Otkhazia was killed, the Public Defender of Georgia believes the Russian Federation is responsible for the violation of their right to life.

C. Social-Economic and Civil Rights in the Occupied Territories of Georgia

14. The practice of banning Georgian as a language of instruction for pupils of ethnic Georgian background in Abkhazia, and of preventing such pupils from participating in various educational activities on Georgian-controlled territory, continues and constitutes a violation of the rights of the child and discrimination on grounds of ethnicity. The Abkhaz de-facto authorities have no intention of considering any form of multilingual education except for that in Russian. Mirroring the situation in Abkhazia, in 2017 the de-facto authorities in South Ossetia/Tskhinvali region decided to introduce Russian as a language of instruction in six ethnic Georgian primary schools in occupied Akhgori district. As a result, the language of instruction was changed to Russian, while Georgian is now offered only as a foreign language class. Therefore, the ethnic Georgian population in Akhgori district is now deprived of its right to mother-tongue education.

¹⁵ "Public Defender's Statement on Murder of G.O. at Dividing Line", available at [14.05.2018]. Public Defender's Statement is available online at: < <https://goo.gl/XkTCQa> > Accessed [03.05.2018].

¹⁶ Information available online at: < <https://goo.gl/t7vbQc> > Accessed [03.05.2018].

15. Violations of property rights in South Ossetia/Tskhinvali region raise particular concerns and represent continued ethnic cleansing of the Georgian population. It has been reported that the de-facto authorities cleared the territory of the occupied village Eredvi of 268 houses that had belonged to ethnic Georgians—people who are now Internally Displaced Persons (IDPs). The houses were removed to prepare the land for agricultural activities under the “Investment Program for Socio-Economic Development of South Ossetia” funded from the Russian Federation budget. This incident once again points to Russia’s responsibility for violations of property rights in the occupied regions of Georgia.

16. In 2017 Tskhinvali de-facto authorities resumed pressure on civil society representatives and activists. Tamar Mearakishvili, an Akhalkgori-based activist, was unlawfully detained twice for criminal proceedings launched against her in two separate cases. Mearakishvili has been cooperating with international media and international organizations, reporting problems and human rights violations of the local population, which is believed to be the reason for her detention. The Public Defender of Georgia considers the actions of the de facto authorities against Mearakishvili to be an attempt to silence her criticisms and force her to leave her hometown.

17. In both 2016 and 2017, the “Freedom in the World” reports by Freedom House rated South Ossetia/Tskhinvali region a “not free” territory. Since 2014, a number of non-governmental organizations have ceased their activities there. Individuals and organizations working with Georgian counterparts to implement confidence and peace-building projects are subject to pressure. Verbal assault against activists and organizations participating in Georgian-Abkhaz dialogue meetings also occurred in 2017.

D. Responsibility and Recommendations

18. The Russian Federation, which maintains effective political, economic and military control over Abkhazia and Tskhinvali region/South Ossetia, is ultimately responsible for human rights violations committed on those territories.

19. In spite of numerous demands and recommendations to the Russian Federation and the de-facto authorities, international human rights and watchdog organizations have no access to the occupied territories and are precluded from monitoring the human rights situation there. This results in a scarcity of information pertaining to the human rights situation on these territories. Considering the situation described above, the Public Defender of Georgia:

- Calls on the Russian Federation, to ensure the access of international human rights monitoring mechanisms and humanitarian organizations to the occupied Abkhazia and South Ossetia/Tskhinvali region;
- Calls on the Russian Federation to end discrimination of local population, especially of ethnic Georgians, restriction of freedom of movement and prohibition of education in mother-tongue language in Georgia’s occupied regions of Abkhazia and Tskhinvali region/South Ossetia;
- Calls on the Russian Federation to end the impunity and ethnically-motivated crimes in Georgian regions of Abkhazia and Tskhinvali region/South Ossetia and to remove any obstacles in order to ensure that the perpetrators for illegal deprivation of life of Mr. Archil Tatunashvili, Mr. Giga Otkhзорia and Mr. David Basharuli are brought to justice;
- Calls on the Russian Federation to end practice of illegal detentions and kidnappings of local residents along the administrative boundary lines separating Abkhazia and South Ossetia/Tskhinvali Region from the Georgian-controlled territory.

20. The Public Defender of Georgia welcomes the new initiative introduced by the government of Georgia¹⁷ to engage communities living in the occupied regions and recommends to expand the scope of state-funded programs and make them more accessible to conflict-affected communities. The Georgian government should develop well-coordinated, flexible and need-based mechanisms both at the legislative and practical levels.¹⁸

¹⁷ Available online at: < <https://goo.gl/R1aci3> > Accessed [03.05.2018].

¹⁸ Supra note 2. The Annual Report of the Public Defender of Georgia for 2017, pp 328-329.