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**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

Technical assistance and capacity-building

Cooperation with Georgia

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report, submitted pursuant to Human Rights Council resolution 40/28, outlines the technical assistance provided by the Office of the United Nations High Commissioner for Human Rights between June 2018 and May 2019 to strengthen the promotion and protection of human rights in Georgia. It highlights the main human rights developments and outstanding challenges to be addressed. The report also provides an update on the situation of human rights in and around Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 40/28, in which the Council requested the United Nations High Commissioner for Human Rights to continue to provide technical assistance in Georgia through the presence of her office in Tbilisi. The resolution also called for immediate and unimpeded access to be given to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and international and regional human rights mechanisms to Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia.¹ The Council also requested the High Commissioner to present an oral update at its forty-first session on the follow-up to resolution 40/28² and a written report at its forty-second session on developments relating to the resolution and its implementation.

2. The present report gives an update on the technical assistance provided by OHCHR in Georgia and on the main human rights developments during the period from 1 June 2018 to 31 May 2019.³

3. OHCHR applied the same methodology for the elaboration of the present report as for those prepared in 2017 and 2018.⁴ The report thus draws on information provided by the Government of Georgia, the Office of the Public Defender of Georgia (an A status national human rights institution), international, regional and non-governmental organizations and credible open-source documents.

4. OHCHR draws the attention of the Council to the ongoing constraints related to the implementation of the reporting element of resolution 40/28 in the continued absence of a dedicated budget for this purpose. It encourages Member States to provide an adequate programme budget implication⁵ for any future requests.

II. Context

5. On 28 October and 28 November 2018, presidential elections took place in Georgia. The Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE) assessed the elections as competitive and well administered, while reporting incidents of misuse of administrative resources throughout the electoral campaign. It held that the gathering of voter data and mapping of political preferences, together with tracking voters on election day, raised concerns about the potential for intimidation and the ability of voters to vote free of fear of retribution. In addition, the OSCE Office for Democratic Institutions and Human Rights observed that “the use of negative, harsh and at times violent rhetoric significantly overshadowed the campaign” and went unaddressed by the authorities.⁶

III. Technical assistance and human rights developments

6. An OHCHR Senior Human Rights Adviser for the South Caucasus has been posted in Tbilisi since 2007, benefiting from the full cooperation of Georgia. He has been supported by national staff in Georgia and Azerbaijan. The Senior Human Rights Adviser

¹ For the purpose of the present report, Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia, are hereinafter referred to as Abkhazia and South Ossetia.

² The oral update was presented on 10 July 2019. The webcast is available at <http://webtv.un.org/meetings-events/human-rights-council/regular-sessions/watch/item10-general-debate-36th-meeting-41st-regular-session-human-rights-council/6057827136001#player>.

³ Pursuant to Human Rights Council resolutions 34/37 and 37/40, the High Commissioner presented written reports on cooperation with Georgia in 2017 (A/HRC/36/65) and 2018 (A/HRC/39/44).

⁴ A/HRC/36/65, paras. 3–5; and A/HRC/39/44, paras. 4–5.

⁵ Statement detailing the administrative, financial and programmatic changes that the adoption of a draft resolution would entail.

⁶ See www.osce.org/odihr/elections/georgia/412724.

has continued to advise and provide technical assistance to the Government and institutions of Georgia, civil society organizations and other actors. He continued to focus on supporting the compliance of legislation, policies and practices with international human rights standards and assisting in the implementation of the National Human Rights Strategy.

A. Support for the implementation of the National Human Rights Action Plan

7. Along with other United Nations entities, OHCHR provided support to the Government of Georgia for the ongoing implementation of the National Human Rights Action Plan 2018–2020, including in the framework of the Human Rights for All programme, a joint United Nations initiative funded by the European Union.⁷ Such support included building the capacity of various national counterparts, such as members and staff of the parliament, staff of the National Human Rights Secretariat in the Administration of the Government of Georgia,⁸ representatives of local self-government bodies, the Office of the Public Defender, judges and court staff, police officers, legal professionals, journalists, civil society organizations, students and youth groups.

8. Between 1 June 2018 and 31 May 2019, OHCHR conducted 30 capacity-building activities in Georgia and developed the following materials: a human rights curriculum for the Police Academy to train investigators; a handbook on human rights for civil servants; and an analysis of the compatibility of national legislation with international standards on freedom of expression. Most of the activities were planned in close consultation with the National Human Rights Secretariat and were conducted in response to requests by, and in cooperation with, the Government.

9. On 23 April 2019, the inter-agency human rights council – the governmental body tasked with coordinating the elaboration and implementation of the National Human Rights Action Plan, under the chairmanship of the Prime Minister – convened for the first time since April 2015. Most ministries were represented at the ministerial or deputy ministerial levels. OHCHR and the United Nations Development Programme (UNDP) participated in the event and gave an overview of the main activities implemented by the United Nations agencies to support the authorities. Several non-governmental organizations spoke on the main human rights challenges in Georgia.

10. During the reporting period, relevant parliamentary committees held hearings on the implementation by the executive branch of recommendations of international and regional human rights mechanisms, the Public Defender and decisions of the European Court of Human Rights. On 15 October 2018, OHCHR participated in the hearing held by the parliamentary Committee on Human Rights and Civic Integration on the midterm report of the Government on the implementation of the recommendations emanating from the universal periodic review. The hearing was open to civil society organizations.⁹

11. During the period under review, the Government submitted a midterm report on the implementation of recommendations received by Georgia during the second cycle of the universal periodic review. The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Working Group on the issue of human rights and transnational corporations and other business enterprises visited Georgia at the end of September and beginning of October 2018 and in April 2019, respectively.¹⁰ Georgia has yet to submit its next periodic reports to the Committee on

⁷ This joint initiative aims at supporting the implementation and monitoring of the National Human Rights Strategy and Action Plan of Georgia.

