



BEHIND BARBED WIRE

HUMAN RIGHTS TOLL OF “BORDERIZATION” IN GEORGIA

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Cover photo: 85-year-old Davit Vanishvili in the village of Khurvaleti in Georgia ended up on the South Ossetian/Tskhinvali Region side of the Administrative Boundary Line after Russian border guards commenced with "borderization" in 2013. His house and the adjacent yard are now fenced off from the Tbilisi-controlled territory. Davit Vanishvili told Amnesty International that he is cut off from the rest of the village and the rest of the country, including from his extended family and neighbors.
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GLOSSARY

WORD	DESCRIPTION
ABL	Administrative Boundary Line
COE	Council of Europe
ECHR	European Convention on Human Rights
ECTHR	European Court of Human Rights
EUMM	European Union Unarmed Monitoring Mission in Georgia
EU	European Union
FSB	Federal Security Service
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of Red Cross
IDP	Internally Displaced Person
IPRM	Incident Prevention and Response Mechanism
NGO	Non-Governmental Organisation
OSCE	Organisation for Security and Co-operation in Europe
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

1. EXECUTIVE SUMMARY

“Our lives are strangled by the encroaching barbed wire: They have sealed off our farmlands and pasturelands, leaving us unable to harvest crops and maintain cattle. We are even scared to approach our family burial sites. They are too close to the fence and we risk detention.”

Residents of the village Tsitelubani in Georgia near the South Ossetian/Tskhinvali Region Administrative Boundary Line explain to Amnesty International the impact of the Russian installed barbed wire fence next to the village.

In 2013 85-year-old Davit Vanishvili from Khurvaleti in Georgia was given a stark choice by Russian servicemen who were physically reinforcing a boundary between the breakaway region of South Ossetia/Tskhinvali Region and the rest of Georgian territory, a line they said ran through his village. He could stay in the family home on one side of the fence, regarded as part of South Ossetia/Tskhinvali Region, or move to the other side on Georgian-controlled territory, and live the rest of his life displaced. Davit chose to stay, but is now separated from the rest of his family and friends by the barbed wire which cuts through his village. Risking detention if he tries to cross, he and his wife survive through relatives and neighbours who pass his pension, medicine and other goods through the fence under cover of darkness. As thanks, he tends the graves of their deceased they can no longer reach, on his side of the wire.

Davit remains caught in one of the most painful legacies of the August 2008 Georgia-Russia conflict which continues to take a heavy toll on those in affected areas even after a cease-fire ended armed hostilities later that same month. He is among those divided or displaced by increasing securitization of what is known as the Administrative Boundary Line (ABL) running between Georgia’s breakaway territories of South Ossetia/Tskhinvali Region and Abkhazia on the one hand, and Georgian-controlled territory on the other. Communities are separated from each other and the land that supports them. Villagers – some living in the poorest parts of the country - have lost access to pastures, farmland and orchards, to sources of water in summer, and firewood for winter. They are cut off from relatives, sources of income and cultural and social life. Each year hundreds are detained arbitrarily while trying to cross.

Many of these violations arise directly from moves to further entrench lines of separation arising from the 2008 – and previous – conflicts, turning what were once often just dotted lines on a map into a physical barrier. Known as “borderization”, it is a process spearheaded since 2009 by Russian forces seeking to transform the ABL into an “international border” after Moscow’s recognition of Abkhazia and South Ossetia/Tskhinvali Region as independent states. It entails the installation of physical barriers such as barbed wire, metal or wooden fences, trenches, anti-fire ditches or raked earth, together with “border” signs and surveillance equipment to further mark – and securitize - the ABL.

Amnesty International recognizes 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. This current report, however, mostly addresses its effects on the communities in the

Georgian controlled territories, as they have been further impacted in recent years by Russian forces taking control of additional land previously administered by the Georgian authorities.

According to the Georgian authorities, as of late 2018, 34 villages like Davit's had been divided by fences, separating residents not only from each other, but also from their farms, pasturelands, irrigation sources or village cemeteries. An estimated 800 to 1,000 families in total have lost all or partial access to agricultural land and woodlands near the South Ossetian/Tskhinvali Region ABL.

Most of the discussion around the Georgia-Russia conflict in the international community focuses on the security, political and social dimensions of the dispute, often overlooking an approach that is centred on human rights. This report aims to address such a gap by using international human rights and international humanitarian law frameworks to research and analyse the human rights violations, and inform calls on all the relevant actors to respect and fulfil their obligations.

Ensuring the rights to freedom of movement and liberty of those who live near the ABL remains a major challenge. People on both sides seek to cross the ABL for various reasons, such as to tend agricultural lands, see relatives, trade, access medical care, education or social benefits, and visit graveyards or religious buildings. However, crossings outside the limited number of designated crossing points and without proper documentation, which is often hard to secure, are considered illegal by the Russian and local de-facto authorities. This results in hundreds of people being arbitrarily detained every year, including, in the case of South Ossetia/Tskhinvali Region, both ethnic Georgians and ethnic Ossetians. Some of those held have alleged ill-treatment while detained.

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.

"Borderization" also negatively impacts the already poor social and economic conditions of local residents, as it deprives hundreds of access to their pastures, farmlands and orchards which are the main source for their food and livelihoods. Amiran Gugutishvili, a 71-year-old-farmer in the village of Gugutiankari near the South Ossetian/Tskhinvali Region ABL, lost access to his apple orchard because of "borderization" in 2017, and now depends on social benefits: "Every year I used to harvest more than a hundred boxes of apples from my orchard and sell them. The profit was enough for my family to survive. Since 2017 I cannot access my garden. Russian servicemen installed a state border sign there. I still pass by sometimes to take a look at my apple trees through the fence."

Villagers' right to an adequate standard of living is further eroded as "borderization" has also resulted in the decreased number of crossing points on the ABL that were important drivers of generating income because of the active cross-ABL trade. Apart from losing access to the sources of food production, the local population has also lost access to the nearest markets, where they traditionally sold their produce. While some social and economic assistance has been offered by the Georgian authorities, locals say it is insufficient and describe themselves as being "refugees within their homes".

This restricted freedom of movement has also negatively affected the right to family life as relatives who ended up on different sides of the ABL find it hard, if not impossible, to visit each other. Some of the religious buildings and graveyards near the South Ossetian/Tskhinvali Region ABL have also ended up behind or next to barbed-wire fences, preventing the locals from visiting them and infringing on their right to freedom of religion and the right to take part in cultural life.

The findings in this report are primarily based on victims' testimonies gathered by Amnesty International throughout 2018. The organization's representatives spoke to more than 150 persons directly affected by "borderization" and the limitations of freedom of movement it imposes. Amnesty International representatives also met with Georgian authorities as well as staff at governmental and non-governmental organizations at the international and national level working in Georgia.

Amnesty International requested meetings with Russian governmental representatives as well as the Abkhaz and South Ossetian/Tskhinvali Region de facto authorities, and further requested permission to visit Abkhazia and South Ossetia/Tskhinvali Region. The organization regrets that no reply to any of these requests had been received by the time of publication, and therefore that responses from these authorities cannot be reflected in this report. First hand material was supplemented with desk research.

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. Russia and the de facto authorities must ensure freedom of movement of civilians across the ABL as no concrete military necessity justifies the scale of present restrictions on freedom of movement. All those separated from family and livelihoods, including those from the Georgian-controlled side of the ABL whose agricultural lands have been seized by Russian forces during the process of “borderization”, must be able to access their lands by safely crossing over the ABL.

The international community must use every available opportunity to address with the Russian authorities the human rights violations documented in this report and push Russia to respect its international obligations. The international community must advocate for access to Abkhazia and South Ossetia/Tskhinvali Region for international human rights mechanisms, something that has been lacking since 2008. Georgia must provide relevant assistance to those families whose social and economic rights have been negatively affected by “borderization”, in particular, those, who have lost access to their farmlands and pasturelands.

Note: Amnesty International takes no position on the broad political issues underlying the hostilities between Georgia, Russia, and the breakaway regions of Abkhazia and South Ossetia/Tskhinvali Region, which are the subject of deeply contested narratives between the various parties. The de facto authorities in Abkhazia and South Ossetia/Tskhinvali Region are approached as they exercise local control in the territories, and not as a recognition de jure. Issues of discrimination, historic displacement and the right of various communities to return to their previous places of residence are important and ongoing, but beyond the scope of this present report.

2. METHODOLOGY

Amnesty International recognizes 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. This current report, however, addresses its effects mostly on the communities in the Georgian controlled territories, who have been further impacted in recent years by Russian forces taking control of additional land previously administered by the Georgian authorities. The organization would actively welcome the assistance of Russia and the de facto authorities in Abkhazia and South Ossetia/Tskhinvali Region in gaining similar research access to the territories under their control.

In 2018, Amnesty International representatives undertook visits to Tbilisi, the Georgian capital, and the conflict affected regions in Tbilisi-controlled territory along the newly marked line that largely follows the Administrative Boundary Line (ABL) adjacent to South Ossetia/Tskhinvali Region and Abkhazia. During these visits, Amnesty International’s representatives met and collected testimonies from more than 150 persons directly affected by “borderization” and its limitations on freedom of movement.

In March 2018 Amnesty International representatives visited Tbilisi-controlled villages along the South Ossetian/Tskhinvali Region ABL affected by “borderization”: Dvani, Nikozi, Ergneti, Gugutiantkari, Tsitelubani and Khurvaleti. The villages were selected to cover most of the perimeter of the South Ossetian/Tskhinvali Region ABL affected by the “borderization”. Amnesty International representatives interviewed local residents (around 100 persons), most of whom survive on subsistence farming. Similar visits and interviews were also conducted with the locals in the villages along the ABL with Abkhazia during the same period (around 30 persons). This included the villages of Shamgona and Khurcha. Representatives also visited and observed “border” markings and closed crossing points of Nabakevi-Khurcha and Otobaia-Orsantia as well as the main remaining crossing point on the Enguri river bridge at the Abkhazian ABL.

Interviews with ethnic Georgian returnees to Gali were carried out in Tbilisi-controlled territory in the western Georgian town of Zugdidi (22 persons) in March and in Tbilisi (10 persons) in July. Interviews with ethnic Georgian returnees to the Akhagori district of South Ossetia/Tskhinvali Region were carried out in person in Tbilisi (two persons) and via phone in Akhagori (one person) in July.

Interviews with residents were conducted individually, except for a small number of focus groups. All agreed that their statements would be used in this report. The names of persons have been withheld where they requested that these, as well as other identifying information, be redacted to protect them from possible adverse consequences. Many interviewees in Gali or Akhagori districts (or who had families living there) made this request. Amnesty International found it particularly challenging to interview residents from Gali district and the Akhagori district of South Ossetia/Tskhinvali Region. Many respondents from Akhagori refused to speak to Amnesty International due to security concerns.

When group interviews were conducted, men and women were interviewed in separate groups by Amnesty International representatives of the same gender.

To ensure the genuine possibility for all sides of the conflict to comment on Amnesty International’s findings, after the initial research missions to Tbilisi-controlled territory, Amnesty International approached the Russian government and the de facto authorities in South Ossetia/Tskhinvali Region and Abkhazia. Letters detailing Amnesty International’s findings and concerns and requests for further information were sent to the Foreign Ministry of Russia in Moscow and the de facto Foreign Ministries of Abkhazia and South Ossetia in Sukhumi and Tskhinvali respectively in July 2018. Copies of the letters were also sent to the de facto embassies of Abkhazia and South Ossetia in Moscow.

In the letters Amnesty International also asked for meetings with relevant representatives to discuss the issues further, both in Russia and in South Ossetia/Tskhinvali Region and Abkhazia. At the time of publication Amnesty international had not received replies to any of these approaches.

From the Georgian side, Amnesty International representatives met with the Ministry of Foreign Affairs, State Security Service, State Minister's Office for Reconciliation and Civic Equality, Government of the Autonomous Republic of Abkhazia in exile in Tbilisi and the Georgian Public Defender's (Ombudsperson) Office.

Information was also collected from staff of the EU Monitoring Mission (EUMM) in Georgia, UNHCR, and international and national NGOs working on the conflicts in South Ossetia/Tskhinvali Region and Abkhazia or human rights issues in Georgia. Amnesty International also reviewed reports of international organizations, including the UN, OSCE, EU and COE and information in local and international media, as well as examining photographs, videos and satellite images providing information about human rights violations. Details were corroborated through the testimonies of victims and residents.

2.1 USE OF TERMS

South Ossetian/Tskhinvali Region de facto authorities designate the territory as “the Republic of South Ossetia—the State of Alania”, while the Georgian government has referred to the region as “Tskhinvali Region”. This report uses “South Ossetia/Tskhinvali Region” when referring to the territory similar to the UN, which refers to it as “Tskhinvali Region/South Ossetia”.¹ The report refers to parts of Georgia which are under control of the Tbilisi government as “Tbilisi-controlled territory”. Use of these terms does not imply support for any political position on the conflict but is aimed at clarity of language. The use of “de facto” when referring to the authorities in Sokhumi and Tskhinvali likewise does not imply support for any political position on the conflict, but rather reflects the fact that these authorities lack full international recognition. Names of places in English such as Tskhinvali (used by Tbilisi government, the UN and most of the international community) or Tskhinval (used by the South Ossetian/Tskhinvali Region de facto authorities) and Sokhumi (used by Tbilisi government), Sukhumi (used by the UN and various other intergovernmental organizations) or Sukhum (used by the Abkhaz de facto authorities) are provided in versions used by the UN and various other intergovernmental organizations.

In 1994, de-facto Abkhaz authorities changed the administrative borders of the Gali district, splitting off its northern and western parts and including these in Tkvarcheli and Ochamchire districts. When referring to the Gali district, for the clarity of the text, this report means the district in its pre-1994 borders, thus including the villages that are now de-facto parts of Tkvarcheli and Ochamchire districts.

This report uses the term “borderization” to describe the process of marking and building physical barriers along what is the ABL of Abkhazia and South Ossetia/Tskhinvali Region. This report refers to this line between Abkhazia and South Ossetia/Tskhinvali Region on the one hand and Tbilisi-controlled territory on the other as the ABL, because the line lacks international recognition as an international border. This does not imply support for any political position on the conflict.

¹ For example, see the UN General Assembly Res. A/RES/72/280, Status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia, June 2018. Available at https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/72/280

3. BACKGROUND

3.1 CONFLICTS IN ABKHAZIA AND SOUTH OSSETIA/TSKHINVALI REGION

MAP OF THE REGION



Starting in the late 20th century, the rise of ethnic nationalism in Georgia and its push for independence from the Soviet Union increased ethnic tensions between Georgians on the one hand and Abkhaz and Ossetians – minority ethnic groups with autonomous regions in what was then the Georgian Soviet Socialist Republic – on the other.² Various measures taken over the years exacerbated each side's perception that they had been discriminated against by the other. Ethnic tensions culminated in Abkhaz and Ossetian demands for secession from Georgia in the run-up to the breakup of the Soviet Union in the late 1980s. Tensions between these aspirations for greater independence, and the desire of the Georgian government to preserve the republic's territorial integrity, escalated into armed conflicts in both breakaway areas in the early 1990s. By 1994, when ceasefires in both areas were in force, Georgia had lost control of most of Abkhazia and parts of South Ossetia/Tskhinvali Region. Joint peacekeeping forces of Georgian, Russian, and Ossetian troops were stationed in South Ossetia/Tskhinvali Region, while Russian peacekeepers were established in Abkhazia.

