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Report submitted by

THE GEORGIAN YOUNG LAWYERS' ASSOCIATION



(Report submitted in July 2010)

The present report is submitted by the Georgian Young Lawyers' Association (*hereinafter* GYLA). The report concerns human rights situation on the occupied territories of Georgia and rights of persons affected by August conflict of 2008. GYLA represents interests of the hundreds of victims of war both at the domestic and international level. The information submitted in this report is mainly based on the first hand information. GYLA remains hopeful that the recommendations presented in the present report will be considered by the government and consequently will be dully reflected in the legislation and administrative practices.

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I. INTRODUCTION

1. The present report is submitted by the Georgian NGO, the Georgian Young Lawyers' Association. GYLA provides free legal aid for victims of armed conflict of 2008, particularly through litigation at the European Court of Human Rights. In addition, GYLA represents the interests of victims before the national authorities for the purposes of facilitation effective and thorough investigation of crimes committed during the armed conflict and afterwards. GYLA also provides legal assistance to internally displaced persons from Abkhazia and South Ossetia.

II. BACKGROUND INFORMATION ON ABKHAZIA AND TSKHINVALI REGION

2. Situation on the territories of breakaway regions of Abkhazia and Tskhinvali continuous to be particularly alarming in terms of human right protection. Since 1990s, de facto authorities in the both separatist regions, supported by several thousand occupying Russian troops, remained outside the control of the central government. In August 2008 Russia officially recognized the independence of both territories.

3. Currently these territories are isolated from the outside world and are not accessible for either international organizations or media. None of the international organizations, except for the International Committee of the Red Cross, have activities in the area. There are no effective mechanisms for monitoring, protecting and prevention violation of human rights in these regions.

4. Pursuant to international law, despite the fact that the Georgian Government is unable to exercise *de facto* jurisdiction over the territories of Abkhazia or Tskhinvali region, Georgia remains legally responsible for positive obligations in terms of protection of human rights in these regions.

III. INTERNALLY DISPLACED PERSONS

6. According to the Ministry for Refugees and Accommodation, before the August 2008 armed conflict there were approximately 235,000 IDPs from conflicts of 1992 and 1993. Approximately 30 000 persons were not able to return to their homes after the five days long war with the Russian Federation, thus total number of IDP equaling to 265,000 persons.

IDP Status for the persons displaced in 2008

7. The process of the registration of the persons displaced in August 2008 is not finalized yet. Legal protection mechanisms and right to social benefits are directly linked to the formal recognition of the displaced persons as IDPs under the national legislation. The IDPs who are not residing in IDP settlements and at the same time do not possess formal status are not entitle to enjoy social benefits. Particularly, neither they receive IDP status linked allowances, nor social assistance and free health insurance as the last is only anticipated for those who are accommodated in the newly established IDP settlements.

Recommendation: All displaced persons should receive equal treatment and legal guarantees from the Government. The formal status should be provided to all displaced persons in order to enable IDPs enjoy their rights without any discrimination.

Resettlement and Privatization

8. The National State Strategy elaborated by the Government of Georgia focuses on providing durable housing solutions to the IDPs displaced in 1990s. The most considered housing solutions are privatization of living space occupied in IDP collective centers and offering to IDP families rehabilitated state owned buildings as an alternative shelter, which also might be privatized later. The durable housing to IDPs provides a step forward towards their integration, however, it is to mention the voluntary nature of resettlement and emphasize that housing opportunities should be offered in a non-discriminatory manner, giving priority to vulnerable cases. The IDPs shall be able to make informed choice about durable solutions offered to them and the Government should create an environment where IDPs can participate in the planning and management of their resettlement. In this regard, it is essential creation of transparent procedures and receiving sufficient information on this.