⁸ Under the Office of the Prime Minister, the National Human Rights Secretariat is responsible for coordinating the drafting and implementation of, and reporting on, the National Human Rights Action Plan, and for supporting the inter-agency human rights council in that regard.

⁹ Parliamentary hearings on the implementation of recommendations of international and regional human rights mechanisms and of the Public Defender have been held since 2016.

¹⁰ Since 2012, Georgia has hosted visits from nine special procedure mandate holders.

Economic, Social and Cultural Rights and the Committee against Torture, which are both overdue. The most recent reviews of Georgia before these Committees took place in 2002 and 2006, respectively.

B. Administration of justice and law enforcement

12. OHCHR continued to support the justice sector, focusing on building the awareness and capacity of judges and court staff, especially of the Supreme Court, to apply international human rights standards. Activities focused on economic rights, equality and combating discrimination (especially on the basis of religion and sexual orientation) and access to justice for persons with disabilities.

13. Based on a request for assistance from the Ministry of Internal Affairs, and in close cooperation with its representatives, OHCHR developed a comprehensive curriculum on human rights for the Police Academy. In the context of the ongoing reforms within the Ministry, it is planned that 1,200 investigators will participate in training based on this curriculum as of February 2019. Furthermore, OHCHR conducted training sessions for the police and the Prosecutor's Office on the effective identification and investigation of hate-motivated crimes.

14. OHCHR also pursued its well-established cooperation with the Georgian Bar Association, and its training continued to be integrated into the professional courses for practising lawyers.

15. At the same time, OHCHR takes note of information it received from the Public Defender of Georgia indicating that internal checks and balances within the judiciary are lacking, and specifying that her Office had been documenting violations of due process guarantees. The Public Defender noted that her Office was advocating for institutional reforms to strengthen the independence of the judiciary.

16. OHCHR is not aware of any progress in addressing the concerns raised in its 2018 report to the Council regarding the case of archpriest Giorgi Mamaladze, who was accused of plotting a murder, and the abduction of the Azerbaijani journalist, Afgan Mukhtarli.¹¹ Other individual cases raising concerns about the administration of justice in Georgia were brought to the attention of the Senior Human Rights Adviser during the reporting period.

C. Combating torture and ill-treatment

17. As recognized by various national and international mechanisms,¹² Georgia continued making progress in combating torture and other types of ill-treatment within the penitentiary system. In that regard, the establishment of the Office of the State Inspector was the most significant achievement in the reporting period. The Law on the State Inspector Service, adopted on 21 July 2018, endows that entity with the former mandate of the Data Protection Inspector and mandates it to investigate allegations of serious human rights violations involving law enforcement officers. This reflects the will to address the long-standing issue of ineffective investigations into human rights abuses committed by the police, the Prosecutor's Office and penitentiary officials, which has generated a sense of impunity and undermined public trust in law enforcement agencies. OHCHR has been advocating for the creation of the Office of the State Inspector since 2014, and has participated in various meetings and discussions concerning its establishment. It considers the Law to be a significant step forward and underlines the need to allocate sufficient financial and human resources to the Office of the State Inspector to ensure its effective functioning, in accordance with the Law.

¹¹ A/HRC/39/44, paras. 15–16.

¹² See, for example, A/HRC/31/57/Add.3.

18. On 17 May 2019, the inter-agency coordinating council against torture and other cruel, inhuman or degrading treatment or punishment¹³ adopted a new National Action Plan on Combating Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for 2019–2020. OHCHR participated in the work of the Council and provided comments on the draft Action Plan, most of which were accepted. Among other things, the Action Plan requires video recordings made at the penitentiary establishments to be kept for a longer period of time and for the compilation of statistics on allegations of ill-treatment of certain vulnerable categories of individuals, such as persons with disabilities, to be improved.

D. Combating discrimination

19. In her submission to OHCHR, the Public Defender highlighted improvements in the anti-discrimination legislation, namely the inclusion of harassment and sexual harassment as forms of discrimination, in February 2019, and amendments adopted on 3 May 2019 strengthening the anti-discrimination mechanism in the private sector and extending the term for filing complaints with national courts in alleged cases of discrimination. The legislative changes broadened the mandate of the Public Defender and would more generally enhance the effectiveness of the mechanism to fight against discrimination.¹⁴

20. At the same time, the Public Defender stressed that deeply rooted societal stereotypes, negative perceptions and misconceptions persisted, reinforcing discrimination against vulnerable groups. In 2018, her Office had considered 158 newly submitted cases of alleged discrimination, with discrimination or incitement to discrimination established in 22 cases, while 63 cases had been terminated on various legal grounds. The largest share of the complaints concerned alleged discrimination on the grounds of gender, religion, political or different opinion, ethnicity, sexual orientation and gender identity, disability and citizenship. Discrimination was most frequently alleged in the public sector and in the context of pre-contractual and labour relationships. The Public Defender reported that the most vulnerable groups in terms of realization of the right to equality remained women, persons with disabilities and lesbian, gay, bisexual and transgender persons. Religious minorities had also frequently had recourse to her Office regarding alleged hate crimes.