² The history of the conflicts is a contested narrative. See for example the report by the Council of Europe's Independent International Fact-Finding Mission on the Conflict in Georgia, September 2009, available at https://www.echr.coe.int/Documents/HUDOC_38263_08_Annexes_ENG.pdf

It is estimated that in Abkhazia at least 10,000 people died and some 250,000 were displaced, mostly ethnic Georgians who were forced to flee to Tbilisi-controlled territory.³ Some 40,000-50,000 ethnic Georgians subsequently returned, but have been restricted to the Gali district.⁴ The conflict in South Ossetia/Tskhinvali Region was said to have resulted in 1,000 deaths and caused the displacement of around 60,000 people, mainly ethnic Ossetians from throughout Georgia. Most found refuge in the Russian Federation, while around 10,000 ethnic Georgians from the South Ossetia/Tskhinvali Region were displaced to other parts of Georgia.⁵

Sporadic violence continued at intervals since, claiming lives and causing further displacement, but following a period of escalating tensions a large-scale conflict erupted in South Ossetia/Tskhinvali Region on 7 August 2008 between Georgia and Russia. Hostilities later spread to other Tbilisi-controlled territory and Abkhazia, involving the de facto authorities in both entities, and Georgia lost areas it had previously controlled in Abkhazia and South Ossetia/Tskhinvali Region. A truce was agreed on 12 August and the EU-mediated ceasefire agreement ended the war.⁶ The conflict resulted in further displacement⁷ - an estimated 26,000 people, mostly ethnic Georgians, fled their villages in South Ossetia/Tskhinvali Region in 2008.⁸ A range of human rights violations were committed by all parties to the hostilities.⁹ Ethnic Georgian communities in the Abkhazia and South Ossetia/Tskhinvali Region are now concentrated in the Gail district of Abkhazia, and the Akhagori district of South Ossetia/Tskhinvali Region.

Shortly after the end of hostilities in August 2008, Russia recognized the independence of South Ossetia/Tskhinvali Region and Abkhazia. They are not recognized, however, by Georgia or the vast majority of the international community.¹⁰ Russia guards the Abkhazian and South Ossetian/Tskhinvali Region sides of the ABL, and it regards one of its roles as a security guarantor for Abkhazia and South Ossetia/Tskhinvali Region. Georgia regards the involvement of Russia in Abkhazia and South Ossetia/Tskhinvali Region as a foreign occupation.¹¹ The de facto authorities in Abkhazia and South Ossetia/Tskhinvali Region consider the ABL as a “state border” and a security guarantee against what they perceive as Georgia’s hostile actions.

³ Amnesty International, Georgia Summary of Human Rights Concerns, EUR 56/002/1998, 1998, available at <https://www.amnesty.org/en/documents/eur56/002/1998/en/>

⁴The de facto authorities insist that return to other parts of Abkhazia is not possible, accusing many of the ethnic Georgians of treason – see Amnesty International, Georgia: In the Waiting Room: Internally Displaced People in Georgia, EUR 56/002/2010, 2010, page 10, available at <https://www.amnesty.org/en/documents/EUR56/002/2010/en/>; UN Secretary General, Status of Internally Displaced Persons and Refugees from Abkhazia, Georgia and the Tskhinvali Region/South Ossetia, Georgia, 2017, para 16, available at <https://reliefweb.int/sites/reliefweb.int/files/resources/N1712489.pdf>; UNHCR, Protection of Internally Displaced Persons in Georgia: A Gap Analysis, 2009, page 6, available at <https://www.unhcr.org/protection/convention/4ad827f59/protection-internally-displaced-persons-georgia-gap-analysis-july-2009.html?query=Population%20Movements%20as%20a%20Consequence%20ossetian>

⁵ Amnesty International, Georgia: In the Waiting Room: Internally Displaced People in Georgia, EUR 56/002/2010, 2010, available at <https://www.amnesty.org/en/documents/EUR56/002/2010/en/>

⁶ Amnesty International, the Georgia-Russia conflict, Civilians in the Line of Fire, EUR 04/005/2008, 2008, available at <https://www.amnesty.org/en/documents/EUR04/005/2008/en/>

⁷ UNHCR, “UNHCR concern as shelter capacity in Georgia town of Gori is exhausted”, 2008, available at <https://www.unhcr.org/news/latest/2008/9/48bd56044/unhcr-concern-shelter-capacity-georgia-town-gori-exhausted.html>

⁸ Amnesty International, Civilians in the aftermath of the war: the Georgia-Russia conflict a year on, EUR 04/001/2009, 2009, available at <https://www.amnesty.org/en/documents/EUR04/001/2009/en/>

⁹ Amnesty International, the Georgia-Russia conflict, Civilians in the Line of Fire, EUR 04/005/2008, 2008, available at <https://www.amnesty.org/en/documents/EUR04/005/2008/en/>. In 2016 the International Criminal Court authorized an investigation in relation to crimes against humanity and war crimes in the context of the Georgia-Russia conflict between 1 July and 10 October 2008 (ICC Pre-Trial Chamber 1, Decision on the Prosecutor’s request for authorization of an investigation, available at https://www.icc-cpi.int/CourtRecords/CR2016_00608.PDF

¹⁰ The European Commission, the European Parliament, the Parliamentary Assembly of OSCE and the Parliamentary Assembly of the Council of Europe have referred to South Ossetia/Tskhinvali Region and Abkhazia as Georgian territories occupied by Russia - See European Commission, “First Progress Report on the implementation by Georgia of the Action Plan on Visa Liberalisation”, 2013, available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/news/docs/20131115_1st_progress_report_on_the_implementation_by_georgia_of_the_apvl_en.pdf; European Parliament, Resolution 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)), 2011, available at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-0514>; OSCE Parliamentary Assembly, Monaco Final Declaration, Resolution on the Situation in Georgia, 2012, available at <http://www.oscepa.org/meetings/annual-sessions/2012-monaco-annual-session/2012-monaco-final-declaration/1683-15>; Council of Europe Parliamentary Assembly, Georgia and Russia: the humanitarian situation in the conflict- and war-affected areas, Resolution 1916 (2013), 2013, available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19435&lang=en>

¹¹ Georgian Law on Occupation, 2008, available at <https://matsne.gov.ge/en/document/download/19132/5/en/pdf>

3.2 RESTRICTED ACCESS FOR INTERNATIONAL MECHANISMS AND HUMANITARIAN AND HUMAN RIGHTS ORGANIZATIONS

Lack of access for international mechanisms to Abkhazia and South Ossetia/Tskhinvali Region has been a matter of concern since the 2008 armed conflict. Following Russia's recognition of Abkhazia and South Ossetia/Tskhinvali Region as independent states, no consensus was reached at the Organization for Security and Co-operation in Europe (OSCE) to continue its existing mission in Georgia, as Moscow argued that the OSCE must establish separate and unrelated offices in South Ossetia/Tskhinvali Region and Tbilisi-controlled territories.¹² For the same reason, Russia vetoed the continuation of the United Nations Observer Mission in Georgia (UNOMIG) in 2009, which had maintained military observers in Abkhazia since 1993 and had contributed to preventing a resumption of armed hostilities.¹³

To fill the vacuum of international monitoring mechanisms around Abkhazia and South Ossetia/Tskhinvali Region, the EU established an unarmed peacekeeping mission - the European Union Monitoring Mission in Georgia (EUMM) in September 2008. Its mandate is to ensure that there is no return to hostilities, to facilitate the resumption of a safe and normal life for the local communities living on both sides of the ABL with Abkhazia and South Ossetia/Tskhinvali Region, to build confidence among the parties to the conflict and to inform EU policy in Georgia and the wider region. However, the EUMM has not been allowed to access Abkhazia and South Ossetia/Tskhinvali Region and they operate only on Tbilisi-controlled side of the ABL.¹⁴

International discussions were launched in Geneva in 2008 co-chaired by representatives of the UN, EU and the OSCE to address the issues of security and stability and the return of the internally displaced.¹⁵ Under an agreement reached in February 2009 at the Geneva International Discussions, regular meetings under the Incident Prevention and Response Mechanism (IPRM) take place between the parties to the conflict. Representatives from the UN, EUMM, OSCE, Moscow, Tbilisi, Sukhumi and Tskhinvali discuss and resolve specific incidents and issues.¹⁶ Attached to the IPRM is a "hotline" telephone system accessible for all parties to the conflict. As reported by the EUMM, the Hotline has proven very useful for participants to quickly establish a common understanding of events surrounding specific incidents and it has repeatedly helped to de-escalate possible tensions.¹⁷

The presence of humanitarian and human rights organizations is limited both in the Gali region of Abkhazia and South Ossetia/Tskhinvali Region. In Abkhazia, a few international NGOs, along with the UNHCR and the ICRC, are nominally present in the Gali region. In 2018 the de facto Cabinet of Ministers of Abkhazia passed an order that prohibits Abkhaz public servants from participating in events abroad organized by NGOs. The order also asked the de facto Ministry of Foreign Affairs to report to the de facto Cabinet of Ministers on the activities of international NGOs in Abkhazia.¹⁸ 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.¹⁹ Since the 2008 conflict, all UN agencies, funds and programmes have ceased operating in the area.²⁰

The UN Human Rights Council adopted resolution 34/37 in 2017, entitled "Cooperation with Georgia", in which the Council called for immediate access for the Office of the High Commissioner for Human Rights

¹² OSCE, OSCE Chairman regrets disagreement on OSCE future in Georgia, 2008, available at <https://www.osce.org/cio/50525>

¹³ "The Security Council failed today to extend the presence of the United Nations Observer Mission in Georgia (UNOMIG) after Russia vetoed a technical roll-over for the nearly 16-year-old operation", UN News, 2009, available at <https://news.un.org/en/story/2009/06/303512-russia-vetoes-extension-un-mission-georgia>

¹⁴ Interview with the EUMM staff, Tbilisi, March 2018; EUMM factsheet, updated 2018, available at https://eumm.eu/en/about_eumm/facts_and_figures

¹⁵ UN Secretary General, Status of Internally Displaced Persons and Refugees from Abkhazia, Georgia and the Tskhinvali Region/South Ossetia, Georgia, 2017, para. 4, available at <https://reliefweb.int/sites/reliefweb.int/files/resources/N1712489.pdf>

¹⁶ EUMM factsheet, January 2018, available at https://www.eumm.eu/data/image_db_innova/EUMM%20Factsheet%20ENG%202018%20JAN.pdf

¹⁷ EUMM factsheet, January 2018, available at https://www.eumm.eu/data/image_db_innova/EUMM%20Factsheet%20ENG%202018%20JAN.pdf

¹⁸ Official web-site of the de facto Cabinet Ministers of Abkhazia (in Russian), "Genady Gagulia gave out over a hundred orders", 2018, available at <https://km-ra.org/news/gennadiy-gaguliya-otdal-svyshe-sta-porucheniy.html>

¹⁹ Interviews with the UNHCR and EUMM staff, Tbilisi, 2018

²⁰ UNHCR did manage to have a single humanitarian mission to South Ossetia/Tskhinvali Region in 2016 since 2008, according to the Report of the United Nations High Commissioner for Human Rights on cooperation with Georgia, A/HRC/36/65, available at <https://www.right-docs.org/download/69131/>

(OHCHR) and international and regional human rights mechanisms to Abkhazia and South Ossetia/Tskhinvali region.²¹

In addition, Georgia's 2008 Law on Occupied Territories imposes restrictions on visits to these regions, such as permitting access to Abkhazia and South Ossetia/Tskhinvali Region for foreign nationals only via Tbilisi-controlled territory. Humanitarian workers can be exempt from this prohibition.²²

²¹ UN HRC, Cooperation with Georgia, Res 34/37, 2017, available at <https://daccess-ods.un.org/TMP/680517.852306366.html>

²² Georgian Law on Occupation, 2008, Article 4 - Restriction on free movement in the occupied territories, available at <https://matsne.gov.ge/en/document/download/19132/5/en/pdf>

4. APPLICABLE INTERNATIONAL LAW

Both international human rights law and international humanitarian law apply to the human rights abuses documented in this report and it is in the light of these obligations that Amnesty international conducts and analyses its research and presents its conclusions and recommendations.

4.1 INTERNATIONAL HUMAN RIGHTS LAW

Georgia and Russia are both parties to a range of universal human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Georgia and Russia are also parties to regional human rights instruments, including the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the European Social Charter. Both states (and the de facto authorities of Abkhazia and South Ossetia/Tskhinvali Region through the obligations of Georgia and Russia) are bound by these universal and regional treaties, as well as by relevant customary international law to take measures to respect and protect a range of human rights.

It is Amnesty International's understanding that the Russian Federation effectively controls the South Ossetian/Tskhinvali Region and Abkhazian sides of the ABL and has maintained overall effective control over South Ossetia/Tskhinvali Region and Abkhazia since the armed conflict with Tbilisi in 2008. Russia and the de facto authorities in these territories deny that Russia exercises such control.²³

Russian military presence in the region is, however, undeniable. According to the Georgian authorities, Russia has three military bases in South Ossetia/Tskhinvali Region (in the towns of Java, Tskhinvali and Akhagori) and 19 militarized border guard bases (referred to as "semi-military buildings" by Georgian officials) in the villages close to the ABL. In Abkhazia, Russia has a military base in Gudauta, a naval facility in Ochamchire, 12 militarized border guard bases in the villages close to the ABL and its forces regularly use the military training grounds of Tsebelda and Nagvalou.²⁴

²³ Article of the State Secretary, the Deputy Minister of Foreign Affairs of Russia Grigoriy Karasin in the «Mezhdunarodnaya zhizn» magazine, 2012, available at the official website of the Russian Ministry of Foreign Affairs:

http://www.mid.ru/press_service/deputy_ministers_speeches/-/asset_publisher/O3publba0Cjv/content/id/143554; See also, Case concerning the Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Request for the indication of provisional measures, International Court of Justice - ICJ, 15 October 2008, para 33, page 10

²⁴ Information provided by the Georgian authorities, March 2018. Information on the use of the military training grounds of Tsebelda and Nagvalou by the Russian armed forces is confirmed by the Russian Ministry of Defence - "The soldiers of the Russian military base in Abkhazia conducted more than ten tactical exercises with live fire", Ministry of Defence of Russia (in Russian), 2018, available at https://function.mil.ru/news_page/country/more.htm?id=12201878@egNews. In respect of "borderization" the EUMM in October 2018 notes 19 Russian border guard bases in South Ossetia/Tskhinvali Region and the same number in Abkhazia, see The EUMM Monitor Issue No. 7, October 2018

There are also a number of agreements signed between Russia and both Abkhazia and the South Ossetia/Tskhinvali Region which cement Russia's military presence in these territories²⁵, establish a joint military command between Russia and Abkhazia,²⁶ incorporate the South Ossetia/Tskhinvali Region military into the Russian armed forces²⁷, and allow Russian border guards to secure and protect the Abkhazian and South Ossetian/Tskhinvali Region sides of the ABL²⁸. This latter activity is predominantly carried out by the Russian Border Service under the Federal Security Service (FSB, *Пограничная служба ФСБ России*), employing service personnel from Russia.²⁹ Gali and Akhagori district residents who regularly cross over the ABL told Amnesty International that South Ossetian/Tskhinvali Region and Abkhaz service personnel are also stationed at the crossing points and patrol parts of the ABL, but their presence, both in numbers and in authority, is secondary to that of Russian officers.

