

## Coming Home: The Abkhazian Human Rights Crisis

Alessandro Miotti

Since the breakup of the Soviet Union, it is fair to say the relationship between Georgia and the occupied territory of Abkhazia has been tense. A war which culminated in an ethnic cleansing campaign during the early 90s, followed by an Abkhaz front during the August War in 2008, has served to sour any relations. While the conflict remains frozen, hostility has managed to remain alive and well in the form of a human rights crisis. Following the Georgian-Abkhaz conflict of the early 90s, more than 200,000 people, predominantly ethnic Georgians, were left internally displaced or forced to flee abroad. In accordance with the wishes of Abkhazia, these IDPs have been allowed to resettle in the southernmost Gali District, a predominantly Georgian area prior to the conflict. As of 2011, about 47,000 returnees have resettled<sup>1</sup>. In spite of this, Abkhazia continuously interferes with the rights of returnees and stands in clear violation of numerous UN resolutions and key human rights documents<sup>2</sup>. To better understand what is happening and what can be done to resolve this crisis, the rights that are being violated should first be examined.

### Gateway Violation

The root of the numerous human rights violations against ethnic Georgian IDPs stems from an issue of citizenship and the process of forced passportization. Forced passportization demands the renouncement of citizenship in favor of that of another state. In this case, IDPs would give up their Georgian citizenship to obtain an Abkhaz passport. This document allows one to receive a variety of benefits which include the right to an education, participation in elections, the right to work and the right to own property<sup>3</sup>.

In 2005, the “Law of the Republic of Abkhazia about Citizenship of the Republic of Abkhazia” was enacted, outlining those eligible for Abkhaz citizenship as well as the requirements<sup>4</sup>. People of Abkhazian ethnicity, regardless of residence or foreign citizenship, are automatically granted citizenship, as are people who have lived within the territory for a period of five years after Abkhazia’s declaration of independence in 1999<sup>5</sup>. For non-Abkhaz nationals, this process becomes much more complicated. One must renounce one’s foreign citizenship, know the Abkhaz language, take an oath of loyalty, understand the provisions of the constitution, have lived within the territory for a period of ten years, have a legal source of income, and pay taxes (determined by the legislature of Abkhazia)<sup>6</sup>. In addition to these already cumbersome requirements, necessary documents that must be provided include: a birth certificate, residence

permit, diplomas from higher education institutions (high school and college), passport photos, proof of residence, labor record book and a passport application form submitted in triplicate. This required documentation must be notarized and submitted in Russian or Abkhazian. For Georgian IDPs, many of these documents were either lost or destroyed during their displacement, thus creating another barrier to entry. Additionally, the ability to work and, at a minimum, live in the region requires an Abkhaz passport in spite of the fact that two provisions for said document call for residency and a source of income. In the likelihood that there are IDPs willing to renounce their citizenship, which in many cases there are, they will find that this provides its own set of issues.

Abkhazia is not an internationally recognized state by any definition, which in turn makes Abkhaz passports ineffective as a means of identification, let alone citizenship. By implementing a policy in which Georgian IDPs must renounce their recognized citizenship, Abkhazia has kept them in a perpetual state of limbo. IDPs who inevitably follow this process will find themselves stateless, even if they manage to acquire an Abkhaz passport. Stateless, meaning they do not have citizenship of a sovereign state. Abkhazia is neither sovereign nor a state, nor even internationally recognized, but rather an occupied territory; making their passports null and void. Even IDPs that are dual-citizens will not be able to protect their status. Non-ethnically Abkhaz persons are limited to the Russian Federation for dual citizenship, thus denying Georgians the right to retain any connection to a state when applying for Abkhaz passports<sup>7</sup>.