21. As previously mentioned, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity visited Georgia during the reporting period, from 25 September to 5 October 2018. In his end-of-mission statement, he noted that virtually all conversations held during the visit had led him to presume that physical and psychological violence and discrimination against lesbian, gay, bisexual and transgender people were pervasive in Georgia.¹⁵ In its submission to OHCHR, the Women's Initiatives Supporting Group stated that the number of cases of hate crimes against lesbian, gay, bisexual, transgender, queer and intersex individuals, as documented by non-governmental organizations, exceeded the official statistics by many times. The Group noted that the Law on the Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence did not consider an intimate partner to be a family member and thereby failed to regulate violence committed by such partners.¹⁶ It also noted that transgender people could not change the gender marker on their identity documents since the mechanism for legal recognition of gender identity was not regulated by law.

22. In 2019, the lesbian, gay, bisexual and transgender community decided to cancel the annual rally it had held in recent years on 17 May, on the occasion of the International Day against Homophobia, Transphobia and Biphobia, as the Georgian Orthodox Church had declared 17 May to be Sanctity of Family Day. Part of the community expressed interest in

¹³ Established under the Ministry of Justice.

¹⁴ The anti-discrimination mechanism has two tracks, with victims having the possibility to address their complaint to the Public Defender's Office or the Court.

¹⁵ See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23682&LangID=E.

¹⁶ According to the information provided by the Government of Georgia, intimate partners might be considered to be family members if they shared a common household with the victim.

holding a Tbilisi pride week, including a public march, later in 2019, while expressing concern about the safety of participants.

23. In its previous reports on cooperation with Georgia, OHCHR highlighted the situation of Muslims in Batumi, who were forced to pray in the open air due to the small size of the mosque. It also provided updates on the appeal proceedings launched on behalf of the New Mosque Building Foundation in Batumi, which had been denied authorization to construct a new mosque.¹⁷ By the end of May 2019, three court sessions had taken place in the case and the final decision was pending.

24. On 3 July 2018, the Constitutional Court upheld claims filed by two non-governmental organizations that certain provisions of the Tax Code and the Law on State Property, providing exclusive tax exemptions to the Georgian Orthodox Church and enabling it to receive State property free of charge, were unconstitutional because they were discriminatory vis-à-vis other religious organizations. The Court ruled that the discrimination should be eliminated, either by abolishing preferences or by extending the privileges to other religious organizations. Although the Court required that its decision be executed by 31 December 2018, the parliament has yet to initiate the necessary legislative amendments. Discussions on the subject continued into 2019, including in the parliamentary Committee for Human Rights and Civic Integration. OHCHR and other international actors and non-governmental and religious organizations participated in the discussions.

25. In her annual report to the parliament for 2018,¹⁸ the Public Defender noted that numerous challenges remained to the equal and effective realization of the rights of persons with disabilities, and that no significant steps had been taken towards the implementation of the Convention on the Rights of Persons with Disabilities. She also noted that no State entity had been designated to coordinate the implementation of the Convention. On 15 April 2019, at an event co-organized by the Office of the Public Defender and OHCHR to commemorate the fifth anniversary of the ratification of the Convention by Georgia, the OHCHR Senior Human Rights Adviser presented a briefing paper outlining the challenges to implementing this Convention in Georgia. In addition to the lack of a coordinating mechanism and sufficient resources, challenges included the absence of comprehensive legislation compliant with the Convention, a lack of reliable and duly disaggregated statistics, the persistence of a medical approach towards persons with disabilities and prevailing negative stereotypes and stigmatization of persons with disabilities.

E. Promoting gender equality and combating domestic violence

26. OHCHR continued to contribute to efforts by the United Nations country team to promote gender equality and combat domestic violence.

27. During the reporting period, the number of women in ministerial posts increased to 4 out of 11, but there was no progress in women's representation in local self-governance. As of May 2019, there was only one female mayor in Georgia.¹⁹

28. On 30 November 2018, the parliament adopted amendments to the Criminal Code submitted by the Ministry of Internal Affairs as a result of extensive consultations with development partners and the Office of the Public Defender. The Criminal Code now includes gender as an aggravating circumstance for the crimes of murder, incitement to suicide and intentional infliction of bodily injury, and provides for more severe sanctions in such cases. These amendments followed the recommendations of the Public Defender, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and other development actors to introduce specific regulations on femicide.

¹⁷ A/HRC/36/65, para. 22; and A/HRC/39/44, para. 25.

¹⁸ More information in English and a copy of the report in Georgian are available from <http://agenda.ge/en/news/2019/906>.

¹⁹ See also A/HRC/39/44, para. 29.

29. According to UN-Women, concrete and measurable results of joint efforts of the Government, development partners and civil society include the increased disclosure of and response to instances of violence against women and domestic violence in 2018. The number of restraining and protective orders and indictments in cases of violence against women, including domestic and sexual violence, had increased significantly in recent years and the State budget allocation for the State Fund on domestic violence service provision had increased by 84 per cent between 2014 and 2018.

F. Business and human rights

30. In her submission to OHCHR, the Public Defender considered ineffective labour safety regulations and the increased number of accidents at industries to be among the most acute problems in Georgia.

31. As noted earlier, the Working Group on the issue of human rights and transnational corporations and other business enterprises visited Georgia in the reporting period, from 3 to 12 April 2019. In its end-of-mission statement, the Working Group observed that the occupational safety and health of workers was one of the most serious human rights concerns in Georgia. The absence of a comprehensive regulatory framework on occupational safety and health, combined with a general lack of awareness among workers about their rights, had resulted in an alarming number of accidents across sectors. According to the Working Group, 418 workers had died and 1,183 had been injured between 2010 and 2018.

