

The Report of Informal NGO Coalition
for UPR
of Georgia

July 2010

I. INTRODUCTION

- 1 The Informal NGO Coalition for UPR of Georgia submitting this report consists of 3 non-governmental organizations that deal with promotion and protection of human rights in Georgia. The coalition is established in May 2010 by following NGOs: Human Rights Priority (HRP), International Center on Conflict and Negotiation (ICCN), Caucasus Women's Network (CWN).

II. EXECUTIVE SUMMARY

- 2 Georgia, first of all, to be a guarantor for exercising of her/his rights by each member of the society within its territory. There are various mechanisms for exercising of human rights and obligations at national and international levels.
- 3 In some cases these mechanisms are provided for by constitution and national legislation of Georgia and in some cases – with international documents dealing with human rights by which Georgia is bound. Mechanisms, provided for by constitution and national legislation ensure more specific and effective measures, and generally, these are the measures, which should be tested and put in order, first of all.
- 4 National legislative system of Georgia should be oriented in execution of human rights. To make effective adjustments to the legislation, with regard of the issues of women's rights execution.
- 5 Implementation of the conception of gender equality policy would contribute to development of specific programs, for building of truly democratic state, where the citizens' rights would be ensured by the possibility of their execution.

III. Promotion and Protection of Human Rights in Georgia

3.1. Effectiveness UN HR Mechanisms in Georgia

- 6 In July 2005 the Committee reviewed the individual compliant brought by Georgian national Mr. Shota Ratiani.
- 7 The Committee in its views stated to grant the author appropriate compensation, and to take effective measures to ensure that similar violations do not reoccur in the future. The Committee obliged Georgia as a State Party, provide information within 90 days from the moment of adoption of this View (21 July 2005) about the measures taken to give effect to the Committee's views. The State party was also requested to publish the Committee's views.
- 8 Up today, none of the actions had been taken. Georgian citizen Shota Ratiani constantly applied to all relevant agencies with his complaints with no results. Thus Georgian Government is rejecting to fulfill its obligations under the UN Covenant.

3.2. Human Security¹ in relationship² with Human Rights

¹ Since its establishment of HSU (September 2004) it the UN Secretariat at the OCHA, the overall objective of the HSU is to place human security in the mainstream of UN.

² However, the human rights legal framework as part of the global insecurity problem and believe that a human security approach should propel us to move above and beyond this legalistic approach to get at the underlying sources of inequality and violence which are the root causes of insecurity in today's world.

- 9 The Georgian Government currently elaborated the policy document on the Occupied Territories and its Action Plan (State Ministry on Reintegration). The document(s) are not recognizing and covering the issues of Fundamental Human Rights (including Human Security as an integral component), including Right to Compensation, Women's Rights and their role in peacebuilding, as well as issue of Gender Based Sexual Violence.
- 10 The state policy, with regard of the issues of peace and conflict, may be characterized, as gender-blind. In planning of the peaceful processes there are not included gender parameters, gender needs of the war/conflict affected population, IDPs (IDWomen) are not taken into account; gender equality is not ensured in the decision-making process. From the governmental side, women are not represented adequately, in the processes of conflict prevention, negotiation, peace incentives and post-conflict reconstruction. At the ministries, working for resolution of these issues, there even is the trend of decrease of number of participating women.
- 11 Meanwhile the Human Security is at stake among 2008 August War affected civilians. As a result of Monitoring³ we provide the Government of Georgia with results and clear recommendations to be implemented in the region in order to address the following issues in above mentioned region of so called 'Bordering Villages':

3.2.1. Personal security

- 12 According to the villages inhabitants interviewed, there are frequent sounds of shooting in area. Regarding the patrolling operations in the villages, there are patrolling cars driving through the village streets. The locals try to avoid walking in the streets at night as they think that there is a danger from Ossetians.
- 13 Though the patrol police are always present in some villages, people are not still secure. There are frequent shootings especially at night. The sounds of shooting mainly come from the place where Ossetians are deployed. Georgian side tries to never open a fire in response.
- 14 People locally in villages cannot meet their local officials as frequently as they wish and need to. Local government representatives and agencies are not effective regarding security and basic needs. Thus local residents in so called 'bordering villages' are of view that their villages has disappeared from the Georgian map.