9. The privatization process started in 2009, however, the process has been accompanied with number of procedural and normative problems. Taking into account the problems revealed in this respect it is recommended to carry out following measures:

- ***Procedures for correction privatization contract should be elaborated. Meanwhile, information on these procedures should be available to the IDPs;***
- ***The IDP families which refused privatization of living space in collective centers should be informed on alternative housing solutions. This is essential in order to enable IDPs make well-informed choice on their resettlement;***
- ***Mechanism should be established for solving cases related to those families that are residing in collective centers without registration. It is necessary to establish what conditions should be met for obtaining permission for privatization;***
- ***The list of collective centers intended for privatization should be published in order to enable IDPs to take informed choice regarding housing solution and plan long and short-term development perspectives of their families;***
- ***Prior to the beginning of repair-rehabilitation works, IDPs living in collective centers must be informed about dates, so that they have an opportunity to move their belongings and prepare living areas for starting repair-rehabilitation works. In case of building leaving necessity, IDPs should be informed about their temporary place of residence.***

Evictions from collective centers

10. The Law of Georgia on Internally Displaced Persons defines the exceptional cases when the IDPs may be evicted from collective centers. However in practice, there are cases when the MRA permits owners to carry out eviction instead of offering IDPs alternative housing. For example, the owner of the collective center located in Tvalchrelidze Str.#2 after obtaining permission from the MRA, requested eviction of IDP families who had lived in the center for more than 10 years. The residents were given 5 days for moving to the alternative shelter, which was a former administrative building of one of the state agencies and not appropriate for living. The MRA started rehabilitation work but for the moment of eviction it was not finalized and IDPS had to seek shelter among friends and relatives for several weeks.

Recommendation:

- ***The resettlement process should be carried out in accordance with standards for adequate living conditions***

Compensation instead of houses for the newly displaced IDPs

11. The IDPs displaced in 2008, were given possibility to receive 10000 USD as an alternative housing solution. Many IDP families preferred receiving compensation instead of houses provided in the new resettlements. Considerable number of these families has not received compensation yet due to unexplained reasons.

Healthcare

12. Access to free medical services remains a problematic issue for the internally displaced persons. This is partly solved for those who are integrated in state social program. In accordance with the existing legislation, they are entitled to a free health insurance. However, persons displaced in 2008, who are not residing in IDP settlements and at the same time do not possess formal IDP status are not entitled to receive social assistance and linked free health insurance.

13. Another revealed problem is that the IDPs are not aware about medical services covered by the insurance. Neither are they informed about the obligations of insured that are necessary to fulfill for recovering medical expenses.

Recommendation:

- *ss to free medical services should be ensured giving priority to vulnerability.* *Acce*
- *ssary information should be provided in order to enable internally displaced persons utilize health insurance efficiently.* *Nece*

IV. RIGHT TO FREEDOM OF MOVEMENT

Limitation of the Freedom of Movement for Persons Residing in the Occupied Territories

14. The legal regime of movement introduced by the Georgian Government in relation to the occupied territories hinders residents of these territories from free movement, economic activity necessary to support life and the possibility of defending their rights before the Georgian Government.

15. Article 4 of the Law on Occupied Territories stipulates that entry into the occupied territories by foreign citizens and stateless persons using checkpoints other than those declared legal by the Georgian Government is prohibited and is punishable with deprivation of liberty from 2 to 4 years under Article 322¹ of the Criminal Code of Georgia. The Georgian Government maintains the position that individuals residing in the territory of Abkhazia and Tskhinvali region are citizens of Georgia and thus are not subject to limitations imposed by Article 4 of the Law on Occupied Territories. However, such political view of the Government is not clearly and directly reflected in the applicable Georgian legislation. Furthermore, even if application of Article 4 of the Law on Occupied Territories to residents of Abkhazia and Tskhinvali region is excluded, these persons may still be subjected to criminal prosecution under Article 344 of the Criminal Code on the ground of unlawful crossing of the State border. Thus the Georgian legislation does not contain appropriate guarantees that would take into account the factual situation existing in Abkhazia and Tskhinvali region and allow residents of these territories to move freely and safely on the rest of the Georgian territory.