This discriminatory process of forced passportization used against Georgian IDPs is a clear human rights violation. Discrimination based on ethnicity is banned by numerous human rights treaties, among them the International Covenant on Civil and Political Rights (ICCPR). Stated under Article 26 of the ICCPR, “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color (sic), sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>8</sup> Under grounds of ethnicity, Georgians are being targeted by Abkhazia in order to be assimilated or expelled once more from the territory. Thus, IDPs are left with three options: 1) retain their Georgian citizenship and be denied their most basic human rights, 2) apply for an Abkhaz passport at the cost of becoming stateless, or 3) remain internally displaced from their homes and begin life anew outside of Abkhazia.

### **Additional Violations**

**Restriction of Movement:** The ethnic Georgian population of Abkhazia have frequently crossed the administrative boundary that separates the occupied territory from the rest of Georgia, mostly in order to receive IDP allowances paid by the Georgian government and to visit family residing outside the territory. However, this freedom of movement has been restricted since the 2008 conflict<sup>9</sup>. The Enguri Bridge has been established as the sole, legal entrance into Abkhazia,

drastically reducing the number of crossing points IDPs had access to prior to the war. To legally cross the administrative boundary, a special permit is required. In order to obtain a permit, an IDP would need an Abkhaz passport or documents which state that they have filed for citizenship<sup>10</sup>. Passportization goes on, affecting other human rights issues, such as freedom of movement, where an Abkhaz passport specifically is needed to cross the administrative boundary.

Stated in Article 13, paragraphs 1 and 2 of the Universal Declaration of Human Rights, “Everyone has the right to freedom of movement and residence within the borders of each State. Everyone has the right to leave any country, including his own, and to return to his country<sup>11</sup>.” It is clear that this denial of free movement across the Abkhazian-Georgian administrative boundary goes against this declaration and thus can come under scrutiny for violating international human rights law.

Education: Since 1995, Abkhazia has begun implementation of a joint Russian-Abkhazian curriculum within Gali district schools while steadily removing the Georgian language. Eleven schools which lie close to the administrative boundary continue to teach in Georgian, but it is unclear how long that will last. With this uncertainty and language policy, many Gali residents are forced to either switch schools or leave the district entirely in order to send their children off to receive an education in their mother tongue<sup>12</sup>. This removal of the Georgian language from Abkhaz schools in favor of Russian stems from a mix of textbook supply and governmental measures intended to integrate the Gali population. Russia supplies textbooks to schools which use the Russian language for instruction, which explains its dominance within the Gali school system. Georgian textbooks are found to be ideologically harmful to Abkhaz statehood as well as the population at large, hence another reason the language is not being taught<sup>13</sup>.

Stated under Article 29, paragraph (c) of the UN Convention on the Rights of the Child, “State Parties agree that the education of the child shall be directed to.... The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own<sup>14</sup>.” In short, children have the right to an education on their own cultural identity as well as in their native language, a right that is being denied to Gali Georgians by Abkhazia.

### **Who is Responsible (and Why)**

The main actors behind this ongoing crisis are the de-facto Abkhazian government. However, while they are primarily responsible for the violations mentioned above, Russia is itself a party to these offenses as well. As stated in the “Law of Georgia on Occupied Territories,” the responsibility for violations of internationally recognized rights is laid upon the Russian Federation as a state carrying out military occupation<sup>15</sup>. Russia’s responsibility in this crisis

extends well beyond Georgian law and their occupation of Abkhazia. Their preponderant influence over the territory has incessantly deterred humanitarian attempts following the 2008 war. Missions such as the OSCE (Organization for Security and Co-operation in Europe) Mission in Georgia and UNOMIG (United Nations Mission Observer Mission in Georgia) were concluded thanks to a Russian veto of their extension<sup>1617</sup>. Russia can continuously deny entry to Western NGOs and prevent the creation of new missions through their heavy regional presence and, more importantly, their veto power within the UN Security Council. Abkhazia also stands to benefit from the expulsion of international monitors. Without a presence ensuring that they uphold the rights of Georgian returnees, abuse can continue to be exacerbated until the point where ethnic Georgians are forcefully expelled once again. While Abkhazia may deny responsibility for the lack of protection of human rights for Gali residents, they can still be held accountable under international law and human rights treaties.