Furthermore, Moscow also funds virtually all of South Ossetia/Tskhinvali Region's³⁰ and most of Abkhazia's³¹ state budgets, facilitates issuance of Russian pensions to the residents of South Ossetia/Tskhinvali Region³² and Abkhazia³³ who hold Russian passports and influences other parts of public administration. Up to 90 per cent of the population of South Ossetia/Tskhinvali Region and Abkhazia are estimated to hold Russian passports.³⁴ The de facto authorities and residents of these territories regard such documentation as important in enabling travel and other activities which would otherwise be restricted by what they believe are policies aimed at international isolation.³⁵

States have the primary obligation to respect, protect and fulfil human rights. But other actors and entities also have responsibilities to respect human rights, particularly when they directly impact individuals' enjoyment of human rights.

Since Russia has overall effective control of South Ossetia/Tskhinvali Region and Abkhazia, it is bound by its obligations as a party to the international human rights treaties it has ratified. As such Russia is responsible both for the violations committed directly by its forces in Abkhazia and South Ossetia/Tskhinvali Region, and for those committed by the de facto authorities in these entities. In a similar context, that of a breakaway entity in Moldova, the European Court of Human Rights (ECtHR) in 2012 found that Russia could be held responsible for violations of the European Conventions on Human Rights by the de facto authorities, ruling that

It is not necessary to determine whether or not Russia exercised detailed control over the policies and actions of the subordinate local administration. By virtue of its continued military, economic and political support for the "MRT" [Moldavian Republic of Transdnistria], which could not otherwise survive, Russia incurs responsibility under the Convention for the violation of the applicants' rights.³⁶

²⁵ Article 5, Treaty of Friendship, Cooperation and Mutual Assistance between South Ossetia and the Russian Federation (in Russian), available at <http://www.mfa-rso.su/node/305>, and Article 5, Treaty of Friendship, Cooperation and Mutual Assistance between Abkhazia and the Russian Federation (in Russian), available at <http://presidentofabkhazia.org/upload/iblock/596/z4.pdf>

²⁶ Article 5, Treaty on Alliance and Strategic Partnership between Abkhazia and the Russian Federation (in Russian), available at <http://presidentofabkhazia.org/upload/iblock/471/z8.pdf>

²⁷ Article 2, Treaty on Alliance and Integration between South Ossetia and the Russian Federation (in Russian), available at <http://www.mfa-rso.su/node/1289>

²⁸ Agreement with the Russian Federation on Cooperation on Joint Measures for Protection of State Border of the Republic of Abkhazia (in Russian), 2009 available at <http://presidentofabkhazia.org/upload/iblock/8fa/z16.pdf>; Agreement with the Russian Federation on Cooperation on Joint Measures for Protection of State Border of South Ossetia (in Russian), 2009 available at <http://www.mfa-rso.su/node/1204>

²⁹ Article 1, Agreement with the Russian Federation on Cooperation on Joint Measures for Protection of State Border of South Ossetia (in Russian), de facto Ministry of Internal Affairs of South Ossetia, 2009, available at <http://www.mfa-rso.su/node/1204>; Article 1, Agreement with the Russian Federation on Cooperation on Joint Measures for Protection of State Border of the Republic of Abkhazia (in Russian), de facto President of Abkhazia, 2009, available at <http://presidentofabkhazia.org/upload/iblock/8fa/z16.pdf>

³⁰ Article 1, de facto South Ossetian Law on the 2018 State Budget of South Ossetia (in Russian), 2018, available at <http://www.parliamentso.org/node/1663>

³¹ Article 2.1, de facto Abkhazian Law on the 2018 State Budget (in Russian), 2018, available at http://www.gazeta-ra.info/index.php?ELEMENT_ID=16607

³² Article 8, Treaty on Alliance and Integration between South Ossetia and the Russian Federation (in Russian), available at <http://www.mfa-rso.su/node/1289>

³³ Article 15, Treaty on Alliance and Strategic Partnership between Abkhazia and the Russian Federation (in Russian), available at <http://presidentofabkhazia.org/upload/iblock/471/z8.pdf>

³⁴ Legal Reports of the Law Library of the US Congress, Russian Federation: Legal Aspects of War in Georgia, 2008–01474, available at <https://www.loc.gov/law/help/russian-georgia-war.pdf>; Freedom House, Abkhazia, 2014, available at <https://freedomhouse.org/report/freedom-world/2014/abkhazia>

³⁵ Statement at the Human Dimension Implementation Meeting by a charitable foundation from Abkhazia, Abkhazia: Citizenship and Political Rights, available at <https://www.osce.org/odihr/106766?download=true>

³⁶ *Catan and Others v Moldova and Russia*, ECtHR (Applications nos. 43370/04, 8252/05 and 18454/06), 2012, para 150, available at <http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-114082&filename=001-114082.pdf>

Even though Georgia lacks control over South Ossetia/Tskhinvali Region and Abkhazia it still holds international legal title over these territories and as such it too retains certain human rights obligations in South Ossetia/Tskhinvali Region and Abkhazia. As the ECtHR has noted in another case, there are circumstances which may limit a state's ability to exercise its authority over part of its territory, including belligerent occupation of some or all the territory of the state or other loss of effective control over all or part of the territory, such as another state supporting the installation of a separatist state within the territory of the state concerned.³⁷ In such circumstances, the state (here Georgia) remains liable to take all appropriate measures which are still within its power to guarantee those within such territory their human rights. And of course, Georgia also has an obligation to uphold the human rights of conflict-affected civilians who live in Tbilisi-controlled territory, including those living near or next to the Tbilisi-controlled side of the South Ossetian/Tskhinvali Region and Abkhazian ABL.

The de facto authorities of Abkhazia and South Ossetia/Tskhinvali Region also must respect the human rights of everyone in the areas in under their control. Even though they lack widespread recognition as independent states under international law and, as such, are not parties to international human rights treaties, they must refrain from interfering in the enjoyment of the human rights of the people in these territories, who also are protected by international humanitarian law (see below).

³⁷ *Ilascu and Others v Moldova and Russia*, ECtHR (Application no. 48787/99), 1999; *Issa v Turkey*, ECtHR (Application no. 31821/96), 2004

**RUSSIAN “BORDER” BASE AS VISIBLE ON SATELLITE IMAGERY IN SOUTH OSSETIA/TSKHINVALI REGION
IN THE VILLAGE OF ORCHOSANI**



4.2 INTERNATIONAL HUMANITARIAN LAW

Russia also has obligations under International humanitarian law with regard to the situation in South Ossetia/Tskhinvali Region and Abkhazia because its role in these areas falls under the definition of military occupation.

According to Article 42 of the Hague Regulations, “Territory is considered occupied when it is actually placed under the authority of the hostile army”.³⁸ In interpreting this definition with respect to particular situations, the notion of “effective control” over the territory in question is central. Its key elements are: the presence of foreign forces to establish and exert control; the ability to exercise authority over the occupied territory; and the fact that foreign forces are present without the consent of the sovereign state.

³⁸ The Hague Regulations, 1907

The Russian Federation does not consider its military presence in South Ossetia/Tskhinvali Region and Abkhazia to be occupation of Georgian territories. Russia states that Abkhazia and South Ossetia/Tskhinvali Region are independent states and that Russian forces are stationed there based on the treaties Russia has signed with those entities.³⁹

Russian military forces have been present in South Ossetia/Tskhinvali Region and Abkhazia since 2008 without the consent of Georgia. Given Russia's overall effective control over these territories, including effective control over the ABL, and given that South Ossetia/Tskhinvali Region and Abkhazia are still parts of Georgia under public international law, the situation can be classified as military occupation. Amnesty International takes no position on how territorial and political disputes should be resolved, other than to insist on respect for the human rights of those affected. It does mean that Russia, as the overall occupying power in South Ossetia/Tskhinvali Region and Abkhazia, has certain associated obligations and duties under the law of occupation towards the civilian population of these territories.

The rules for occupying powers, including regarding the treatment of local civilian population, are codified in the 1907 Hague Regulations (Articles 42-56), the Fourth Geneva Convention, and Additional Protocol I, to which Russia is a state party, and in customary international humanitarian law.⁴⁰

³⁹ Article of the State Secretary, the Deputy Minister of Foreign Affairs of Russia Grigoriy Karasin in the «Mezhdunarodnaya zhizn» magazine, 2012, available at the official website of the Russian Ministry of Foreign Affairs:

http://www.mid.ru/press_service/deputy_ministers_speeches/-/asset_publisher/O3publba0Cjv/content/id/143554; See also, Case concerning the Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Request for the indication of provisional measures, International Court of Justice - ICJ, 15 October 2008, para 33, page 10

⁴⁰ Russia is a state party to major international humanitarian law documents, including Geneva Conventions I-IV and Additional Protocols I-II as well as the Hague Convention 1907 – see ICRC, Treaties, States Parties and Commentaries – Russian Federation, available at https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=RU

5. “BORDERIZATION” AND ITS IMPACT ON FREEDOM OF MOVEMENT

“Russian servicemen came to my house and told me it is no longer Georgia. The same day they started installing fences around my yard. I can no longer access the rest of the village, or the rest of the country.”

85-year-old Davit Vanishvili (featured on the cover page) from the village of Khurvaleti explains how “borderization” has isolated him from the rest of the village, including his relatives and neighbours. He ended up on the South Ossetia/Tskhinvali Region side of the ABL after Russian border guards commenced “borderization” in 2013, with his house and the adjacent yard fenced off from the Tbilisi-controlled territory.

In 2013 85-year-old Davit Vanishvili from Khurvaleti in Georgia was given a stark choice by Russian servicemen who were physically reinforcing a boundary between the breakaway region of South Ossetia/Tskhinvali Region and the Tbilisi-controlled territory, a line that they said ran through his village. He could stay in the family home on one side of the fence, regarded as part of South Ossetia/Tskhinvali Region, or move to the other side on Georgian-controlled territory, and live the rest of his life displaced. Davit chose to stay, but is now separated from the rest of his family and friends by the barbed wire which cuts through his village. Risking detention if he tries to cross, he and his wife survive through relatives and neighbours who pass his pension, medicine and other goods through the fence under cover of darkness. As thanks, he tends the graves of their deceased they can no longer reach, on his side of the wire.

Like Davit, those affected face daily human rights violations, cut off from relatives, sources of income and cultural and social life. They can even risk detention if they approach too closely the ABL. The constraints placed on their freedom of movement also negatively impact on other rights, eroding living standards, impairing access to agricultural land, healthcare, places of worship and education, and entrenching discriminatory attitudes and measures.

Many of these violations suffered by Davit and other villagers like him arise directly from moves to further entrench lines of separation arising from the 2008 – and previous – conflicts, turning what were once often just dotted lines on a map into a physical barrier. Known as “borderization”, it is a process spearheaded since 2009 by Russian security services who along with the de facto authorities seek to transform the ABL into an “international border” after Moscow’s recognition of Abkhazia and South Ossetia/Tskhinvali Region as independent states. As the EU Monitoring Mission (EUMM) in Georgia describes it: “‘Borderization’ encompasses three main elements: 1) the establishment of physical infrastructure to force commuters, vehicles and goods to use special ‘controlled crossing points’ established at the ABL; 2) surveillance and

patrolling by either Russian border guards or security actors from the breakaway regions that monitor the situation and detain people if they are in violation of established ‘rules’; 3) a crossing regime requiring commuters to have specific documents and only use ‘official’ crossing points.”⁴¹

ONE OF THE “BORDER” SIGNS AMIDST FARMLANDS ALONG THE SOUTH OSSETIAN/TSKHINVALI REGION ABL WARNING ABOUT THE “STATE BORDER” IN ENGLISH AND GEORGIAN. DITCHES MARKING ABL VISIBLE IN THE BACKGROUND.



The physical manifestation of “borderization” entails the installation of barriers such as barbed wire, metal or wooden fences, trenches, anti-fire ditches or raked earth, together with “border” signs and surveillance equipment to further mark the ABL. According to information provided by the Georgian authorities, the process intensified from early 2013, when Russian forces started installing barbed-wire fences along the ABL, taking control of additional stretches of land previously administered by Tbilisi.

The Georgian authorities told Amnesty international that as of late 2018, at least 34 villages⁴² had been divided by fences installed by the Russian servicemen separating their residents from adjacent “critical infrastructure”, such as farms, pasturelands, irrigation sources or village cemeteries. The authorities in Tbilisi estimate that hundreds of farmers have lost access to their agricultural lands,⁴³ while the barbed wire fence has directly affected the homes of at least 20 families⁴⁴ by cutting through the yard adjacent to their houses. In at least two villages of Dvani and Khurvaleti near the South Ossetian/Tskhinvali Region stretch of the ABL “borderization” resulted in cutting off the residences of some of the families from Tbilisi-controlled territory.⁴⁵ In the village of Dvani this led to the displacement of three families: they demolished their houses as the

⁴¹ The EUMM Monitor, Issue No. 7, October 2018, available at https://eumm.eu/data/file/6486/The_EUMM_Monitor_issue_7_ENG.pdf

⁴² Near South Ossetian/Tskhinvali region ABL - Nikozi, Gugutiantkari, Khurvaleti, Dvani, Kvemo Khviti, Ditsi, Mereti, Dirbi, Bershueti, Mejriskhevi, Tvaurebi, Sakorintlo, Ergneti, Ghoghethi, Koda, Kveshi, Jariasheni, Zardiaantkari, Koshka, Adzvi, Tsitsagiaantkari, Akhrisi, Kirbali, Akhalubani, Knolevi, Avlevi, Tsitelubani, Atotsi and Tseronisi; near Abkhazian ABL – Ganmukhuri, Orsantia, Khurcha, Shamgona and Pakhulani

⁴³ Information provided by the Georgian State Security Service, March 2018

⁴⁴ Data gathered in 2014 by the Georgian authorities. Provided to Amnesty International in 2018

⁴⁵ Amnesty International delegates visited Dvani and Khurvaleti near the South Ossetian/Tskhinvali Region stretch of the ABL and saw private residences and yards cut off from the rest of the village with a barbed-wire fence. A representative of the Public Defender (Ombudsperson) of Georgia briefed Amnesty International about a similar case in 2013 in the village of Pakhulani near the Abkhazian stretch of the ABL. According to the representative, one family lost access to their house and the adjacent yard because of the installation of barbed wire that cut the house off from the Tbilisi-controlled territory and the rest of the village of Pakhulani.