32. The Working Group further noted that the new Law on Labour Safety, introduced in March 2018 to reinforce the mandate of labour inspectors, remained limited in scope as it only covered sectors identified as especially hard, risky and hazardous. It welcomed the adoption, in February 2019, of a new Organic Law on Occupational Safety, which made the labour inspectorate a separate legal entity and provided it with the authority to inspect all sectors, both public and private, without a court order or prior notice. The relevant amendments were to enter into force on 1 September 2019. Nevertheless, the Working Group considered that the regulatory framework would remain inadequate, as the new law did not cover the whole spectrum of labour rights. More specifically, from 2020, mandatory inspections covering all labour rights were planned to be conducted but only for risky, heavy, hazardous and harmful activities.

G. Civic space

33. Throughout its activities, OHCHR cooperates closely with civil society. In its submission to OHCHR, the International Society for Fair Elections and Democracy noted that Georgia had a vibrant civil society, which over time had become an important contributor to the democratic process in the country. However, it reported that in recent months there had been alarming signs of deterioration of civil society space due to unprecedented, coordinated attacks on civil society organizations by the authorities and the ruling party officials, accompanied by a smear campaign on social media. For instance, several non-governmental organizations had faced verbal attacks, including by the Chair of the parliament, following concerns that they had publicly expressed about the appointment of new Supreme Court Justices in December 2018, deploring the absence of any selection procedure or transparency.

IV. Human rights situation in and around Abkhazia and South Ossetia

A. Access to Abkhazia and South Ossetia

34. In 2019, the Secretary-General reiterated his calls for OHCHR to be granted unfettered access to Abkhazia and South Ossetia to enable it to assess human rights

protection needs, support related mechanisms on the ground and contribute to confidence-building with a view to enhancing the protection of the human rights of the affected population.²⁰

35. During the reporting period, however, no progress was made regarding access for OHCHR to Abkhazia or South Ossetia pursuant to Human Rights Council resolution 40/28. On 12 and 18 April 2019, pursuant to that resolution, OHCHR sent letters to the authorities in control in Abkhazia and South Ossetia, seeking unfettered access to those areas to gather factual and reliable information on the human rights situation. In contrast to 2017 and 2018, OHCHR did not receive a reply from the authorities in control in Abkhazia before the present report was finalized. While the authorities in control in South Ossetia conveyed a comment of a procedural nature, on 17 April 2019, they did not reply substantively to the OHCHR request.

36. Several United Nations development and humanitarian actors continued to have operational access to Abkhazia and to implement humanitarian assistance and development programmes and activities. There was no progress, however, in granting them access to South Ossetia.²¹

37. The Council of Europe continued to have access to Abkhazia to implement confidence-building measures, but it did not have access for the same purpose to South Ossetia.²² At the same time, the Secretariat of the Council of Europe was still not allowed to visit Abkhazia and South Ossetia for the purpose of preparing the consolidated reports of the Council of Europe Secretary General on Georgia.²³ In its decision of 2 May 2019, the Committee of Ministers of the Council of Europe regretted again that the Commissioner for Human Rights of the Council of Europe, its monitoring bodies and the secretariat delegation preparing the consolidated reports had not been granted access to those regions.²⁴

38. In a welcome step, the OSCE High Commissioner for National Minorities visited Abkhazia in September 2018.²⁵

39. Local staff of United Nations agencies and international non-governmental organizations who are allowed into Abkhazia continue to be subjected to requirements introduced by the authorities in control before crossing the Administrative Boundary Line, which has limited their operational flexibility.²⁶

40. The United Nations Secretary-General highlighted the negative consequences on humanitarian supply and assistance of the closure of the crossing points by the authorities in control in Abkhazia and South Ossetia in early 2019 (see also paras. 53–54 and 66 below).²⁷

41. No progress was reported with regard to reviewing or adjusting the Georgian Law on Occupied Territories, despite the expression of repeated concerns about the ambiguity of some of its provisions and their negative impact on the operational environment for international and local actors that have activities in Abkhazia and South Ossetia.²⁸

B. Key human rights issues concerning Abkhazia and South Ossetia

42. As OHCHR has no access to Abkhazia and South Ossetia, the content of the present section is based on information it has received or that is available in credible open-source

²⁰ A/73/880, para. 10.

²¹ *Ibid.*, paras. 21 and 40.

²² See, *inter alia*, “Consolidated report on the conflict in Georgia (October 2018–March 2019)”, SG/Inf(2019)12, 27 March 2019, paras. 5 and 71.

²³ *Ibid.*, paras. 5 and 33.

²⁴ Committee of Ministers, decision CM/Del/Dec(2019)1345/2.1, para. 18.

²⁵ See www.osce.org/permanent-council/401942?download=true.

²⁶ A/73/880, para. 57.

²⁷ *Ibid.*

²⁸ *Ibid.*, para. 54; and Council of Europe, SG/Inf(2019)12, para. 30.

documents. The international human rights framework outlined in the first report of the High Commissioner on cooperation with Georgia remains valid.²⁹

43. More than ten years after the conflict related to South Ossetia, the absence of a political and legal solution continues to affect the local population and their human rights in and around Abkhazia and South Ossetia. According to several sources, the human rights situation in both regions has deteriorated during the reporting period, particularly due to growing restrictions on freedom of movement.³⁰ According to the submissions by the Government of Georgia and one non-governmental organization, ethnic Georgians continue to face various forms of discrimination in both Abkhazia and South Ossetia. OHCHR reiterates that, irrespective of questions related to the status of territories and entities, the authorities in control in Abkhazia and South Ossetia are responsible for upholding the fundamental freedoms and human rights of all people living under their control and for addressing any conduct that affects their human rights.