3.2.2. Drinking and Irrigation Water, Agriculture, Electricity

- 15 In so called 'bordering villages' there is an acute problem of water (drinking and irrigation). The wells of drinking water in some places have been arranged by the Government either in the household yards or in the village streets. People are watering their small plots of lands within their house yards manually with jars filled with water⁴. Flow of the irrigation water has been stopped since summer 2008. People do not have wooden boxes to harvest their apple crops. The government provided the village with 150 kilowatts. Irrigation problem is directly linked with occupied territories (water supplies are coming from Tskhinvali Region). The area is not supplied with natural gaz and populations used to use wood fire for heating and cooking. After

³ Several stage large-scale Human Security Monitoring was conducted by HRP, CWN in 2008, 2009, 2010 in so called Bordering Villages of former Buffer Zone - Ergneti, Tkhiavi, Mereti, Gugutiantkari, Koshka, Karbi, etc. According to the current official data the number of the population in village **Ergneti** is about 183 households. There are about 24 IDP households, these are the 1st stage IDPs from Tskhinvali. In village **Mereti** amounts to 445 households, with 1125 individuals, in village **Gugutiantkari** amounts to 76 households, with 229 individuals; in village **Koshka** amounts to 116 households, with 315 individuals; in village **Karbi** amounts to 293 households, with 867 individuals.

⁴ Due to non-payment for water supply by the patrol police the entire village had been cut off drinking water in Karaleti village, currently. Police was provided water in tanks while the population not.

occupation local population has no access to the forests. Therefore electricity became the only source for heating and cooking.

- 16 The major problem for villages' inhabitants remains the inability to have an access to their own plots of arable lands located outside, on the occupied territory. Farming of arable lands is high risky as may cause hostage or injuring. Also there are frequent cases of stealing the cattle from villages.

3.2.3. Healthcare Medications, Food and Hygiene

- 17 People in the villages of former buffer zone can visit only nearest Tkviavi outpatient clinic and have an emergency service available. The clinic lacks medical personnel, medicines and equipment. In addition socially unprotected patients were not been distributed insurance policies. In case of health problem in more than three villages' people either goes to Gori or Tkviavi clinics⁵. However, due to high transportation cost and physical inability, many of the ill locals cannot afford to visit doctor. In case of emergency they contact the ambulance in Gori.
- 18 There is no shop for food products and pharmacy in most of the villages. People have to go either to Mereti or Gori. The locals are in a dire hygienic condition. The shops mostly trade on credit as customers cannot effort to buy products.

3.2.4. Education

- 19 Almost all the schools have problem with school manuals. Manuals for the 1st form are distributed free of charge. All other manuals and other school stationary are for sale which parents can hardly afford.

3.2.5. Legal Issues of War Affected Civilians

- 20 The Government of Georgia was responsible for not evacuating civilians from the conflict zone during the period of armed conflict (2008 August War). The Civil Defense Plan was not in place in compliance with the relevant international treaties and domestic laws⁶.
- 21 The government didn't fulfill its obligation to make property restitution and/or compensation for IDPs and other war affected civilians for the damages caused by war⁷.
- 22 Mixing up the legal Terms: the Governmental Orders related to 2008 War affected Civilians do not clarify what the status of the assistance is rendered to the IDPs. Some peaces of legislation include the term 'compensation' and the others - 'assistance'⁸.

⁵ Distance from the 'Bordering villages' to Gori is about 20 km.

⁶ Additional Protocol of 1949 Geneva Conventions, 8 June, 1977, which was ratified by the Georgian Government. Article 61 of the above-mentioned document lays out the principles of civil defense plan, the components of which among others, are warning and evacuation. According to the Article 5 and Article 7 of the Law on Georgian Government Structure, Authorities and Rules of Work, the government has an obligation to take all necessary protection measures to ensure the security of the society.

⁷ Georgian legislature includes the Law on the State of War and the Law on Property Restitution and Compensation on the Territory of Georgia for the Victims of Conflict in the Former South Ossetia District. Adopted on 31 October 1997.