“borderization” commenced in 2013 and transferred the building materials to a location further inside the Tbilisi-controlled side of the newly marked ABL line to build new residences.⁴⁶

The general feeling of insecurity experienced by the local population is also compounded by uncertainty with, and lack of information about, the moving “borders” as different maps are used and only parts of the ABL have been marked so far. So, for example, residents may be detained by Russian border guards and the de facto security personnel for allegedly crossing the “state border”, even though they often do not know where the actual ABL lies.

VILLAGE DVANI DIVIDED BY BARBED-WIRE FENCING. THREE HOUSES ENDED UP ON THE SOUTH OSSETIAN/TSKHINVALI REGION SIDE OF THE ABL WHEN THE “BORDERIZATION” BEGAN IN 2013. THE FAMILIES WERE DISPLACED.



5.1 SECURITIZATION AND LOCATION OF THE ABL

According to the EU Monitoring Mission in Georgia, as of late 2018 physical “borderization” along the South Ossetian/Tskhinvali Region stretch of the ABL included “more than 60 km of security fences, 20 km of surveillance equipment, over 200 “Republic of South Ossetia border” signs, 19 Russian border guard bases and four controlled crossing points.” In Abkhazia, physical “borderization” included “over 30 km of fences, surveillance towers with an ABL coverage of approximately 25 km, 19 Russian border guard bases and two controlled crossing points.”⁴⁷

⁴⁶ Amnesty International’s interview with the locals of Dvani, March 2018

⁴⁷ The EUMM Monitor, Issue No. 7, October 2018, available at https://eumm.eu/data/file/6486/The_EUMM_Monitor_issue_7_ENG.pdf

BARBED-WIRE FENCE AND “BORDER” SIGN NEAR THE VILLAGE OF KHURVALETI. TO THE RIGHT IN THE BACKGROUND ONE OF THE RUSSIAN FSB BORDER BASES WITH A SURVEILLANCE TOWER IS VISIBLE.



According to the information provided by Georgian authorities in March 2018, the total length of the barbed wire and other fencing along the ABL with South Ossetia/Tskhinvali Region at that time was more than 52 km out of 350 km, and the total length of the barbed wire and fences on Abkhazian ABL was around 49 km out of 145 km.⁴⁸ The marked parts in South Ossetia/Tskhinvali Region include mostly the southern portion of the territory,⁴⁹ where most of the population and farms are concentrated.

Both the process of “borderization” as such and the exact location of the “border” are issues of dispute. The Georgian authorities and the overwhelming majority of the international community consider the “borderization” illegal under international law. The official policy of the Georgian government is that South Ossetia/Tskhinvali Region and Abkhazia are integral parts of Georgia, they lack widespread international recognition, including by the United Nations, thus, there can be no state border between Tbilisi-controlled territory and these two territories. The Georgian authorities refer to the ABL which acts as the dividing line between Tbilisi-controlled territory and the territories controlled by the Russian forces and the de facto authorities as the occupation line. The Russian and the de facto South Ossetian/Tskhinvali Region and Abkhaz authorities treat the ABL as an international border on the grounds that Russia has recognized the declarations of independence by the breakaway entities.

When marking the ABL and transforming it into an “international border” Russia and the de facto authorities largely follow the administrative borders of the two respective administrative entities as they existed when Georgia was part of the former Soviet Union.⁵⁰ Georgian authorities argue that not only is the process of “borderization” illegal since there is no recognized international border, but also that it is arbitrary, as Russia is using differently dated maps of the former South Ossetian Autonomous Oblast, thereby “cherry picking”

⁴⁸ Information provided by the Georgian State Security Service, March 2018

⁴⁹ Amnesty International’s visit to the South Ossetian/Tskhinvali Region ABL, March 2018; Amnesty International’s interview with the Georgian authorities, Tbilisi, March 2018

⁵⁰ Interviews with the EUMM staff, Tbilisi, March 2018; Interviews with the Georgian authorities, Tbilisi, March 2018. The former South Ossetian Autonomous Oblast and the Abkhazian Autonomous Soviet Socialist Republic were constituent parts of the Georgian Soviet Republic.

the most favorable ABL placement for the South Ossetia/Tskhinvali Region.⁵¹ EUMM officials told Amnesty International that the de facto South Ossetian/Tskhinvali Region authorities sometimes claim to use a 1922 map of the former region which at some locations would place the ABL further within Georgian territory.⁵² Georgian authorities told Amnesty International that “borderization” sometimes results in encroaching on land outside South Ossetia/Tskhinvali Region, a few kilometers deep into previously uncontested territory.

South Ossetian/Tskhinvali Region de facto authorities state that they are willing to start negotiations with Georgia on where the “state border” lies.⁵³ Georgia refuses to enter any negotiations on demarcation, however, since Tbilisi does not recognize South Ossetia/Tskhinvali Region as independent and considers the “borderization” illegal.⁵⁴

Such uncertainty with and lack of information about the moving “border” compounds the general feeling of insecurity experienced by the local population, because residents may be detained by Russian border guards and the de facto security officers for allegedly crossing the “state border”,⁵⁵ even though they often do not know where the line regarded as such lies (only parts of the ABL have been marked so far). People on both sides continue to cross the ABL for various reasons, such as to access agricultural lands, trade, see relatives, access medical care, education or social benefits and visit graveyards or religious buildings. These movements outside the limited number of designated crossing points and without proper documentation, which is often hard to secure, are considered illegal by the Russian and local de-facto authorities. People often cross the ABL at their own peril avoiding crossing points. Even when crossing through crossing points civilians are at the mercy of border guards and burdensome bureaucratic procedures.⁵⁶ Many families on the Tbilisi-controlled side of the ABL also lost farmlands and other elements of their livelihood because of the construction of fences on the ABL which, previously, was only a dotted line on a map.⁵⁷

5.2 “BORDERIZATION” REGIMES

Border guards of the Russian Federation are the main force responsible for protecting the South Ossetian/Tskhinvali Region and Abkhazian sides of the ABL⁵⁸, and they regularly patrol the “borders”.⁵⁹ Georgian police do not regularly patrol the area, deploying only in response to specific security incidents. According to the Georgian authorities, Georgia has no military force stationed near the ABL.⁶⁰

The Russian border guards and the de facto South Ossetian/Tskhinvali Region authorities have two different movement-control regimes in place – one for the part of South Ossetia/Tskhinvali Region from where Georgians were forcibly displaced in 2008⁶¹ and the other for the Akhalkori district of South Ossetia/Tskhinvali Region – where the ethnic Georgian population remains and over most of which Tbilisi retained control until 2008. Akhalkori Georgians can move freely to and from Tbilisi-controlled territory via the designated crossing point administered by the Russian FSB and de facto South Ossetian/Tskhinvali Region authorities if they possess an entry clearance – a so called “propusk” issued by South Ossetia/Tskhinvali Region. According to the Akhalkori residents Amnesty International spoke to, the Russian and de facto South Ossetian/Tskhinvali Region authorities close the designated crossing point between Akhalkori and Tbilisi controlled territory at night. Travelers are also subjected to security checks, questioning and often asked to pay informal “fees” to officials at the crossing points. Ethnic Georgians whose lands have ended up in other parts of South Ossetia/Tskhinvali Region, have lost all access to their property and cannot cross over the ABL.⁶²

⁵¹ Georgian officials explained that Russia is combining ABLs from two military maps issued by the Soviet Military Headquarters, one in 1984 and the other in 1987, with roughly 10 per cent of the South Ossetian Autonomous Oblast ABL drawn differently.

⁵² Interviews with EUMM staff, Tbilisi, March 2018

⁵³ News Agency of the de facto Ministry of Foreign Affairs of South Ossetia (in Russian), “Georgian authorities are making unsubstantiated accusations against South Ossetia”, 2018, available at <http://south-ossetia.info/gruzinskie-vlasti-v-sredstvax-massovoj-informacii-vydvigayut-protiv-yuzhnoj-osetii-neobosnovannye-obvineniya/>

⁵⁴ Interview with the Georgian authorities, Tbilisi, March 2018

⁵⁵ Interview with the Georgian authorities, Tbilisi, March 2018

⁵⁶ Amnesty International interviews with locals living along the ABL, March 2018.

⁵⁷ See section 7 for more information on appropriation of farmlands

⁵⁸ The EUMM Monitor, October 2018, available at https://eumm.eu/data/file/6486/The_EUMM_Monitor_issue_7_ENG.pdf

⁵⁹ The EUMM Monitor, Issue No. 7, October 2018, available at https://eumm.eu/data/file/6486/The_EUMM_Monitor_issue_7_ENG.pdf

⁶⁰ Meeting with the State Security Service of Georgia. Amnesty International delegates saw no signs of overt militarization during their visits to the ABL from the Georgian controlled side.

⁶¹ For more information on forced displacement of ethnic Georgians from South Ossetia/Tskhinvali Region in 2008 see Amnesty International, *Civilians in the Line of Fire: the Georgia-Russia conflict*, EUR 04/005/2008, page 48, available at <https://www.amnesty.org/download/Documents/52000/eur040052008eng.pdf>

⁶² Interviews with Akhalkori and Gali residents, March 2018

BARBED-WIRE FENCE IN THE VILLAGE OF KHURVALETI. GEORGIAN POLICE PATROLLING THE ABL AS AMNESTY INTERNATIONAL DELEGATES VISIT THE AREA



At present, only residents of Akhagori district (through the Mosabruni-Odzisi crossing point) and a few remote villages in the west of the South Ossetia/Tskhinvali Region (though Perevi-Kardzmani and Perevi-Sinaguri crossing points) can cross the South Ossetian/Tskhinvali Region ABL.⁶³ Anyone else, including other residents of South Ossetia/Tskhinvali Region and residents from Tbilisi-controlled territory are banned from using these crossing points and crossing the ABL.⁶⁴ Russian and de facto South Ossetian/Tskhinvali Region forces deny entry into Akhagori or the rest of South Ossetia/Tskhinvali Region to ethnic Georgians who were living in South Ossetia/Tskhinvali Region outside Akhagori area prior to the 2008 armed conflict.⁶⁵

Since 2013 the construction of fences has also intensified in Abkhazia. Amnesty International representatives visiting the area around the village Orsantia in the Zugdidi district observed recently installed fences and barbed wire marking the ABL of Abkhazia along the Enguri River.⁶⁶ The “borderization” in Abkhazia has been accompanied by additional restrictions on freedom of movement. Starting from 2016, four out of six ABL crossing points⁶⁷ were closed between Abkhazia and Tbilisi-controlled territory. The closure of crossing points means 20-25km of additional travel for some villagers from the Gali district⁶⁸ making the movement of the local population more restricted, lengthy and arduous.

At present, access to Tbilisi-controlled territory from Abkhazia is allowed in two places, the Enguri Bridge in the Zugdidi district and the Pakhulani-Saberio crossing in the Tsalendjikha district. Gali district residents told Amnesty International that they only have limited access to the Pakhulani-Saberio crossing point (it is mainly used by the staff at the Enguri hydroelectric power station – a major source of electricity shared by Abkhazia and Tbilisi-controlled territory) and the Enguri Bridge crossing remains the main crossing point, where

⁶³ Like Akhagori, these villages used to be controlled by Tbilisi before 2008. Since “borderization” Russian border guards and South Ossetian/Tskhinvali Region forces permit them to cross ABL to/from Georgia’s western region of Imereti. Another crossing point near Ergneti village is exclusively for emergency medical crossings and the release of detainees (information provided to Amnesty International by the Georgian authorities and the EUMM staff in Tbilisi)

⁶⁴ Amnesty International’s interview with Akhagori residents, March, July 2018

⁶⁵ Amnesty International’s interview with locals living along the South Ossetian/Tskhinvali Region ABL, March 2018; Amnesty International’s interview with EUMM staff, Tbilisi, March 2018

⁶⁶ Amnesty International’s visit to the Abkhazian ABL, March 2018. The river is known as Ingur in Abkhazian.

⁶⁷ Shamgona-Tagiloni, Orsantia-Meore Otobaia, Khurcha-Nabakevi, Muzhava-Lekukhona crossing points have been closed.