44. Information available to OHCHR indicates the continuing existence of local mechanisms of relevance for human rights protection in Abkhazia and South Ossetia. OHCHR encourages them to be proactive in the promotion and protection of human rights in and around both regions.

45. Given the fact that international human rights mechanisms lack access to provide a comprehensive account of the human rights situation, the report of Thomas Hammarberg and Magdalena Grono on human rights in Abkhazia, published in July 2017,³¹ remains an important reference with regard to human rights issues related to Abkhazia.³² OHCHR encourages follow-up to their recommendations, and reiterates its availability to provide support in this process.

46. OHCHR also reiterates that a comparable independent baseline study on human rights concerning South Ossetia is needed.

1. Violations of the right to life

47. The death of one individual in custody during the reporting period is of serious concern. The case concerned an ethnic Georgian, Irakli Kvaratskhelia, who died in March 2019, while reportedly in detention in a facility of the Russian border guards in connection with his attempt to cross the Administrative Boundary Line with Abkhazia. The circumstances of his death remain unclear, with the authorities in control in Abkhazia claiming that he committed suicide. The body of the deceased was handed over to the Georgian authorities on 13 March 2019, and the forensic examination and investigation were ongoing as of May 2019. The authorities of the Russian Federation reportedly completed an investigation into the case as well.

48. Concerning the death of another ethnic Georgian, Archil Tatunashvili, in South Ossetia, in February 2018, the Government of Georgia informed OHCHR of the conclusions of the examination made by its Forensic Bureau, which had found signs of torture. It also reported that charges had been brought against the perpetrators identified by the Georgian authorities. During the reporting period, justice has not been delivered in the case, nor in the alleged unlawful death or killing of Giga Otkhзорia and David Basharuli.³³

49. The above-mentioned incidents and the lack of accountability therefor continued to contribute to impunity in both Abkhazia and South Ossetia. OHCHR calls on all relevant parties to exert their utmost efforts to clarify the facts in these deaths and to prevent any further arbitrary loss of life in and around both regions.

50. OHCHR received information that the death penalty had been introduced in Abkhazia in April 2019 for drug-related crimes and would be applicable starting in 2020.

²⁹ A/HRC/36/65, in particular paras. 46, 48, 51, 61, 66–67, 71–72 and 80.

³⁰ Submission of the Government of Georgia; and Council of Europe, SG/Inf(2019)12, paras. 16 and 34.

³¹ *Human Rights in Abkhazia Today* (Stockholm, Olof Palme International Center, July 2017).

³² See also A/HRC/39/44, in particular paras. 37, 45–46, 56, 70, 73, 77, 82 and 86.

³³ *Ibid.*, paras. 54–55.

OHCHR stresses that such a move is contrary to the global trend towards abolition of the death penalty. Moreover, in situations where the death penalty has not been abolished, the “most serious crime” requirement under international human rights law and standards restricts its use to the offence of intentional killing.³⁴

2. Restrictions on freedom of movement

51. Restrictions on freedom of movement, mainly around the Administrative Boundary Lines, remained of serious concern in both Abkhazia and South Ossetia and adjacent areas during the reporting period. OHCHR recalls that, in addition to constituting a human right, freedom of movement is a precondition for the exercise of other rights and an important confidence-building measure in the context of Abkhazia and South Ossetia. It reiterates its call on all relevant actors to urgently ensure respect for freedom of movement in accordance with international human rights norms and standards.

52. During the reporting period, the process of so-called “borderization” continued in both Abkhazia and South Ossetia, with the installation of additional fences, “border signs” and equipment, frequent controls and increased surveillance. According to the information received from the Government of Georgia, this process in both regions has particularly affected the villages adjacent to the Administrative Boundary Lines, with more than 800 families consequently deprived of access to their property, agricultural lands and other sites, and some living with barbed wire installed through their property.

53. Freedom of movement was further restricted in early January 2019, when the authorities in control in Abkhazia and South Ossetia simultaneously closed the crossing points along the Administrative Boundary Lines, evoking public health concerns following a reported influenza outbreak on the Tbilisi-controlled territory. Although some exceptions were allowed, the lines remained closed for almost one month in the case of Abkhazia and for over two months in the case of South Ossetia. Under the guidance of the World Health Organization, the international community questioned these closures, considering them to be inefficient in combating the spread of influenza and deprived of any public benefit.³⁵

54. Various reports indicated the severe impact of the closures on the affected population in and around both regions, which aggravated its socioeconomic situation and isolation. Concerning Abkhazia, OHCHR received information of a 90 per cent decline in daily crossings during that period. According to the Government of Georgia and the Council of Europe, the population in South Ossetia was additionally affected by significant food and medicine shortages due to the severe winter season and the lack of access of international humanitarian organizations.³⁶

55. Open and functioning crossing points along the Administrative Boundary Lines remained very limited. With only two crossing points staying open across the Administrative Boundary Line with Abkhazia at the time of finalization of the present report, people travelled longer distances and thus had to spend more money to be able to cross. Concerning South Ossetia, the “customs post” established at one of the crossing points further complicated the crossing process, especially for trade.³⁷

56. OHCHR continued to receive information on the implications of various regulations, regimes and practices applied by the authorities in control in Abkhazia and South Ossetia with regard to personal documents. In Abkhazia, new rules introduced during the period under review have reportedly further impeded freedom of movement, particularly of ethnic Georgians. The old version of the de facto Abkhaz “travel documents” and previous Soviet passports have been declared invalid, and are therefore no longer accepted to cross the Administrative Boundary Line.