16. In addition to legislative obstacles, there have been facts that prove arbitrary limitation by the Georgian Government of the freedom of movement of persons residing in the Tskhinvali region.ⁱ

17. Furthermore, the Georgian Government has limited allowed quantities of movement of goods.^{lii} Lack of clearly articulated and stable regime of movement, ambiguous legislation concerning movement and the general tension between the parties to the conflict constitute a reasonable ground of fear for the residents of Abkhazia and Tskhinvali region that they may become victims of deprivation of liberty or limitation of their other rights if they enter the territory controlled by the Georgian Government.

Recommendation: In view of the above circumstances, for the purpose of ensuring the freedom of movement to residents of Abkhazia and Tskhinvali region, it is important for the Georgian Government:

- ***to directly state in the Law on Occupied Territories that Article 4 of the Law does not apply to persons residing in the territory of Abkhazia and Tskhinvali region;***
- ***to take into consideration the factual situation in Abkhazia and Tskhinvali region when applying Article 344 of the Criminal Code;***
- ***to articulate the regime of movement to and from Abkhazia and Tskhinvali region in the law in detail with a view of limiting and preventing the wide-range discretion enjoyed by the Georgian police so that the regime is clear and foreseeable for citizens;***

4. INEFFECTIVE INVESTIGATION

18. Both during and after the 2008 August war, there have been human rights violations committed by both parties to the conflict. Among the human rights violations, committed by Georgian authorities, are unlawful and disproportionate use of force by the Georgian military, unlawful detention of persons, inhuman treatment and disappearances. In spite of requests sent to the Georgian Prosecution Office, the latter has either not started investigation of alleged human rights violations at all or the investigation progresses slowly and ineffectively.

19. On 4th August five Ossetians freed from court rooms after reaching plea agreement with the Prosecutor's Office, disappeared in the hands of Georgian authorities. Their whereabouts were kept secret and family members did not have any kind of information about their state of health. They have been kept in the building of the Gori Department of the Ministry of Internal Affairs until 2 December 2009. On that date they have been handed over to the Tskhinvali authorities.

20. In spite of numerous motions lodged by their defense lawyers, the authorities have not started preliminary investigation on the fact of their unlawful detention.

21. On 8 August 2008, the Georgian military officials arrested an ethnic Ossetian in the village of Bakatiuka. Relatives of this person have not seen him since 8 August 2008. Several ethnic Ossetians who were also detained by the Georgian military in August 2008 are confirming that the mentioned person was kept together with them in the Gori Military Police Department. This person is regarded disappeared till present. In spite of a number of requests made by human rights defenders, the Georgian Prosecution Office refuses to grant the legal status of victims to the relatives of the mentioned person and the ongoing investigation has had no results to-date.

Recommendation: The Georgian Government should effectively and timely investigate crimes committed by representatives of the Georgia state authorities during and after the August war.

ENDNOTES

ⁱ See, *Burden of Recognition*, International Crisis Group (ICG), 7 June 2010, page 15. In this context ICG reported “[...] Georgian authorities state that South Ossetian residents can generally travel freely in the country provided they have residency documentation. However, in practice the situation is more fluid; it is difficult to cross into Georgian-controlled territory anywhere except from Akhagori; and whether someone is allowed to cross or not is often left to the discretion of local police. Georgia has also drawn up a “black list” of persons who will be detained if they cross. Fear of detention, based on lack of knowledge and public dissemination of the procedure applied, stops many from South Ossetia from travelling to other parts of Georgia.”

ⁱⁱ See *Ibid*, ICG report, pp.15-16. OCG emphasizes that “The Georgians allow in only limited amounts of food and goods and prohibit construction materials and furniture, because, they say, these might be used by the Russian military or the Ossetian administration. Three attempts and interventions by an international organization were needed for a local teacher to bring a printer donated by the organization to Akhagori for a youth club. These restrictions complicate the lives of residents, who complain that, unlike IDPs, they receive no state aid, so have little motivation to remain.”