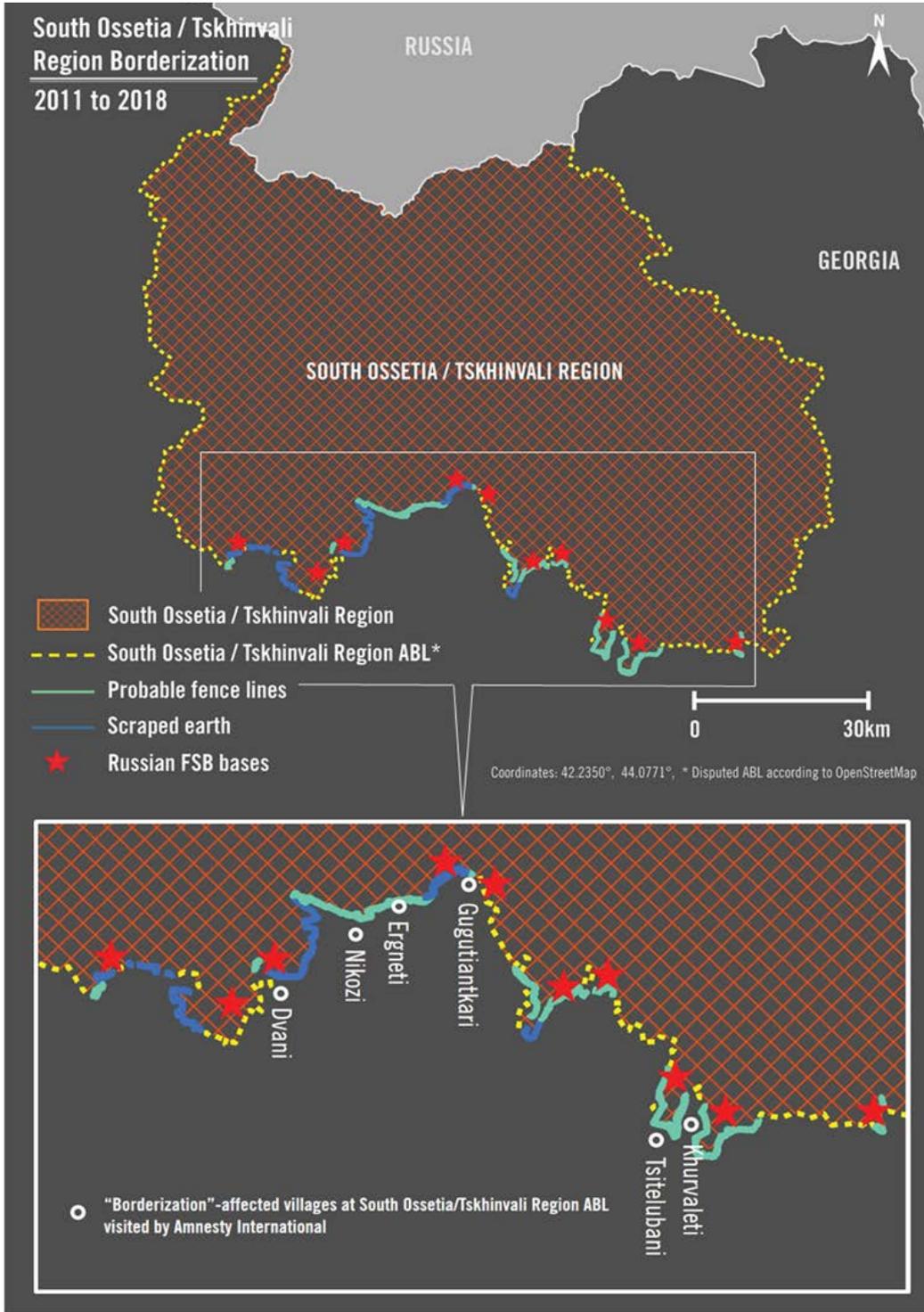
⁶⁸ Amnesty International’s interview with Gali district residents, Zugdidi and Tbilisi, March, July 2018

increased number of crossings, up to 3,000 in total per day, were reported due to the closure of four other crossing points.⁶⁹ The bulk of those crossing include ethnic Georgians from Gali district, but others from throughout Abkhazia and Tbilisi-controlled territory can also cross if they secure prior authorization by the de facto authorities in Abkhazia.⁷⁰

⁶⁹ Amnesty International's interview with the EUMM staff in Tbilisi, March 2018

⁷⁰ Residents of Abkhazia outside the Gali district need a special permit from the de facto authorities to cross into Tbilisi-controlled territory. Sometimes they have to undergo a phone interview with the de facto security service of Abkhazia for clearance (Amnesty International's interview with EUMM staff, Tbilisi, March 2018). Georgian citizens from Tbilisi-controlled territory require "visa" to enter Abkhazia (via the de facto Ministry of Foreign Affairs of Abkhazia (in Russian), Permission to Enter, available at <http://mfaapsny.org/ru/consular-service/permission/>)

THE MAP BELOW SHOWS THE SOUTH OSSETIAN/TSKHINVALI REGION STRETCH OF THE ABL. THE SOUTHERN PORTION OF THE ABL WAS ANALYZED BY AMNESTY INTERNATIONAL USING SATELLITE IMAGERY FROM BEFORE 2011 UP TO 2018 FOR EVIDENCE OF "BORDERIZATION". ACROSS THE SOUTHERN PORTION, AREAS WITH FENCELINES WERE DETECTED ALONG WITH NEWLY SCRAPED EARTH LIKELY FORMING SO-CALLED CONTROL-FOOTPRINT STRIP FOR DETECTING "ILLEGAL CROSSING". TEN RUSSIAN BASES WERE ALSO DETECTED ACROSS THE ABL.



5.3 FREEDOM OF MOVEMENT AND INTERNATIONAL LAW

Under international human rights law freedom of movement can only be restricted to pursue certain legitimate objectives. Specifically, the International Covenant on Civil and Political Rights (ICCPR), to which both Russia and Georgia are parties, provides that grounds for restrictions on freedom of movement must be “provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the ... Covenant”.⁷¹

In addition to meeting these tests, any restriction on freedom of movement must be proportionate. According to the UN Human Rights Committee, the body of independent experts charged with monitoring states parties’ compliance with the ICCPR, a state must use “no more restrictive means than are required” to achieve the purpose of the limitation. Such restrictions must be the least intrusive instrument amongst those that might achieve the desired result.⁷²

Under international humanitarian law, the occupying power (Russia in this case) may only put in place measures of control and security regarding protected persons as may be necessary as a result of the armed conflict.⁷³

Amnesty International wrote to the Russian and de facto authorities in July 2018 asking for the possible justification for restrictions on freedom of movement, but had received no response by the time of publication.

The current regime controlling cross-ABL movement operated by the Russian and de-facto South Ossetian/Tskhinvali Region and Abkhaz authorities arbitrarily restricts freedom of movement for local civilians and prevents the enjoyment of other human rights. There is no evident security justification for such a strict regime, considering that Georgia remains in compliance with the EU-mediated 12 August 2008 Ceasefire Agreement and the Tbilisi-controlled side of the ABL is not militarized. And even if there is a security reason for some form of restricted movement, a less extreme, harmful means, such as security checks, should be sufficient. The current regime is disproportionate – and contrary to Russia’s obligations under international human rights law and international humanitarian law. As explained in the relevant chapters below, Amnesty International is further concerned that these arbitrary restrictions of freedom of movement are negatively affecting the enjoyment of a range of human rights by the local population, including rights to liberty and security of the person to an adequate standard of living, to family life, and to freedom of religion. These restrictions are also leading to the gradual further displacement of some of the ethnic Georgians in the Gali and Akhgori districts.

⁷¹ Article 12.3, ICCPR

⁷² United Nations Human Rights Committee, General Comment No 27 (1999) on Article 12 of the Convention–Freedom of Movement, UN Doc CCPR/C/21/Rev.1/Add.9 (2 November 1999)

⁷³ Article 27, Geneva Convention IV

6. DEPRIVATION OF LIBERTY AND ALLEGATIONS OF ILL-TREATMENT

Amnesty International is concerned 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.

The South Ossetian/Tskhinvali Region stretch of the ABL cuts through some of the most fertile and densely populated farmland in Central Georgia and, according to the EUMM, “due to its excess of people, farms, livestock and plots, restriction of movement represents an ongoing challenge to the conflict affected population on both sides of the Line.”⁷⁴ Before 2008 it was possible for ethnic Ossetians and Georgians to cross the ABL relatively freely either through official or informal crossing points. Since Russian forces were stationed along the ABL in 2011, they have started detaining civilians for “illegal border crossings” and previously available informal crossing points have been closed.

The detention of civilians living on both sides of the ABL is common, particularly in spring and summer when residents tend to graze cattle, cultivate crops or collect firewood. According to information provided to Amnesty International by residents near the Tbilisi-controlled side of the ABL and the EUMM staff, there are on average 10 detentions per month on the South Ossetian/Tskhinvali Region side of the ABL for “illegally crossing the border”.⁷⁵ The table below shows the number of detentions for crossing the ABL as recorded by the Georgian authorities. These figures are limited to detentions for crossing the ABL from Tbilisi-controlled territory, as the Georgian authorities do not have regular access to information on detention of those attempting to cross the ABL from South Ossetian/Tskhinvali Region and Abkhazian side.

Year	South Ossetia/Tskhinvali Region	Abkhazia
2008	7	13
2009	79	91
2010	77	114
2011	140	84
2012	108	192

⁷⁴ EUMM, The EUMM Monitor, Issue 4, April 2017, available at https://eumm.eu/data/file/5774/The_EUMM_Monitor_Issue____April_____ENG.M1UBLiudw.PDF

⁷⁵ Amnesty International's interview with locals along the Georgian controlled side of the ABL, March, July 2018; Interviews with Georgian authorities, Tbilisi, March 2018. The EUMM reports that since the beginning of 2018 there have been at least 650 'Hotline activations' concerning cases of civilians detained for crossing the ABL, see The EUMM Monitor Issue 7, October 2018

2013	139	393
2014	142	375
2015	163	336
2016	134	193
2017	126	52
2018	100	28

The South Ossetia/Tskhinvali Region de facto authorities' own statistics reveal much higher numbers. For example, according to the head of the de facto National Security, in 2016, 549 people were detained for "violation of [the] border regime". Most of them, 325, were "South Ossetian citizens" (presumably, ethnic Ossetians living in South Ossetia/Tskhinvali Region who tried to cross into the Tbilisi-controlled side of the ABL), 133 were "Georgian citizens" (presumably residents in Tbilisi-controlled territory trying to cross into South Ossetian/Tskhinvali Region side of ABL), and 23 were Russian and foreign citizens.⁷⁶

The statistics released by South Ossetia/Tskhinvali Region show that "borderization" is affecting not only ethnic Georgians, but also ethnic Ossetians who reside in South Ossetia/Tskhinvali Region and try to access Tbilisi-controlled territory for various reasons. While Amnesty International has been unable to speak directly to ethnic Ossetians who were detained while trying to cross into Tbilisi-controlled territory, these reported detentions were consistent with information received by Amnesty International in interviews with ethnic Georgians who live along the Georgian controlled side of the ABL and who still maintain contacts with ethnic Ossetians in South Ossetia/Tskhinvali Region. One example of this was given by a 63-year-old resident of the village of Nikozi in Tbilisi-controlled territory. He recalled in an interview with Amnesty International how Russian servicemen detained an ethnic Ossetian for four days in 2017 after he had attempted to cross into the Tbilisi-controlled side of the ABL to search for his cattle. This Nikozi resident spoke to the detained Ossetian through the barbed-wire fence that cuts through their farms after he had been released.⁷⁷

⁷⁶ South Ossetian State News Agency, available at <http://cominf.org/node/1166510411>

⁷⁷ Amnesty International's interview with locals in Nikozi, March 2018

RUSSIAN INSTALLED FENCE ON THE SOUTH OSSETIAN/TSKHINVALI REGION ABL NEAR THE VILLAGE OF DVANI AS SEEN ON SATELLITE IMAGERY, 2017



Some of the interviewees from the Tbilisi-controlled side of the ABL with South Ossetia/Tskhinvali Region told Amnesty International about suddenly being ‘abducted’ – in their words – by Russian servicemen while going about their daily tasks, such as trying to cultivate their land, herding cattle or gathering firewood without crossing any marked part of the ABL. The EUMM also reported de facto South Ossetian/Tskhinvali Region forces crossing into the Tbilisi-controlled territory to detain individuals.⁷⁸

⁷⁸ Amnesty International’s interview with EUMM staff, Tbilisi, March 2018, see also the U.S. Department of State, Georgia 2016 Human Rights Report, 2017, available at <https://www.state.gov/reports/2016-country-reports-on-human-rights-practices/georgia/>

According to data released by the Border Service of the Russian Federation, the number of detentions on the ABL with Abkhazia between 2009 and 2016 totalled 14,000,⁷⁹ most of whom have been ethnic Georgians.⁸⁰ Ethnic Georgians of the Gali district regularly cross into Tbilisi-controlled territory and many have tried to cross the ABL outside the crossing points due to lack of required documentation and closure of additional crossing points.⁸¹

According to international monitors and residents near the ABL Amnesty International spoke to, persons found in violation of the “border regime” in South Ossetia/Tskhinvali Region and Abkhazia are typically fined and detained under administrative penalty legislation (for repeated offences criminal charges might be filed, resulting in fines or two years’ imprisonment), then released after paying a fine. These cases are also examined by local de facto courts, but in most cases the detained civilians are not brought to the court and the fine is levied without a hearing. Most of those detained in South Ossetia/Tskhinvali Region are released after paying a fine of RUB 2,000 (USD 30).⁸² In Abkhazia the fine is much larger, often reaching RUB 15,000 (USD 232) or more. In the case of criminal charges for repeated violations Abkhaz de facto legislation prescribes fines from 30,000 (USD 464) to 60,000 (USD 928) RUB.⁸³ Gali residents told Amnesty International that paying such a hefty fine, often more than RUB 15,000, is beyond their financial means. Many families end up borrowing money to cover the fine, which adds further to their declining standard of living.

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”.⁸⁴

A 34-year-old farmer from the same village who spoke to Amnesty International had been detained twice for a few days for “illegally crossing the border”, in 2014 and 2017. He alleged that he was beaten by members of the South Ossetian/Tskhinvali Region forces on both occasions. Several other interviewees also alleged being subjected to beatings and other forms of ill-treatment during detention, such as being held in poor conditions in the basements of Russian bases where detained civilians are usually first transported to.

According to the Georgian authorities, the ill-treatment of detained civilians by representatives of the de facto authorities in South Ossetia/Tskhinvali Region is common, including cases in which those detained were severely beaten and sustained serious injuries, including head injuries, which required hospitalization.⁸⁵ The Georgian Public Defender (Ombudsperson) has also reported poor conditions in detention centers in South Ossetia/Tskhinvali Region based on the testimonies of former detainees, expressing concerns regarding cases of verbal abuse and limited access to food and drinking water.⁸⁶

Amnesty International wrote to the Russian and de facto authorities in July 2018 to enquire about detentions at the ABL and allegations of ill-treatment in detention, but had received no response by the time of the publication.

Under international law, Russia is responsible for implementing measures to ensure respect and protection of the rights of those seeking to cross the ABL in South Ossetia/Tskhinvali Region and Abkhazia, in particular

⁷⁹ ‘Border Service of Russia’s Federal Security Service celebrates the 7th anniversary in Abkhazia’, 29 April 2016, Apsnypress (in Russian), available at: <http://www.apsnypress.info/news/pogranupravlenie-fsb-rossii-v-abkhazii-prazdnuet-sedmuyu-godovshchinu-so-dnya-obrazovaniya/>; Russian Border Guards Celebrate Seven Years since Establishment’, 2017, Juznaia Slujba Novosteih (in Russian), available at <https://yugsn.ru/pogranupravlenie-fsb-rossii-v-abkhazii-prazdnuet-sedmuyu-godovshhinu-so-dnya-obrazovaniya/>

⁸⁰ Public Defender’s (Ombudsperson) Office of Georgia, Submission to the Office of the High Commissioner for Human Rights (OHCHR), pursuant to Human Rights Council resolution 34/37 entitled “Cooperation with Georgia”, available at <http://www.ombudsman.ge/uploads/other/4/4732.pdf>

⁸¹ Amnesty International’s interviews with ethnic Georgians of Gali district, 2018

⁸² Art. 190 of the de facto Administrative Code of Abkhazia

⁸³ Art. 324 of the de facto Criminal Code of Abkhazia

⁸⁴ Rehabilitation Center for Victims of Torture, RCT applied to the Prosecutor of the International Criminal Court, 2018, available at <http://empathy.ge/en/on-march-9-2018-the-rctempathy-applied-to-the-prosecutor-of-the-international-criminal-court-ms-fatou-bensouda-requesting-extension-of-scope-of-investigation-on-russiangeorgian-war-2008/>

⁸⁵ Statement of the Delegation of Georgia at the 2016 OSCE Human Dimension Meetings – HDIM, 2016, available at: <https://www.osce.org/odihr/271471?download=true>

⁸⁶ Public Defender’s (Ombudsperson) Office of Georgia, Submission to the Office of the High Commissioner for Human Rights pursuant to Human Rights Council resolution 34/37 entitled Cooperation with Georgia, available at <http://www.ombudsman.ge/uploads/other/4/4732.pdf>

liberty and security of the person and the prohibition of torture and other ill-treatment.⁸⁷ Agreements on “border” controls between Russia and the de facto authorities of South Ossetia/Tskhinvali Region and Abkhazia cannot be used as a justification to violate the human rights of local residents. Under international humanitarian law, the civilian population’s protection under the law of occupation cannot be curtailed by any agreement or other arrangement between the occupying power (in this case Russia) and the authorities of the occupied territory (be it the de facto or the de jure authorities).⁸⁸

Russia as a state party to the ICCPR, ECHR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is obliged to ensure the absolute prohibition of torture and other ill-treatment on territories under its control, including in South Ossetia/Tskhinvali Region and Abkhazia and effectively investigate all such allegations and bring perpetrators to justice.