57. As the majority of ethnic Georgians in Abkhazia are reportedly not eligible to obtain the new version of the de facto Abkhaz “travel documents”, they need to apply for the

³⁴ See, for example, A/67/275. See also General Assembly resolution 69/186.

³⁵ See, for example, A/73/880, para. 24.

³⁶ See SG/Inf(2019)12, para. 51.

³⁷ A/73/880, para. 20.

“foreign residence permit” if they wish to continue residing in Abkhazia and to be able to cross the Administrative Boundary Line. Although the issuance of the “foreign residence permit” continued, OHCHR received information indicating ongoing concerns. In particular, the local inhabitants reportedly remained concerned by the fact that the application for the “foreign residence permit” would compel them to accept the status of foreigner, and to register as such, while having resided in Abkhazia for generations. Other concerns related to the strict eligibility criteria to receive the “foreign residence permit”, which excludes various groups of people, the impossibility of enjoying the full range of rights with the “foreign residence permit”, particularly political and property-related rights, and the length and cost of the application process.

58. In parallel, the authorities in control in Abkhazia continued to extend the validity of the “No. 9 forms”, temporary documents that allow local residents to cross the Administrative Boundary Line. However, new rules were introduced as of January 2019, reportedly requiring persons to simultaneously apply for the “foreign residence permit” when requesting or extending the “No. 9 form”.

59. Given the present situation, it is estimated that several thousand ethnic Georgians lack any documentation that would allow them to cross the Administrative Boundary Line, enjoy related rights and access services.

60. Regarding South Ossetia, the submissions from the Government of Georgia and the Public Defender of Georgia mention new rules introduced in 2019 by the authorities in control. These would require the residents of Akhgori to apply for a special “permit” to cross the Administrative Boundary Line, while they previously were able to cross with de facto South Ossetian “travel documents” only.

61. The Government of Georgia considers the above-mentioned documents issued by the authorities in control in Abkhazia and South Ossetia to be null and void.

62. The measures related to the so-called “borderization”, the temporary closure of the Administrative Boundary Lines, the limited availability of functioning crossing points and ambiguities about the identity and other documents necessary to cross have continued to exacerbate the isolation and vulnerability of the local population. The rights to liberty, health, education and property remain particularly affected by these measures, as elaborated below.

3. Deprivation of liberty

63. OHCHR continued to receive reports of cases of deprivation of liberty in connection with the crossing of the Administrative Boundary Lines, notably at locations that the authorities in control consider to be “unauthorized crossing points”. Most cases reportedly involved short-term detentions of up to several days, while long-term detentions of up to several years continued to occur. Many of the persons apprehended or detained were requested to pay considerable fines in order to be released.

64. In her submission to OHCHR, the Public Defender of Georgia referred to reports by the Government of Georgia on 28 individuals registered as detained during the period under review along the Abkhazian Administrative Boundary Line, and to information from Abkhazian sources mentioning 300 such cases. The Public Defender noted that 96 people had been registered by the Government of Georgia as detained along the South Ossetian Administrative Boundary Line during the reporting period and quoted South Ossetian sources pointing to 607 cases.

65. According to information received from the Government of Georgia and non-governmental organizations, children, women and the elderly have also been subjected to detention. Non-governmental submissions highlighted a lack of due process and fair trial guarantees for persons detained, including a lack of permission to contact their families, and poor conditions of detention.

4. Right to health

66. The restrictions on freedom of movement reportedly continued to affect the right to health in Abkhazia and South Ossetia. Patients and medical emergency vehicles continued

to face difficulties in crossing the Administrative Boundary Lines. These difficulties were particularly serious in the context of the closure of the lines in early 2019. While those in need of medical evacuations were exceptionally allowed to cross in the case of Abkhazia, delays around both regions were reported. In South Ossetia, the closure reportedly resulted, inter alia, in a sharp reduction in the availability of medicine.

67. More generally, information received by OHCHR indicates that the medical services, infrastructure and qualifications of medical personnel are poor in both regions.

68. The United Nations Population Fund (UNFPA) continued to express concern regarding sexual and reproductive health in Abkhazia, with a lack of services, programmes and information, and a low prevalence of modern contraceptive methods. UNFPA emphasized the continuing negative consequences of the full ban on abortion introduced in Abkhazia since 2016. According to its submission, due to the low use of contraceptive methods, the ban is expected to lead to an increase in illegal abortions, with an ensuing risk of maternal mortality and morbidity. UNFPA highlighted the importance of making family planning services and contraceptive methods widely accessible in the region.

5. Right to education

69. Many of the submissions that OHCHR received contained information on the ongoing restrictions on the use of Georgian as a language of instruction, which continued to particularly affect the communities identifying themselves as ethnic Georgian in Gali, Abkhazia and Akhgori, South Ossetia.

70. Measures to replace Georgian with Russian as a language of instruction in Georgian schools reportedly persisted in both Abkhazia and South Ossetia. According to the Government of Georgia, 4,000 pupils remained affected in Abkhazia and 100 in South Ossetia. The practice reportedly continued to hamper teachers and students from providing or benefiting from quality education. One submission received by OHCHR referred to the risk of significantly lower learning achievements among Georgian children in Abkhazia and South Ossetia and of a poorly educated generation in both regions in the longer term.

71. The multifaceted restrictions on freedom of movement further hampered access to education. OHCHR continued to receive information about children compelled to cross the Administrative Boundary Line with Abkhazia to attend schools in the Georgian language and finding it difficult, if not impossible, to pursue their education due to much longer travel times and other requirements. According to the Public Defender of Georgia, the students and schoolchildren who were visiting Abkhazia and South Ossetia during the end-of-year holidays were not able to return on time to the Tbilisi-controlled territory due to the closure of the Administrative Boundary Lines in early 2019, thus missing classes and examinations.