### Accountability

- 1) Abkhazia falls under the umbrella of Georgian sovereignty and remains a territory of the region in spite of Russian occupation. Article 47, paragraph 4 of the Fourth Geneva Convention, states that “the occupation of territory in wartime is essentially a temporary, de facto situation, which deprives the occupied Power of both its statehood and its sovereignty<sup>18</sup>.” Since the Abkhaz-Georgian conflict remains unresolved, it can be considered a temporary de-facto situation which by all rights does not deprive the occupied power, Georgia, of this region’s sovereignty. With this being the case, Abkhazia would be subject to the same human rights treaties as Georgia.
- 2) On January 27<sup>th</sup>, 2016, an investigation was begun by the International Criminal Court (ICC) into alleged war crimes and crimes against humanity perpetrated during the 2008 international conflict in South Ossetia<sup>19</sup>. As an occupied and independent territory, one would imagine that the ICC would have no jurisdiction in South Ossetia, considering they have not ratified, let alone signed, the Rome Statute which would allow this. Georgia, on the other hand, has signed, ratified and entered the Rome Statute into force as of September 5<sup>th</sup>, 2003<sup>20</sup>. This means that from the date it was entered into force, the ICC can open investigations into any violations of the statute, like those during the 2008 conflict. Taking into account how the ICC views South Ossetia as under the umbrella of the Rome Statute and thus within their jurisdiction, an investigation could easily be opened by investigators into crimes against humanity committed against ethnic Georgians. To clarify, under the Rome Statute, Article 7 section 1 subsection (h), “persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender....” is considered a crime against humanity<sup>21</sup>.

- 3) Universal applicability: The essential human rights document outlining the guidelines for internal displacement and internally displaced persons is the United Nations Guiding Principles on Internal Displacement. This universal applicability stems from the document itself being based in existing international laws that govern humanitarian and human rights issues, which in themselves have binding force<sup>22</sup>. It is clear that Abkhazia is in violation of this document via principle 28 and 29 of the document.

Stated under Principle 29 of the Guiding Principles on Internal Displacement, “internally displaced persons who have returned to their homes or places of habitual residence...shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services<sup>23</sup>.” This pertains to forced passportization, a discriminatory process which allows ethnic Georgians to have access and participate in public affairs and services only if they renounce their previous citizenship in favor of an Abkhaz or Russian passport.

Stated under principle 28 of the Guiding Principles on Internal Displacement, “competent authorities have the primary duty and responsibility to establish connections, as well as provide the means which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence<sup>24</sup>.” This pertains to the restriction of movement across the Georgia-Abkhazia border, where IDPs who are caught crossing are detained.

## Conclusion

From the early years of Georgian independence to the present day, the Abkhaz human rights crisis has shown no signs of ending. Occupied by Russia and unrecognized internationally, amelioration will be nothing short of a miracle. Forcing returnees to the Gali district into a position of statelessness further exacerbates Georgia’s inability to send aid. External support is at the mercy of Russian veto power, which has proven it can halt established missions, like those created by the OSCE and the UN, from recurring. While a future ICC investigation could be opened into examining crimes against humanity in Abkhazia, the Georgian government must rouse itself into action to ensure its success. The ICC relies on cooperation with other states when it comes to support, something which Russia and Abkhazia will most assuredly not provide. Georgia however, having ratified the Rome Statute, can and will provide the necessary concessions if they wish to see amelioration restarted. A concerted effort must be made to supply aid to ethnic Georgians in the Gali district. Focus on solely IDPs residing in Georgia proper is only tackling the crisis from one side. In short, it is not enough. Russia is a terrifying adversary, but assisting returnees is neither an invasion nor an encroachment of Abkhazia. It is merely a desire to aid fellow human beings in the pursuit for their most basic human rights.