⁸⁷ In case of Russia this responsibility derives from the 1907 Hague Convention (IV) on the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land as well as the Fourth Geneva Convention of 1949 relative to the Protection of Civilian Persons in Time of War

⁸⁸ Art. 47, Geneva Convention IV

7. RIGHT TO ADEQUATE STANDARD OF LIVING

“Every year I used to harvest more than a hundred boxes of apples from my orchard and sell it. The profit was enough for my family to survive. Since 2017 I cannot access my garden. Russians installed a ‘state border’ sign there. I still pass by sometimes to take a look at my apple trees through the fence.”



Amiran Gugutishvili – a 71-year old resident in the village of Gugutiantkari near the ABL with South Ossetia/Tskhinvali Region shows Amnesty International delegates his orchard that he lost access to because of “borderization” in 2017. This further worsened his family’s economic situation, which has never recovered from their house being burnt down during the Russian-Georgian war in 2008.

In March 2018 Amnesty International delegates interviewed more than 100 residents of different villages along the Tbilisi-controlled side of the ABL. The interviewees told Amnesty International that their standard of living had significantly worsened since “borderization” began in 2009 and intensified in 2013. “Borderization” has negatively affected their standard of living primarily in two ways. Firstly, it has deprived locals of access to their pastures, farmlands, orchards, woodlands and sources of water, cutting them off from what was the main source of their food and livelihoods. Secondly, it has led to the closure of official crossing points with South Ossetia/Tskhinvali Region and Abkhazia that were important sources of income because of the active cross-ABL trade.

Interviewees living near the South Ossetian/Tskhinvali Region ABL said that people are leaving the villages because of the worsening social and economic and security situation. Many complained that most young people have left for Gori or Tbilisi, leaving mostly elderly people. The interviewee demographics also reflected this as the vast majority of residents interviewed by Amnesty International at the South Ossetian/Tskhinvali Region ABL were middle aged and elderly.

7.1 ACCESS TO LIVELIHOODS - LOSS OF AGRICULTURAL LANDS

The main source of income for the villages along the ABL was livestock and farming.⁸⁹ The local population traditionally used crops to feed their own families and sold the extra yield.⁹⁰ Many had cattle and used to sell their dairy products in local markets both in Tbilisi-controlled territory and South Ossetia/Tskhinvali Region and Abkhazia.⁹¹ Losing access to their agricultural lands near the ABL has weakened the local population’s already poor social and economic conditions, negatively impacting on the right to an adequate standard of living.

Georgia is not a high-income country, with 20% of the population estimated to live below the national poverty line.⁹² Poverty is more prevalent in rural areas,⁹³ and this is especially true for the region through which the South Ossetian/Tskhinvali Region ABL cuts. This area is regarded as the poorest part of the country, with 59% of the population living below the poverty line.⁹⁴

Local villagers told Amnesty International that they lost access to their pasturelands, farmlands, and woodlands as the Russian servicemen set up barbed wire fences and trenches on their lands. The process started without prior consultation or, in many cases, without warning; and the owners of the affected land did not receive any compensation.⁹⁵

In each of the villages visited by Amnesty International delegates along the South Ossetian/Tskhinvali Region ABL,⁹⁶ locals showed the delegates from a distance the lands that used to belong them before the fences were constructed. The lands are now separated from the villages with barbed wire, trenches or fences. There are signs installed by the Russian officers stating in English and Georgian that entry to the territory is

⁸⁹ The World Bank study, Georgia Poverty Assessment, 2009, available at <http://documents.worldbank.org/curated/en/132471468244171912/pdf/444000ESWOP1071C0Disclosed041281091.pdf>

⁹⁰ For example, the study by the Danish Refugee Council reported in 2013 that in the village of Ergneti near the South Ossetian/Tskhinvali Region ABL locals would sell 80 percent of vegetables at markets and only 20 percent was kept for self-consumption, available at <https://drc.ngo/media/1181268/socio-economic-assessment-of-ergneti-village-2013.pdf>

⁹¹ Interviews with the locals living near the ABL, March 2018; see also, the World Bank study, Georgia Poverty Assessment, 2009, available at <http://documents.worldbank.org/curated/en/132471468244171912/pdf/444000ESWOP1071C0Disclosed041281091.pdf>

⁹² Asian Development bank, Poverty in Georgia, available at <https://www.adb.org/countries/georgia/poverty>

⁹³ The World Bank study, Georgia Poverty Assessment, 2009, available at <http://documents.worldbank.org/curated/en/132471468244171912/pdf/444000ESWOP1071C0Disclosed041281091.pdf>. This study estimates that rural Georgia accounts for 59% of the total poor and 69% of extreme poor in the country.

⁹⁴ The World Bank study, Georgia Poverty Assessment, 2009 (general trends remain the same now, with Shida Kartli one of the poorest regions of Georgia – see World Bank statistics from 2013, at the Disaster Risk Finance Country Note: Georgia, page 8 at <http://documents.worldbank.org/curated/en/929561510329276686/pdf/121242-WP-P155421-PUBLIC-32p-DRFIGeorgiaDiagnosticWeb.pdf>)

⁹⁵ Amnesty International’s interview with locals along the ABL, March 2018

⁹⁶ Dvani, Nikozi, Ergneti, Gugutiantkari, Tsitelubani and Khurvaleti

prohibited. The local farmers have cultivated or used these lands as pastures adjacent to their houses for decades, many having documents proving their titles.

There are no comprehensive statistics available as to how many families lost how much land. The Georgian authorities told Amnesty International that, since the beginning of “borderization”, from 800 to 1,000 families in total had lost all or partial access to farmlands, pasturelands and woodlands that they had rights to either as private property (mostly farmlands) or as communal village land (mostly pasturelands and woodlands) near the ABL with South Ossetia/Tskhinvali Region.⁹⁷ Residents of villages near the ABL with South Ossetia/Tskhinvali Region told Amnesty International that from 10 to 50 hectares of pasture or farmlands per village have been seized by the Russian border guards in the process of “borderization” since 2011. In 2017, the Public Defender (Ombudsperson) of Georgia documented that in just one village, Jariasheni near the South Ossetian/Tskhinvali Region ABL, out of 138 families, 60 have lost access to at least some of their agricultural lands because of the “borderization”.⁹⁸

Locals in the villages affected complained that they had had to sell their cattle since the Russian forces had taken their pasturelands away.⁹⁹ This further negatively affected already poor villages, as there is hardly any alternative to a farming-based economy in those areas.¹⁰⁰

In the village of Tsitelubani, Amnesty International was told that each family previously possessed five to six dairy cows. They used to sell milk and dairy products from the cows as their main source of income. However, in 2015, since the Russian forces took their lands near the village (around 50 hectares, mostly pasture lands but including a smaller shares of arable land), the locals have had to sell the cows. Families are currently without any income, many of them merely surviving on Georgian government assistance for those falling below the poverty line. This assistance generally amounts to between 10 (USD 4) and around 60 GEL (USD 24) per person per month; if the village is included in the so-called mountainous area list¹⁰¹, then an additional 20% is added. Tsitelubani residents told Amnesty International that this is less than their previous income from selling dairy products. Not all families in these areas qualify for the financial assistance.¹⁰²

A farmer from the village of Gugutiantkari told Amnesty International that he had lost a hectare of an orchard, with apple trees, and he is now totally dependent on government assistance. Previously he would harvest, on average, 50 tons of fruit from the land and sell it, and the income was sufficient for the family to get through the winter. He has not received any compensation for the lost land and income, and remains unable to find any alternative source of income. The government assistance is far less than that he could obtain through his previous farming.

Local residents are not only deprived of access to agricultural lands that have ended up on the other side of the ABL, but also to the lands adjacent to the ABL, due to their fear of abductions (to use their own words) by Russian servicemen who regularly cross into the Tbilisi-controlled side.¹⁰³ 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 Ossetia/Tskhinvali Region, in 2016 and 2018 respectively.¹⁰⁴

There have been some attempts to broker local access arrangements. In 2011 in the village of Kveshi, an informal gentleman’s agreement was reached between South Ossetia/Tskhinvali Region representatives, Russians and the Tbilisi authorities that locals from the Tbilisi-controlled side would be able to access their farmlands that had ended up on the other side of the ABL. However, according to Georgian authorities the

⁹⁷ Amnesty International’s interview with the representative from the Georgian State Security Service, March 2018

⁹⁸ Public Defender (ombudsperson) of Georgia, Special report on conflict affected population, 2017, <http://www.ombudsman.ge/uploads/other/4/4524.pdf>

⁹⁹ Amnesty International’s interview in Tsitelubani, Ergneti and Khurcha, March 2018

¹⁰⁰ Amnesty International’s interview with the residents of villages near the South Ossetian/Tskhinvali Region ABL, March 2018. The villages near the South Ossetian/Tskhinvali Region ABL are one of the poorest in Georgia. See the World Bank Study, Georgia Poverty Assessment, 2009, available at <http://documents.worldbank.org/curated/en/132471468244171912/pdf/444000ESWOP1071C0Disclosed041281091.pdf>

¹⁰¹ In Georgia this list confers on its residents additional social and economic benefits, such as 20% higher pensions and social benefits and waiver of income and property tax

¹⁰² Amnesty International’s Interview with Tsitelubani residents, March 2018

¹⁰³ EUMM staff also confirmed with Amnesty International cases of detentions by the Russian border guards or South Ossetian forces on the Tbilisi-controlled side of the ABL fences/trenches

¹⁰⁴ Interviews with local farmers in Gugutiantkari, Nikozi and Khurvaleti. Those who died were Giga Otkhozoria, shot in 2016 by de facto Abkhaz border guards, and Archil Tatumashvili who died while in the custody of de facto South Ossetian/Tskhinvali Region police in 2018. The circumstances in both cases are disputed, with Georgian authorities rejecting the conclusions of investigations carried out by the de facto entities. According to the information provided by the Georgian authorities to Amnesty International, “the justice in the above cases of deprivation of life has not been served, as the de facto entities do not show the constructive spirit and refuse to cooperate within the IPRMs in a good faith”. See also Amnesty International, Public Statement, Georgia: Russia and De Facto Authorities Must Investigate Death of a Detainee in South Ossetia/Tskhinvali Region and Ensure the Body is Returned to His Family, March 2018, EUR 56/7997/2018, available at <https://www.amnesty.org/en/documents/eur56/7997/2018/en/>

South Ossetian/Tskhinvali Region de facto officials terminated this agreement in 2017. EUMM officials told Amnesty International that the Georgian authorities had approached the de facto officials and the Russian authorities at the IPRM discussions and suggested that Tbilisi officials provide a Georgian government-approved list of farmers who possessed lands on the other side of the ABL to allow them to access farmlands and pasturelands. This suggestion was rejected.¹⁰⁵

In the case of Abkhazia, loss of land was mentioned by the interviewees only in the village of Khurcha. Since the ABL between Abkhazia and Tbilisi-controlled territory follows the River Enguri - a natural ABL marker - local villagers have lost less land than has been the case with South Ossetia/Tskhinvali Region. While Abkhazia is separated from the Tbilisi-controlled territory by a river, making it easy to understand where the ABL lays, the South Ossetian/Tskhinvali Region stretch of the ABL zigzags around and cuts through villages, meaning that often even locals are unaware where the “border” runs.

As observed by Amnesty International delegates, the village of Khurcha has been left without any pasturelands, and is surrounded by fences, except for the narrow opening that connects the village to Tbilisi-controlled territory. Some families in Khurcha also reported losing access to five hectares of hazelnut plantations (the most lucrative farming industry in these parts). Locals complained to Amnesty International that their cattle often end up on the other side of the ABL and are then lost because they cannot retrieve them; those who try risk detention.

All these problems are compounded by the fact that those who lose their lands cannot find alternatives, because of a lack of available land. According to the Georgian Statistics Office data of 2009, the total area of land in Shida Kartli (a region of Georgia that includes areas effected by “borderization” of the South Ossetian/Tskhinvali Region ABL) is 69,425 ha, of which 56,682 ha is in private ownership and 95% of the remaining non-private lands (or 12,116 ha) had already been leased by the state.¹⁰⁶ Only a few of the residents interviewed told Amnesty International that they had been offered alternative farmlands by the Tbilisi authorities, and even then they declined since the offered plots were further from their villages than their original lands and lacked easily accessible water.

7.2 ACCESS TO LIVELIHOODS - RESTRICTIONS ON CROSS ABL TRADE

“Our village has become a dead end – like our lives.”

An 85-year-old resident of the village of Khurcha complained to Amnesty International that after the closure of the ABL crossing point with Abkhazia the village lost its role as a local trade hub negatively affecting the social and economic situation of its residents. The interviewee said some Khurcha residents decided to leave the village and relocate elsewhere in Tbilisi-controlled territory.

Closure of crossing points across the ABL with Abkhazia and South Ossetia/Tskhinvali Region has further eroded social and economic conditions, since, apart from losing access to the sources of food production, the livelihoods of the local population have also been negatively affected by the loss of access to the nearest markets, where locals traditionally sold their produce.