⁸ The interpretation of the term 'compensation', the Georgian Law on restitution and compensation does not interpret the term 'compensation', however this term is used in the following context: 'compensation for the property damage', in this context it can be understood as the reparation (remedy) for the property damage. This term has the same meaning in the Law on the Damage Caused by the Dangerous Materials. Section b) of Article 2 of the above-mentioned Law interprets the 'compensation' as the reparation (remedy) for the damage. Consequently, the term, 'compensation' is used as reparation (remedy) in the Georgian legislature.

- 23 Despite the foresee, it should be noted that even the Public Defender in his Report⁹ does not touch upon those rights of the victims of war that are guaranteed by the Laws about Property Restitution and the State of War. These laws, as it was already mentioned, require full compensation for the property damage for the victims of war; namely, restitution of the lost property, provision with adequate housing solutions; compensation for the property damage.
- 24 The report of the Public Defender does mention about ‘compensation’, however it is not linked with the right to compensation established in the legislature and implies the provision of compensation in case of denial to get the temporary housing solution. Thus, it is an alternative to the temporary residence buildings defined in the Government order #534 and covers those situations when the victim of war refuses to receive a cottage.
- 25 Mixing up the legal terminology (e.g. Compensation, state aid) mislead the victims of war. Majority of them do not know the legislature and do not have information about their rights; consequently, they often are satisfied with whatever the Government gives them and do not ask for more than is established by the normative acts.

3.3. Human Rights Defenders

- 26 Current Situation is marked with a smear PR campaign against NGOs and human rights defenders which surfaced in Georgia in December 2009.
- 27 Media outlets, widely considered to be state-controlled or otherwise having close ties with the government, consecutively released biased and one-sided reports portraying human rights defenders as “enemies and traitors of the nation” working against the interests of the society. We are particularly concerned by the fact that those media outlets and certain political figures used sensitive topics such as Russia-Georgia war, ethno-territorial conflicts, minorities etc., in their statements in order to manipulate public opinion and create hostile social attitude against human rights defenders.
- 28 December 10, 2009 – On the International Day of Human Rights the news program of Georgian Public Broadcaster released a media report condemning the actions of the Human Rights Priority. The news item harshly criticized Tbilisi-based NGO who has lodged applications before the European Court of Human Rights concerning human rights violations allegedly committed by the Georgian side in the course of Russia – Georgia war 2008.

3.4. Torture, inhumane and degrading treatment – ineffective investigation

- 29 Despite the fact that more than 2 years had passed since the 2008 August war no crime accrued against civilians has been investigated yet. Some of war affected civilians has been recognized as ‘victims’ by the Main Prosecutor’s office. Those numbers of recognized victims unfortunately are no longer informed about investigation proceedings. Therefore all relevant domestic remedies can no longer be deemed effective regarding the cases of murder, taking of hostages and injuries regarding the war crimes (2008 August War).
- 30 The Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters¹⁰ – which must serve as an effective remedy is not followed by the government to investigate crimes after the 2008 Georgian-Russian War outside the territory of Georgia.

⁹ Parliamentary Report of the Public Defender, 2009 2nd half, p. 274

¹⁰ 19.01.1994

- 31 The Ministry of Justice of Georgia is entitled to apply for legal cooperation to the RF investigative bodies. The gap in implementation is blocking effective investigation and not bringing to justice war criminals. Georgia is a party to Rome Statute.

3.5. Sexual and Gender Based Violence

3.5.1. Rape during the War

- 32 HRP client¹¹ is the victim of rape that occurred during the August 2008 war between Georgia and Russia. HRP claims that the victim has been subjected to the violation of the following articles of EConvHR – art.1; art 3, art. 8 and 13; also article 1 of the I Additional Protocol of EConvHR and respective provisions of Geneva Conventions and its additional protocols, the Statute of Rome of the International Criminal Court and the Hague Regulations.
- 33 The responsibility of Georgia for the violations of the above listed provisions stems from the fact that Georgia failed to warn and evacuate HRP client. As well as other civilian population from the zone of an armed conflict and thus did not make an effort to protect them from hostilities. The direct responsibility of the crimes committed against the applicant lie with the Russian Federation, which, as an occupying power failed in its duty under international humanitarian law to ensure, as far as possible, public order and safety in areas under its effective control, instead allowing South Ossetian forces to engage in wide scale criminal assaults. Georgia and the Russian Federation are defendants in this case.
- 34 There is an overwhelming number of rape instances and other sexual violence that occurred both in 1990s in South Ossetia and Abkhazia and in 2008 armed conflict which has been documented by international human rights NGOs. Despite the existing statistics, this is the first case related to sexual violence of the citizen of Georgia during an armed conflict that has been a subject of litigation in the international court.