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- <sup>1</sup> Human Rights Watch, *Living in Limbo Rights of Ethnic Georgian Returnees to the Gali District of Abkhazia*, (2011) (accessed 10 July, 2017) pp. 1
- <sup>2</sup> Ibid pp. 20-21
- <sup>3</sup> Ibid pp. 31
- <sup>4</sup> The “*Law of the Republic of Abkhazia on the Citizenship of the Republic of Abkhazia*”, adopted on November 8, 2005. Available at: [http://presidentofabkhazia.org/en/vize\\_president/dejatelnost/zakon.pdf/](http://presidentofabkhazia.org/en/vize_president/dejatelnost/zakon.pdf/) (accessed 10 July, 2017)
- <sup>5</sup> Ibid Article 5 pp. 3
- <sup>6</sup> Ibid Article 13 pp. 5
- <sup>7</sup> Ibid Article 6 pp. 3
- <sup>8</sup> Article 26, International Covenant on Civil and Political Rights, (entry into force 23 March 1976). Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>
- <sup>9</sup> Human Rights Watch. *Living in Limbo Rights of Ethnic Georgian Returnees to the Gali District of Abkhazia*, (2011) pp. 1 (accessed 10 July, 2017)
- <sup>10</sup> Ibid pp. 41, 43-44
- <sup>11</sup> Article 13, paragraphs 1 and 2, *Universal Declaration of Human Rights*, (10 December 1948), available from [http://www.ohchr.org/Documents/Publications/CoreInternationalHumanRightsTreaties\\_en.pdf](http://www.ohchr.org/Documents/Publications/CoreInternationalHumanRightsTreaties_en.pdf) (accessed on 21 July 2017)
- <sup>12</sup> Human Rights Watch. *Living in Limbo Rights of Ethnic Georgian Returnees to the Gali District of Abkhazia*, (2011) (accessed 10 July, 2017) pp. 48-49
- <sup>13</sup> Public Defender of Georgia Special Report, *The Right to Education in Gali District: New Developments and Challenges of the Academic Year 2015-2016*, (October 2015) pp. 6 (accessed 20 July, 2017)
- <sup>14</sup> Article 29, paragraph c, *Convention on the Rights of the Child*, (entry into force: 2 September 1990), Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> (accessed on 21 July 2017)
- <sup>15</sup> Mikheil Saakashvili, Article 7, paragraph 1, 3, *The law of Georgia on Occupied Territories*, (entry into force October 23<sup>rd</sup>, 2008) Available at: <https://matsne.gov.ge/en/document/view/19132> (accessed 12 July, 2017)
- <sup>16</sup> Daisy Sindelar, *OSCE To Dissolve Georgia Mission After Russia Blocks Extension* (December 22<sup>nd</sup>, 2008) Available at: (accessed 13 July 2017).
- <sup>17</sup> UNOMIG, *Georgia- UNOMIG- Background* Available at: <http://www.un.org/en/peacekeeping/missions/past/unomig/background.html> (accessed 13 July, 2017)
- <sup>18</sup> Geneva Convention (IV,) *Relative to the Protection of Civilian Persons in Time of War*, adopted on 12 August 1949, Available at: [https://www.loc.gov/rr/frd/Military\\_Law/pdf/GC\\_1949-IV.pdf](https://www.loc.gov/rr/frd/Military_Law/pdf/GC_1949-IV.pdf) (accessed 14 July, 2017)
- <sup>19</sup> ICC Investigation Page on Georgia
- <sup>20</sup> ICC State party page on Georgia
- <sup>21</sup> (Article 7, Rome Statute).
- <sup>22</sup> “Handbook for applying the Guiding Principles on Internal Displacement” Available at: <http://www.unhcr.org/protection/idps/50f94df59/handbook-applying-guiding-principles-internal-displacement-ocha-november.html>
- <sup>23</sup> Principle 29, Guiding Principles on Internal Displacement, New York 2nd Edition, (October 2004). Available at: <http://www.unhcr.org/en-us/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html> (accessed 11 July 2017).
- <sup>24</sup> Ibid, Principle 28