In Abkhazia, following the closure of most crossing points, transporting produce back and forth and local trade in the cross-border villages that previously existed has become more arduous due to the complicated procedures associated with getting crossing permits and the difficulty of travelling. Local interviewees claimed that small-scale trading – even though still very much happening over the Enguri crossing point at the ABL - has decreased overall since “borderization”.¹⁰⁷ When travelers are transporting agricultural goods from or to Tbilisi-controlled territory, de facto Abkhaz authorities require import and export duties if quantities are larger than for personal needs. These fees often change depending on a season or other

¹⁰⁵ Interview with the EUMM staff, March 2018; Interview with Georgian authorities, March 2018

¹⁰⁶ Georgian Statistics Office data cited in the Shida Kartli Regional Development Strategy by the Ministry of Regional Development and Infrastructure, 2013, available at http://www.mrdi.gov.ge/sites/default/files/shida_qartli_regional_development_strategy_2014-2024.pdf

¹⁰⁷ Amnesty International’s interviews with Gali residents in Zugdidi in March 2018

circumstances.¹⁰⁸ Residents near the Abkhazian ABL complained that border guards sometimes confiscate their crops either on spurious grounds related to import/export duties or purely arbitrarily.¹⁰⁹

A local from the Gali district village of Otobaia told Amnesty International that before the closure of the Orsantia-Meore Otobaia crossing she would spend around two GEL (USD 0.77) to travel to Tbilisi-controlled territory. Now she has to pay 12 GEL (USD 4.62) for each trip due to the increased time and distance one needs to cross via the only remaining crossing point on the river Enguri. Gali residents told Amnesty International that closure of crossing points and restrictions on freedom of movement further impoverished the ethnic Georgian population in Abkhazia, since they are now forced to purchase food and non-food products in Gali, where prices are significantly higher – sometimes double – those across the ABL in Tbilisi-controlled territory.¹¹⁰

ORSANTIA-MEORE OTOBAIA CROSSING POINT OVER THE BRIDGE ACROSS THE RIVER ENGURI WITH ABKHAZIA. THE CROSSING POINT WAS CLOSED IN 2017 AND THE BRIDGE HAS NOT BEEN USED SINCE.



The village of Khurcha on the Tbilisi-controlled side of the ABL with Abkhazia was an important local trade hub before “borderization”. Cafes, restaurants and shops were operating there and the local economy thrived. According to its residents, ethnic Abkhaz would often visit Khurcha to trade with Georgians and locals would earn most of their income through that. After the closure of the Khurcha ABL crossing the local economy declined and Khurcha villagers have lost the main source of their income.¹¹¹ Amnesty International delegates visited the village in March 2018, and observed permanently closed shops, cafes and restaurants near the now defunct crossing point to Abkhazia.

¹⁰⁸ EUMM, the EUMM Monitor, August 2016, available at https://eumm.eu/data/file/5667/The_EUMM_Monitor_Issue_____August_____ENG____Revised_March____.D_LEp9sXD.pdf

¹⁰⁹ Reported by locals from the Gali district to Amnesty International, March 2018

¹¹⁰ Amnesty International’s Interview with Gali residents; see also UN Secretary General, Status of Internally Displaced Persons and Refugees from Abkhazia, Georgia and the Tskhinvali Region/South Ossetia, Georgia, 2017, available at <https://reliefweb.int/sites/reliefweb.int/files/resources/N1712489.pdf>

¹¹¹ Amnesty International’s interview with Khurcha residents, March 2018

ABANDONED SHOPS AND CAFES IN THE VILLAGE OF KHURCHA, NEAR ABKHAZIAN ABL. BEFORE "BORDERIZATION" KHURCHA WAS A LOCAL CROSS-ABL TRADE HUB.



In South Ossetia/Tskhinvali Region, prior to the closure of Ergneti market, cross-ABL trade had been booming and was an important contributor to the local economy. Ergneti market had been an unofficial trading hub between South Ossetia/Tskhinvali Region and Tbilisi-controlled territory, which was closed by the Georgian government in 2004 in an attempt to crackdown on smuggling. According to the locals living near the ABL with South Ossetia/Tskhinvali region, they still managed to trade across the ABL after the closure of Ergneti market by carrying their agricultural products together with goods from other regions in Georgia to the regional capital Tskhinvali, and in some cases, via Tskhinvali to Russia. After the installation of barbed wire fences, locals complain that the cross-ABL trade died out, adding to the further isolation of the villages near the ABL line.¹¹²

Dozens of fruit farmers from Ergneti told Amnesty International that on average they now sell half the produce they used to since they are no longer allowed to engage in cross-ABL trade and access Tskhinvali market following the conflict in 2008 and the construction of fences. In a nearby village of Nikozi, up to 10 dairy farmers reported having lost their markets for selling yogurt, milk, cheese and other dairy products in Tskhinvali after the closure of the ABL. Both Nikozi and Ergneti are approximately three kilometers from Tskhinvali and the local farmers could previously cross and sell their produce locally every day, without the need for transport. In comparison, the current closest market is Gori which is 30 km away or Tbilisi, which is 100 km away, requiring additional time, transportation costs and logistical arrangements. Many subsistence farmers lack sufficient cash to pay for the transportation of their crops or produce.

¹¹² Amnesty International's interview with locals in Nikozi, March 2018

SOUTH OSSETIAN/TSKHINVALI REGION CAPITAL OF TSKHINVALI VISIBLE FROM THE GEORGIAN VILLAGE OF NIKOZI. BEFORE THE WAR IN 2008 AND “BORDERIZATION” NIKOZI FARMERS SOLD THEIR PRODUCTS IN TSKHINVALI – A MERE THREE KM AWAY



Akhalgori residents who returned to the district following their displacement during the 2008 war, have used the Mosabruni-Odzisi crossing point to engage in cross-ABL trade in agricultural and other food and non-food products that they transported from Tbilisi-controlled territory. These products were significantly cheaper than most of the products imported from Russia to South Ossetia/Tskhinvali Region. Residents living along the ABL and in Akhalgori interviewed by Amnesty International said that many ethnic Ossetians also used to go to Akhalgori to buy products transported from Tbilisi-controlled territory in order to sell them in Tskhinvali. Since January 2018 the de facto authorities have set up a “customs office” on the Mosabruni-Odzisi crossing point and imposed restrictions on Akhalgori residents’ transportation of goods. According to information available to Amnesty International, up to 50 kg of goods for personal use can be transported per month to South Ossetia/Tskhinvali Region. Goods beyond this limit need to be “declared” and a fee is imposed.¹¹³ Akhalgori residents interviewed by Amnesty International said that the opening of the “customs office” had reduced their income. They also feared it would result in higher prices for food and non-food products in the South Ossetia/Tskhinvali Region.

7.3 ACCESS TO LIVELIHOODS AND INTERNATIONAL LAW

The ICESCR, to which both Russia and Georgia are parties, makes it clear that state parties to the Covenant “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food... and to the continuous improvement of living conditions”.¹¹⁴ The Russian Federation, both directly and through the acts of the de facto authorities in South Ossetia/Tskhinvali Region and Abkhazia have violated their obligations under the ICESCR by effectively preventing the local population from generating a livelihood near the ABL.

¹¹³ Amnesty International’s Interview with Akhalgori residents, July 2018; also see Council of Europe’s Secretary-General, Consolidated Report on the Conflict in Georgia - 2017-18, available at <https://rm.coe.int/consolidated-report-on-the-conflict-in-georgia-october-2017-march-2018/16807b81cc> para. 53

¹¹⁴ Art. 11, ICESCR

It should also be noted that the actions of the Russian and de facto authorities may amount to forced evictions which are prohibited under international law.¹¹⁵ A forced eviction has been defined as “the permanent or temporary removal against their will of individuals, families and/or communities from *the homes and/or land which they occupy*, without the provision of, and access to, appropriate forms of legal or other protection” [emphasis added].¹¹⁶ It therefore includes both evictions from homes and farms, orchards and pastoral land. The fact that the Russian and de facto authorities arbitrarily deprived the local population of access to their farms, orchards and pasture lands in a process characterized by lack of consultation, adequate notice, compensation and/or provision of alternative productive land means that they have carried out forced evictions.¹¹⁷

According to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights,¹¹⁸ a state breaches its extraterritorial obligations wherever the harm caused in another country can be considered a “foreseeable result” of its conduct.¹¹⁹ For example, the obligation to respect access to adequate food, including not to deprive people of their existing access to food or food producing resources such as passing a law or administrative measures destroying people’s access to food or food producing resources, also applies extraterritorially.¹²⁰

According to the Maastricht Principles the Russian Federation has obligations to respect, protect and fulfil economic, social and cultural rights in Abkhazia and South Ossetia/Tskhinvali Region and the neighbouring territory under Tbilisi’s control based on the following criteria – all of which apply to the current situation:

- a) situations over which it exercises authority or effective control, whether or not such control is exercised in accordance with international law;*
- b) situations over which State acts or omissions bring about foreseeable effects on the enjoyment of economic, social and cultural rights, whether within or outside its territory;*
- c) situations in which the State, acting separately or jointly, whether through its executive, legislative or judicial branches, is in a position to exercise decisive influence or to take measures to realize economic, social and cultural rights extraterritorially, in accordance with international law.*

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.”¹²¹ 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.¹²² 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.

7.4 LACK OF SOCIAL AND ECONOMIC ASSISTANCE FOR THE POPULATION AFFECTED BY “BORDERIZATION”

Beginning in 2013, the Georgian authorities have implemented a set of social and infrastructure projects for the villages affected by “borderization”. This has included gasification and irrigation projects, farming subsidies and a free registration service for farmers.¹²³ Many of the villages along the Tbilisi-controlled side of

¹¹⁵ Committee on Economic, Social and Cultural Rights, General Comment 7, para 3

¹¹⁶ Committee on Economic, Social and Cultural Rights, General Comment 7, para 3

¹¹⁷ Committee on Economic, Social and Cultural Rights, General Comment 7, paras 15 and 16

¹¹⁸ The Maastricht Principles were issued on 28 September 2011 by 40 international law experts from all regions of the world, including current and former members of international human rights treaty bodies, regional human rights bodies, as well as former and current Special Rapporteurs of the United Nations Human Rights Council.

¹¹⁹ Art. 13, Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, 2011, available at https://www.etoconsortium.org/hc/en/main-navigation/library/maastricht-principles/?tx_drblod_pi1%5BdownloadUId%5D=23

¹²⁰ Committee on Economic, Social and Cultural Rights, General Comment 12, Right to adequate food (Twentieth session, 1999), U.N. Doc. E/C.12/1999/5 (1999), U.N. Doc. HRI/GEN/1/Rev.6 at 62 (2003).

¹²¹ Art. 54.2, Additional Protocol I to the Geneva Conventions Relating to the Protection of Victims of International Armed Conflicts; See also ICRC, Customary International Humanitarian Law, Vol.1: Rule 54

¹²² ICRC, Customary International Humanitarian Law, Rule 51f

¹²³ Amnesty International’s interviews with the resident of villages on the Tbilisi-controlled side of the South Ossetia/Tskhinvali Region ABL, March 2018

the ABL have been included in the list of mountainous villages, which in Georgia confers on its residents additional social and economic benefits, such as 20% higher pensions and social benefits and waiver of income and property tax.¹²⁴ Georgian authorities also note that hundreds of students from villages affected by “borderization” have received state funding for higher education, while several public schools have been renovated in the conflict affected zone.¹²⁵

Locals along the ABL complained to Amnesty International that the assistance from Georgia is insufficient and they feel “abandoned” by the central government in Tbilisi, describing themselves as “refugees within their homes”. Their main concern is unemployment and lack of income because of the loss of or reduction in subsistence-based farming resulting from the “borderization”, with the result that they can barely make ends meet. Affected farmers complained that the authorities in Tbilisi offered neither compensation nor adequate alternatives for the farms and pasturelands that had been seized by the Russian officers (as explained above, adequate alternatives were not offered because of the lack of such alternatives in the area). Local farmers do not have adequate resources to invest in farming and have limited access to bank loans because they live in high-risk areas. Some of the interviewees also mentioned that they had been deprived of additional monthly state support for being “socially vulnerable” as government officials told them they no longer satisfied the relevant criteria.¹²⁶ The interviewees told Amnesty International that they have been asking the authorities to introduce special, more flexible criteria for granting socially vulnerable status and assistance to the families affected by the “borderization”. Many residents also expressed concern about the lack of maintained roads linking villages to Gori and the rest of Georgia.

Returnees to Gali and Akhagori districts across the ABL retain the status of internally displaced people (IDP) in Georgia as the Tbilisi government does not consider their return as “safe and dignified” due to various restrictions they face in Abkhazia and South Ossetia/Tskhinvali Region.¹²⁷ This entitles them to IDP financial assistance (GEL 45, or USD 17, monthly per person) that can be collected in Tbilisi-controlled territory along with Georgian pensions (GEL 200, or USD 73, monthly per person).

According to the Georgian authorities, medical treatment costs in Tbilisi-controlled territory is fully covered for residents of South Ossetia/Tskhinvali Region and Abkhazia through the State Referral Programme¹²⁸ – a measure introduced in 2010 to support reintegration and reconciliation. This, however, excludes ethnic Georgians who live in the Akhagori district of South Ossetia/Tskhinvali Region and the Gali district of Abkhazia. They only have access to Georgia’s State Healthcare Programme, which does not cover the full costs of medical treatment. Gali and Akhagori residents complained to Amnesty International that they find it discriminatory to be excluded from the fully funded State Referral Programme when ethnic Abkhaz and ethnic Ossetians from Abkhazia and South Ossetia/Tskhinvali Region are entitled, considering that their own living conditions are already subject to various restrictive measures adopted by the de facto authorities. The Georgian authorities told Amnesty International that they plan to extend the State Referral Programme for Gali and Akhagori residents as well, but, as of the time of publication of this report, this has not been implemented.

While primary responsibility for the worsening social and economic rights of the local population rests with Russia, along with the de facto authorities, Georgia also has human rights obligations to which it must adhere when it comes to people under its jurisdiction. Georgia has ratified the ICESCR, which mandates that states parties to the Covenant “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food... and to the continuous improvement of living conditions”.¹²⁹ Article 2.1 of the ICESCR obliges Georgia to take steps to the maximum of its available resources to progressively achieve the full realization of the rights under the Convention. This entails obligations on Georgia to further increase the social and economic assistance available for the “borderization” effected farmers and conflict affected population generally, so that they can at least enjoy some form of adequate livelihood, including by addressing their current grievances.

¹²⁴ Georgian Law on Development of Mountainous Regions, 2015

¹²⁵ Amnesty International’s interview with the Georgian authorities, March 2018

¹²⁶ In Georgia, each family must individually satisfy strict financial and social criteria to be included in the database of socially vulnerable. Periodic assessments are conducted and the list is regularly updated.

¹²⁷ Interview with Georgian authorities, Tbilisi, March 2018

¹²⁸ As of 2019, the programme excludes diagnostic costs but covers the treatment costs entirely (information provided by the Georgian authorities)

¹²⁹ Article 11, ICESCR

8. RIGHT TO FAMILY LIFE

“Last time I saw my sister was five years ago. She lives so close – just five kilometres away - I can see her village from here, but we are separated by barbed wire.”

A 60-year-old resident of the village of Tsitelubani speaks with Amnesty International about the difficulties of visiting her sister, who has been married on the South Ossetian/Tskhinvali Region side of the ABL in a nearby village of Orchosani.

“Borderization” and restricted freedom of movement has negatively affected the right to family life as family members who ended up on different sides of the ABL find it hard, if not impossible, to visit each other.