3.5.2. Marriage Registration – obstacle in divorce

- 35 During and after divorce women are facing violation of their economic rights (property, financiers, etc.) if their marriage is not registered officially, according to Civil Law. Women need bringing equality for families in Georgia with official registration of marriage, with church registration and for families which are without any registration - under the legislation of Georgia.
- 36 According to official statistical data more than 50 % of marriages are without official registration in Georgia. Relevant Amendments to national legislation were elaborated – as for the Civil Code (article 1106 about definition of marriage and article 1151 about rights and responsibilities of spouses in marriage) and Criminal Code (article 44 is about who to be considered as a spouse) which considering as a spouse just only couple with official registration. This approach contradicts: a) to the existing practice in Georgia and b) to the European Convention on Human Rights (Articles 8, right to family and article 12 right to marriage).
- 37 Women's organizations are discussing marriage official registration and churches registration issue through women's perspective, and, also are discussing possibilities to find non-discriminative ways of harmonization of national laws with the Constitutional Agreement of Orthodox Church and State of Georgia. On the one hand the article 3, of Constitutional

¹¹ The use of client/victim's initials is due to the nature of the crime which requires the confidentiality of the victim's identity.

Agreement of Orthodox Church and State of Georgia is declaring that the State is recognizing church registration, on the other, harmonization should also cover other marriages made in other churches (Different Denominations). Relevant recommendations were elaborated and submitted to the Parliament of Georgia and Ministry of Justice in April 2008, by CWN. Till today nothing is adopted or changed as a result. The divorce is still affecting women and children.

3.6. Social Rights

- 38 According to Georgian legislation, we have two types of social security statuses and benefits to them. In case of receiving both statuses citizens have choice – receive benefit of IDP or receive benefit of Socially Unsecured. Therefore, the problem is that a person is not allowed to receive both benefits in case of receiving both statuses. People in different needs are treated equally.
- 39 In 2008 HRP initiated and disclosed the tabooed issue of NOT GRANTING WAR VICTIMS THE IDP STATUS – only after 8 months of litigation before the courts the Ministry of Refugees and Accommodation had to admit that they are granting the status of IDP to all civilians affected by the August War 2008. Notwithstanding the fact that in June 2009 the Final Courts Decision on Granting IDP Status was to be enforced by the Ministry of Refugees and Displacement, up today it is not implemented. For non execution several complaints brought before the Main Prosecutors Office with no result.
- 40 No matter that more than two years are passed after the 2008 Georgian-Russian August War not all the IDPs had been granted the Status of IDP. Relevant official statistics is not available.

3.7. Political Participation of Women

- 41 On the basis of more than 10 years working experience of Women's NGOs, according to our mission and implemented activities, we state that women's participation according to all level elections in Georgia is becoming diminished (women MP's percentage in Georgian Parliament decreased from 9% to 5%). On the other hand, the vary fact of women's low political participation in elected bodies is mismatching with a quantity and quality of women's activeness in composition of democratic institutions. It also should be mentioned that in civil society institutions percentage of women's participation is much more higer than in last several years.
- 42 All these is marking assumption of existing glance ceiling here – different barriers that do not allow women to participate on an equal base. It is clear we need some special majors to have Constitutional rights implemented.

4.0. National Minorities

Women of National Minorities

- 43 Georgia had singed and ratified framework convention for the protection of National Minorities in 2005. The principles of this convention are: promoting tolerance, cultural diversity and dialogue. With the support of International organizations Georgia had developed important steps in regard of national minority protection. The National concept on Tolerance and Civic Integration, special programs and strategies to empower minority communities made a great deal in the integration process. But the problems regarding national minorities in Georgia are not resolved: minority communities remain isolated, language problems still hinders their participation in political and social life, their access to education is limited, general negative

attitude¹² towards minorities are still persistent; Media is one of the main source of reproduction of stereotypes and prejudice towards minorities; Despite of many attempts in education system to improve environment in terms of ethnic and religious tolerance, school education process does not contribute to the integration and overcoming alienation of minorities in the society.