72. Some non-governmental organizations considered that, as a consequence of the above-mentioned situation, ethnic Georgians may forget their mother tongue or otherwise feel compelled to leave the concerned territories.

6. Property issues

73. No progress was reported on the restitution of, or compensation for, property left behind by internally displaced persons. The effects of the so-called “borderization” and the frequent apprehension of persons crossing the Administrative Boundary Lines continued to hinder and discourage access to property situated across or along the lines.

74. In Abkhazia, the lack of clarity over the necessary identity documents continued to result in further infringements of the right to property, as the “foreign residence permits” do not confer this right. In its submission, the Government of Georgia mentioned a recent initiative in Abkhazia that would deprive the relatives of those who fought on the Georgian side during the past conflicts of the right to claim property.

75. According to two submissions received by OHCHR, the practice of demolishing the ruins of houses belonging to internally displaced persons continued in South Ossetia, particularly in the villages of Eredvi and Ksuisi.

7. Gender-based and domestic violence

76. According to UN-Women, violence against women and domestic violence remained difficult to discuss in Abkhazia due to the denial of their existence and because they were treated as personal issues rather than as crimes and human rights violations. UN-Women informed OHCHR about its ongoing work in Abkhazia, focusing on prevention and response to violence against women and domestic violence.

8. Role of civil society

77. Information available to OHCHR indicates the continuing existence of a generally vocal civil society in Abkhazia, which is operating in a difficult environment. OHCHR received reports on rules introduced on 1 June 2018 that prohibit the representatives of the authorities in control in Abkhazia from participating in any international travel organized by non-governmental organizations.

78. In South Ossetia, the environment was reported to be very restrictive for civil society. The creation of a voluntary association is allegedly subject to strict scrutiny and control, which results in people opting to work individually, and those participating in meetings involving international organizations are allegedly pressured. According to several submissions, intimidation continued against Tamara Mearakishvili, an ethnic Georgian and civil society activist in Akhlagori, including through “criminal proceedings”.³⁸

9. Truth and accountability

Truth and accountability processes

79. During the reporting period, the International Criminal Court continued to investigate alleged crimes committed in the context of an international armed conflict between 1 July and 10 October 2008, in and around South Ossetia.³⁹

80. By the time of finalization of the present report, the decision of the European Court of Human Rights remained pending regarding application No. 38263/08 submitted by the Government of Georgia concerning the armed conflict in August 2008 and its aftermath. Procedures were also ongoing regarding a series of individual applications related to the conflict.⁴⁰

Missing persons

81. The International Committee of the Red Cross (ICRC) continued work and reported on progress under its coordination mechanisms established to clarify the fate of persons missing in relation to the armed conflicts of the 1990s and 2008 and their aftermaths. According to ICRC, as of March 2019, more than 2,300 persons remained unaccounted for, including 2,200 in connection with the armed conflict in Abkhazia in the 1990s.⁴¹

³⁸ The case of Ms. Mearakishvili was mentioned in the 2018 report of the High Commissioner (A/HRC/39/44, para. 85). Several submissions received by OHCHR for the present report indicated that, by the end of May 2019, two “criminal proceedings” against Ms. Mearakishvili were ongoing, with hearings having been continuously postponed in one proceeding. Ms. Mearakishvili reportedly remained deprived of her identity documents and therefore unable to cross the Administrative Boundary Line.

³⁹ See www.icc-cpi.int/Georgia.

⁴⁰ Council of Europe, SG/Inf(2019)12, para. 24. According to a press release of the European Court of Human Rights of 31 August 2018 (ECHR 287 (2018)), almost 2,000 individual applications related to the conflict were pending, with some having been communicated to the relevant party.

⁴¹ See ICRC news releases, “Missing in connection with 1990s, 2008 conflicts remains of 23 more people identified”, 12 March 2019; and “Missing since 1992–1993 Abkhazia conflict: Speeding up identification process”, 15 April 2019.

82. ICRC suggested that the Government of Georgia set up a body to coordinate the work on the search for the missing individuals and the provision of support to their families, similar to commissions on missing persons that exist in other countries.⁴²

83. In its information provided to OHCHR, the Government of Georgia reported that a new investigation into missing persons had been initiated.

84. The subject of missing persons continued to be raised in the context of the Geneva international discussions. The work of an expert commissioned by OSCE to focus on missing persons from South Ossetia has continued.

10. Confidence-building measures

85. In June 2018, the parliament of Georgia approved the package of proposals submitted by the Government entitled “A step to a better future”, which envisages, inter alia, confidence-building measures between the communities across the Administrative Boundary Lines.⁴³ In March 2019, the Government launched a related small grant programme (“Enterprise for a better future”) aimed at supporting joint business production and partner projects across the lines. The Secretary-General commended the focus on concrete measures to encourage and facilitate the free movement of goods, services, persons and finances across the lines, and he urged the continuation of dialogue and political will to ensure their implementation.⁴⁴

86. The Council of Europe also continued to implement confidence-building measures in Abkhazia, while noting the impossibility of developing and implementing such measures in South Ossetia.⁴⁵

11. Incident Prevention and Response Mechanisms

87. While the Geneva international discussions continued regularly during the reporting period, OHCHR regrets the suspension of the Gali and Ergneti Incident Prevention and Response Mechanisms, which offered a platform for joint discussion of a number of issues, incidents and individual cases. While the Ergneti mechanism was eventually renewed in December 2018, the Gali mechanism remained suspended as at the date of the finalization of the present report.