A 60-year-old resident of a mixed Georgian-Ossetian village Tsitelubani in Tbilisi-controlled territory told Amnesty International that it had been five years since he last saw his sister, who is married and lives in the ethnic Ossetian village of Orchosani, which is only five kilometers across the ABL. He cannot cross into South Ossetia/Tskhinvali Region. The only way she can travel to see him is to undertake a 300 km journey through the Caucasus mountains via Vladikavkaz in Russia, then on to Tbilisi and from there to his village on the Georgian-controlled side of the ABL – a journey she cannot afford to make.

For those extended families who have ended up on different sides of the ABL in this region the only way to visit each other is for those on the South Ossetian/Tskhinvali Region side to take this extended journey, although the direct distance between houses in many divided villages across the ABL could be just a few hundred meters. Residents on the Tbilisi-controlled side of the ABL do not even have the option of travelling to the South Ossetian/Tskhinvali Region side of the ABL via Vladikavkaz in Russia, as, according to the Akhlagori residents the de facto officials would not allow locals in South Ossetia/Tskhinvali Region to invite their relatives from the other side of the ABL. Elderly people from mixed Georgian-Ossetian marriages who after “borderization” chose to remain in their homes in South Ossetia/Tskhinvali Region, are deprived of help and support from younger family members who had been living on the other side of the ABL or decided to move to Tbilisi-controlled territory after the 2008 armed conflict.¹³⁰

Tsitelubani residents told Amnesty International that before the installation of barbed wire and fences they used to go to the village of Orchosani to meet their relatives and extended family members almost daily. They explained that after the “borderization” some still managed to cross over the ABL covertly at night, sometimes resulting in their detention by the Russian or de facto officials.

Residents in the village of Nikozi said that they still try to maintain contact with neighbors and friends who ended up on the South Ossetian/Tskhinvali Region side of the ABL since 2011, and that when they see each other near the ABL they often initiate a conversation over a fence. However, the residents explained that if Russian border guards see ethnic Ossetians speaking to those on the Tbilisi-controlled side of the fence, they intervene and threaten them with detention.

¹³⁰ Amnesty International’s interview with residents near South Ossetian/Tskhinvali Region ABL, March 2018; Separation of family members and impossibility of family visits across the South Ossetian/Tskhinvali Region ABL has also been noted by the ICRC - Georgia/South Ossetia: two years after conflict, daily life still a struggle, 2010, available at <https://www.icrc.org/eng/resources/documents/interview/georgia-interview-060810.htm>

According to interviews with different sources both in Tbilisi-controlled territory and those from the Gali and Akhgori districts, prior to “borderization”, locals on both sides of the ABL maintained close extended family relations. Before the 2008 armed conflict, mixed Georgian-Ossetian families were common, and many villages across the ABL are still ethnically mixed. In Abkhazia, ethnic Georgians in Gali still maintain close links with Georgians living in Tbilisi-controlled territory and visit them often.

According to information available to Amnesty International, ethnic Georgians living in Tbilisi-controlled territory require officially-approved invitations to be able to visit their relatives in Gali district. Gali residents told Amnesty International that it takes around 10 days to have an invitation approved and it can cost up to 5,000 RUB (USD 73). However, such approvals are routinely refused without explanation and when issued they do not always guarantee entry to Abkhazia. Gali residents told Amnesty International that often the de facto Abkhaz authorities deny entry without providing a clear reason to the holders of the invitation. A displaced person from Abkhazia’s Gali region who lives in Tbilisi told Amnesty International that in July 2017 he was denied entry to Gali to see his dying grandfather who had suffered a heart attack even though he had secured the invitation beforehand. The interviewee explained that the de facto Abkhaz security officers stopped him at the Enguri Bridge crossing point after he presented the invitation. The officers told him they would have to wait for the call from Sukhumi for the final clearance. He waited for two days at the crossing point and when the call still had not arrived, he decided to turn back. No reasons were given for the denial of entry.¹³¹ The interviewee said he was never able to see his grandfather, who died shortly afterwards. Amnesty International delegates heard other cases like this when they spoke to the Gali district residents in March 2018 in the Zugdidi District.

Georgians who live in Gali and do not possess the necessary documents issued by the Abkhaz de facto authorities find it impossible to visit their relatives in Tbilisi-controlled territory, as without those documents they are either unable to leave Abkhazia for Tbilisi-controlled territory or unable to re-enter Abkhazia.¹³²

By prohibiting family visits across the ABL, the Russian Federation, as the country exercising overall effective control in Abkhazia and South Ossetia/Tskhinvali Region, including over the ABL, is failing its obligations under international human rights law and humanitarian law. According to international humanitarian law, Russia has the duty to at all times respect the right to family life of the local civilian population in Abkhazia and South Ossetia/Tskhinvali Region. In line with this, Russia has the obligation not to arbitrarily interfere in family visits across the occupation line.¹³³ Russia is also obliged under Article 8 of ECHR to respect everybody’s “private and family life” across all territory where it has effective control. The de facto authorities in Abkhazia and South Ossetia/Tskhinvali Region have a responsibility to not interfere in the enjoyment of the right to “private and family life” under the European Convention, which they have failed to do by preventing family visits across the ABL.

¹³¹ Amnesty International’s Interview with Z.T. in Tbilisi, June 2018

¹³² Interview with Gali district residents, March 2018

¹³³ Art. 27, Geneva Convention IV

9. RIGHT TO FREEDOM OF RELIGION AND THE RIGHT TO TAKE PART IN CULTURAL LIFE

“We have our parents and our ancestors buried there, why should we not be able to visit their graves?”

Khurvaleti residents near the ABL with South Ossetia/Tskhinvali Region who have lost access to the village graveyard since “borderization”

“Borderization” has also affected local civilians’ access to religious buildings and graveyards near the ABL with South Ossetia/Tskhinvali Region, infringing their right to freedom of religion and the right to take part in cultural life. Amnesty International delegates were told that villagers who try to visit churches and graveyards are often detained by the Russian servicemen.¹³⁴

Interviewees in the villages near the ABL with South Ossetia/Tskhinvali Region visited by Amnesty International complained that some of the historic churches in the region have ended up behind the barbed wire, with locals currently lacking any access to them.¹³⁵ These churches have spiritual importance for residents and they would often gather there for religious festivals according to the local tradition. According to information provided by the Georgian authorities, villagers along the South Ossetian/Tskhinvali Region stretch of the ABL have lost access to at least nine Georgian Orthodox churches which have ended up on the other side of the ABL.¹³⁶

Interviewees in the village of Khurvaleti told Amnesty International that they had lost access to the village cemetery which ended up behind barbed wire in 2013. Georgian authorities also report that locals have lost access to a cemetery in the village of Kveshi. In addition, eight village cemeteries across the South Ossetia/Tskhinvali Region stretch of the ABL have ended up next to the barbed wire fences and due to the

¹³⁴ Amnesty International’s interviews at the South Ossetian/Tskhinvali Region ABL, March 2018; Interviews with the EUMM staff, Tbilisi, March 2018; Interviews with the Georgian authorities, March 2018

¹³⁵ Lack of access to graveyards by locals along the South Ossetian/Tskhinvali Region ABL has also been noted by the ICRC – see Georgia/South Ossetia: two years after conflict, daily life still a struggle, 2010, available at <https://www.icrc.org/eng/resources/documents/interview/georgia-interview-060810.htm>

¹³⁶ Church of the Virgin Mary in Bershueti; Lomisa St. George church in Kirbali, St. George church in Adzvi, St. George church in Kere, Kviratskhoveli church in Kere, Lomisa St. George church in Mejvriskhevi, Ikorta church of the Archangel in Kveshi, church of Saint John the Baptist in Dvani, church of Karis Sakdari in Sakorintlo

threat of detentions by the Russian border guards and South Ossetian/Tskhinvali Region forces local people are advised not to visit them. These graveyards are family burial sites which would normally be regularly visited as part of the local religious tradition.

Under international humanitarian law, the Russian Federation has the duty to at all times respect religious convictions, and manners and customs of the local civilian population;¹³⁷ this includes the obligation to allow civilians to visit shrines, churches and graveyards. Russia as a state party to the ICCPR has the obligation to ensure that everyone within its jurisdiction has the right to manifest his or her religion or belief in worship and observance subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.¹³⁸ As a state party to the ICESCR, Russia also has the obligation to recognize the right of everyone to take part in cultural life.¹³⁹ The Committee on Economic, Social and Cultural Rights has made clear that culture for the purposes of Article 15(1) of ICESCR includes religion or belief systems and rites and ceremonies.¹⁴⁰

¹³⁷ Art. 27, Geneva Convention IV

¹³⁸ Art. 18, ICCPR

¹³⁹ Art. 15, ICESCR

¹⁴⁰ Committee on Economic, Social and Cultural Rights, General Comment 21, para 13

10. CONCLUSIONS AND RECOMMENDATIONS

“Borderization” has divided communities, separating residents from each other and from the land that supports them. Villagers – some living in the poorest parts of the country - have lost access to pastures, farmland and orchards, to sources of water in summer, and firewood for winter. They are cut off from relatives, sources of income and sites and buildings important for their cultural and social life. Each year hundreds are detained arbitrarily while trying to cross the ABL.

The constraints “borderization” places on freedom of movement further negatively impact on a range of other rights. States have the primary obligation to respect, protect and fulfil human rights. But other actors and entities also have responsibilities to respect human rights, particularly when they directly impact individuals’ enjoyment of human rights. Amnesty International is therefore making the following recommendations to authorities in the Russian Federation and Georgia, as well as to the de facto authorities in Abkhazia and South Ossetia/Tskhinvali Region. The international community also has a role to play in monitoring and upholding the observance of human rights in the region.

10.1 RECOMMENDATIONS

Amnesty International calls upon the Russian government to:

Fully respect its obligations under international human rights and international humanitarian law; and in particular:

Ensure that the Russian forces and the de facto authorities present in South Ossetia/Tskhinvali Region and Abkhazia fully comply with international humanitarian law and respect, protect and fulfil the human rights of everyone in the territories under their overall effective control, without discrimination, including on the basis of their ethnicity, citizenship, language or political affiliation; and specifically:

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;

As an immediate measure, review and relax the regime introduced for crossing the ABL, dropping all travel restrictions that are not dictated by genuine security and military considerations, to ensure that the economic, social and cultural rights of the populations either side of the ABL are not disproportionately affected any further;

Assess the human rights and humanitarian impact of the existing crossing regime and of the infrastructure put in place along the ABL, commit to ensuring compliance of these measures with Russia’s obligations under human rights and international humanitarian law, and consistently and demonstrably implement this commitment;

Ensure prompt, independent, thorough and impartial investigations into the allegations of torture and other ill-treatment of individuals detained during or after crossing the ABL into the territory under effective Russian control, identify anyone reasonably suspected of being responsible and, wherever there is sufficient

admissible evidence, ensure that they are brought to justice in proceedings which comply fully with international fair trial standards;

Provide prompt and full reparation to all victims of human rights violations and of violations of international humanitarian law committed by Russian forces in territories under their overall effective control.

Amnesty International calls upon the Russian government and the relevant de facto authorities in South Ossetia/Tskhinvali Region and Abkhazia, to:

Reopen the closed crossing points over the Abkhazian ABL and ensure operation of crossing points across the South Ossetian/Tskhinvali Region ABL;

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, and protect anyone deprived of their liberty from torture and other ill-treatment;

Lift arbitrarily restrictions on cross-ABL travel that adversely affect the enjoyment of economic, social and cultural rights by the local population on either side of the ABL;

Ensure that local residents who, as a result of “borderization”, have lost access to agricultural land that they own or legitimately use are able to regain free access;

Abstain from any further actions which may result in the loss of agricultural lands and/or access to them for the local civilians who depend on them for their livelihood;

Respect the right to family life, and refrain from actions that violate it, including arbitrary restrictions in relation to family visits across the ABL;

Respect the right to freedom of religion and the right to take part in cultural life, and refrain from actions that violate it, including arbitrary restrictions in relation to cross-ABL visits to religious sites and graveyards;

Fully co-operate with all international human rights and international humanitarian law monitoring initiatives, including:

Allow and facilitate full and unimpeded access to international monitors in the territories under your control, and in particular:

Allow and facilitate access for and work in the territories under your control by the currently existing EU Monitoring Mission.

Amnesty International calls upon the Georgian government to:

Provide relevant financial and social support to those families whose social and economic rights have been negatively impacted because of the “borderization”, in particular, those, who have lost access to their farmlands, orchards and pasturelands as a result of the “borderization”;

Extend the State Referral Programme to ethnic Georgians from Gali and Akhagori districts so that they can also enjoy the same entitlement to free healthcare like others from South Ossetia/Tskhinvali Region and Abkhazia;

Explore and make best use of every appropriate opportunity, whether formal or informal, to engage with all stakeholders concerned to identify, discuss and seek to resolve collaboratively all human rights issues and concerns caused by, or arising as a result of, the “borderization”.

Amnesty International calls upon the international community, including the UN, EU, CoE and the OSCE to:

Explore every available opportunity for effective monitoring of the human rights situation on the South Ossetian/Tskhinvali Region and Abkhazian sides of the ABL, including contributing their respective expertise and other available resources to facilitate international monitoring of the human rights situation in the relevant territories and investigation of and reporting on the violations documented;

Use every available opportunity to address human rights violations arising as a result of “borderization”, and lack of international access to the relevant territories for international human rights monitors, with the Russian and Georgian authorities in bi- and multilateral fora.

Amnesty International calls upon the EU to:

Continue the operation of the EU Monitoring Mission in Georgia;

Renew their request to the Russian Federation to provide the EU Monitoring Mission in Georgia with access to South Ossetia/Tskhinvali Region and Abkhazia.

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BEHIND BARBED WIRE

HUMAN RIGHTS TOLL OF “BORDERIZATION” IN GEORGIA

Efforts by the Russian forces and de-facto authorities of the breakaway regions to “securitize” the administrative boundary lines between South Ossetia/Tskhinvali Region, Abkhazia, and the rest of the Georgian territory after the armed conflict in August 2008 have had a long-lasting negative human rights impact on the communities living there.

Communities are separated from each other as a result, and many of their members are cut off the land that supports them. Villagers – some living in the poorest parts of Georgia – have lost access to their traditional pastures, to farmland and orchards they own, and to sources of water in summer and firewood for winter. They are cut off from relatives and have lost important sources of income. Their cultural and social life is affected, with many locals now unable to visit their extended families, their ancestors’ graves and their traditional churches. Each year hundreds of civilians are detained arbitrarily by the Russian military and the forces of the de facto authorities while trying to cross the administrative boundary lines.

The Russian authorities and the de facto authorities of the breakaway regions must respect human rights and international humanitarian law. They must open the previously closed crossing points and relax movement and related restrictions for locals who live next to the administrative line. If any restrictions on freedom of movement are applied they must be strictly necessary, proportionate and dictated by genuine security and military considerations.