- 44 Georgia has obligation in the framework of European Neighboring Policy Action plan¹³ to sign and ratify European Charter on regional and minority languages. There is neither consensus in the society, nor in the government to sign and ratify mentioned Charter.
- 45 Women of Ethnic minorities are the subject of CEDAW, the Convention that provides solid guidance as a gender specific human rights treaty. Georgia singed and ratified the Convention in 1994. Women and girls belonging to national minorities in Georgia are subject to discrimination in the following fields of life: education (deprivation of girls from the secondary education and high education), personal choice and freedom, economic independence, freedom of movement, freedom from degrading treatment from their communities and families (ex. early and forced marriage, labour exploitation, domestic violence and etc). State is so far not able to react effectively to the needs of minority women and provide them with proper protection. State should implement policies aiming at including national minority women into the legal protection space.

IV. RECOMMENDATIONS

- 46 To make necessary changes in procedural law of Georgia to reviewing enforced court decisions based on UN HR Committee views. Set up the mechanism to monitor implementation of UN conventions and TB recommendations and decisions.
- 47 For ensuring gender equality in legislative branches of government to use public financing through amending legislation that motivates political parties to keep gender balance between candidates. Providing equal opportunities in line with equal rights to ensure effective and equal election campaigns for parties/candidates. It is an urgent objective to implement campaigns, directed to advocacy of women's role in politics and also to conduct gender expert examination of the election legislation and introduction of election models, which would contribute promotion of women in politics.
- 48 Georgian Government has a responsibility under the laws to work out and implement a plan for Civil Defense. Elaboration of the civil defense law should be in place in times of war or prior to it breaks up. Unfortunately, civilians in the 2008 August war have not been subject to such kind of defense policy by their national Government.
- 49 Domestic law obligates the Government of Georgia to compensate the victims of war for their property damage. Unfortunately, it should be noted that the Government of Georgia did not fulfill its duties under the relevant laws that have lead to the issue of claim of full compensation caused by the failure of the State to fulfill its duties, which is also in accordance with domestic laws.
- 50 Creation of thorough gender statistics implies introduction of gender indicators in all spheres and at all levels of the system. Gender statistics imply consideration of gender factors in data collection, their analysis and representation and, what is the most important, distribution of the data in the format convenient for the users. Now it is necessary to make gender indicators more

¹² ICCN has conducted study on perception of interethnic and interreligious relations in Georgia, 2009-2010
¹³

refined, provide their compliance with international standards and introduce data collection at all levels.

- 51 The State Budget of Georgia to be adequate and subsequently state social guarantees of war-affected civilians to be raised; the state budget to be supportive and vectored towards peace and confidence-building for divided societies destroyed by armed conflicts;
- 52 To start reviewing IDPs social aid criteria: to be reviewed indicators for defining a status of socially unprotected. (for example we think that coefficient related to shelters and IDPs is very low);
- 53 To have in place effective investigation on War Crimes and Crimes on Gender Based Sexual Violence. To implement fully guidelines of Istanbul Protocol and other international mechanisms.
- 54 To have in place effective investigation on violations of rights of Human Rights Defenders. To implement fully guidelines and international mechanisms.
- 55 To fulfill State obligations regarding IDPs and entire war affected civilians under international treaties and mechanisms.
- 56 State has to seek for broader public consensus in regard of integration of minorities based on principles of Framework convention for the protection of National Minorities and international treaties and conventions;
- 57 State has to seek for effective public support to the ratification of Charter on Regional and Minority Languages through deep analysis and proper campaigning and presenting to the society
- 58 State has to ensure international legal standards on nondiscrimination and tolerance in regard of national minorities in the field of education and media are implemented.

References:

Human Rights Priority (HRP) - www.hrp.ge;
International Center on Conflict and Negotiation (ICCN) – www.iccn.ge;
Caucasus Women's Network (CWN) – www.cwn.ge.