C. Situation of internally displaced persons and refugees

88. Pursuant to General Assembly resolution 72/280, the Secretary-General submitted his annual report to the seventy-third session of the General Assembly on the status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia (A/73/880), covering the period from 1 April 2018 to 31 March 2019. The present report therefore does not address this subject.

V. Conclusions and recommendations

89. **The United Nations High Commissioner for Human Rights expresses her appreciation for the continuous cooperation between the Government of Georgia and OHCHR, which demonstrates the Government’s commitment to the promotion and protection of human rights. Her Office remains committed to further supporting the Government and other national stakeholders to further improve the promotion and protection of human rights in Georgia.**

⁴² See www.messenger.com.ge/issues/4354_march_15_2019/4354_icrc.html. See also A/HRC/39/44, para. 53.

⁴³ See also A/HRC/39/44, para. 88.

⁴⁴ A/73/880, para. 54.

⁴⁵ SG/Inf(2019)12, paras. 64 and 71.

90. OHCHR welcomes the achievements made by Georgia during the reporting period, including the establishment of the State Inspector, progress in combating ill-treatment and domestic violence, and the continued cooperation with United Nations special procedure mandate holders.

91. OHCHR makes the following recommendations to the Government of Georgia:

- (a) Continue the reform of the judiciary, in particular with a view to enhancing its independence;
- (b) Step up efforts to combat discrimination, including on grounds of gender, sexual orientation, religion or belief, and disability, in particular by:
 - (i) Combating stigma and hate speech;
 - (ii) Pursuing human rights education and awareness-raising;
 - (iii) Ensuring the right of everyone, including lesbian, gay, bisexual, transgender and intersex individuals, to peaceful assembly;
 - (iv) Intensifying efforts to implement the Convention on the Rights of Persons with Disabilities;
 - (v) Implementing the decision of the Constitutional Court of 3 July 2018, on the legal provisions conferring privileges on the Georgian Orthodox Church;
- (c) Intensify efforts to increase women's representation in political and public life;
- (d) Pursue efforts to combat domestic violence, building on the progress achieved;
- (e) Preserve and increase the vibrant civic space, including by taking steps to prevent verbal attacks on non-governmental organizations;
- (f) Promptly operationalize the Office of the State Inspector, notably by allocating sufficient resources for the effective implementation of its mandate;
- (g) Implement the recommendations of the Public Defender and international mechanisms with regard to the cases of Giorgi Mamaladze and Afgan Mukhtarli;
- (h) Implement the recommendations of the United Nations special procedure mandate holders who have visited Georgia, including during the reporting period;
- (i) Submit overdue reports to the United Nations treaty bodies.

92. Available information indicates the persistence of serious human rights challenges in Abkhazia and South Ossetia, highlighting the need for credible and verified information. The absence of a political solution, compounded by ensuing political divergences that inform decisions and practices, continues to adversely affect the rights of the local population.

93. The High Commissioner therefore regrets the lack of progress regarding access for OHCHR and United Nations human rights mechanisms to Abkhazia and South Ossetia, while noting that the authorities in control in Abkhazia have continued to provide access to some United Nations development and humanitarian actors. Access to these regions would enable OHCHR and other actors to independently and objectively assess the human rights situation and gaps, develop tailored assistance and contribute to confidence-building with a view to enhancing the human rights protection of the affected population. The High Commissioner therefore reiterates the call for unfettered access for her Office and United Nations human rights mechanisms to Abkhazia and South Ossetia.

94. Bearing in mind the conclusion of Mr. Hammarberg and Ms. Grono in their report on human rights in Abkhazia, that several human rights problems can be addressed before a comprehensive political agreement is achieved (p. 76), OHCHR

makes the following recommendations to all relevant parties in the context of the situation in Abkhazia and South Ossetia with view to making progress on the realization of human rights:

(a) Concerning the human rights situation in and around Abkhazia and South Ossetia:

- (i) Lift all restrictions to freedom of movement to facilitate the enjoyment of human rights and services by the affected population, and avoid measures leading to its increased vulnerability and isolation;**
- (ii) Put an end to the practice of detention in connection with the crossing of the Administrative Boundary Lines;**
- (iii) Prevent any further arbitrary loss of life in and around both regions, and ensure justice, accountability and redress in all cases of alleged unlawful death or killing that have occurred in recent years;**
- (iv) Support local mechanisms of relevance for human rights protection and create an enabling environment for civil society;**
- (v) Promote people-to-people contacts and exchanges among professionals;**
- (vi) Prevent discrimination on any grounds, including ethnicity and gender;**
- (vii) Promote women's rights and adopt measures to combat violence against women, including domestic violence;**
- (viii) Ensure the right to education in their native language for all ethnic groups, including ethnic Georgians;**
- (ix) As appropriate, seek the assistance of the international community to address all the issues outlined in the present report.**

(b) Concerning the human rights situation in and around Abkhazia:

- (i) Follow-up on the recommendations of Mr. Hammarberg and Ms. Grono presented in their 2017 report;**
- (ii) Abolish the death penalty;**
- (iii) Remove the ban on abortion and ensure the availability of sexual and reproductive health services.**

(c) Concerning the human rights situation in and around South Ossetia, allow the conduct of an independent baseline study on human rights in South Ossetia.

95. OHCHR reiterates its support for efforts made in the context of the Geneva international discussions as critical to create the necessary conditions for the improvement of the human rights situation of the affected people living in Abkhazia and South Ossetia and adjacent areas.