



COMMISSIONER FOR HUMAN RIGHTS

COUNCIL OF EUROPE



Strasbourg, 8 September 2008

CommDH(2008)22
Original version

HUMAN RIGHTS IN AREAS AFFECTED BY THE SOUTH OSSETIA CONFLICT

SPECIAL MISSION TO GEORGIA AND RUSSIAN FEDERATION

**By Thomas Hammarberg
Council of Europe Commissioner for Human Rights**

**Vladikavkaz, Tskhinvali, Gori, Tbilisi and Moscow
22-29 August 2008**

TABLE OF CONTENTS

Executive summary	3
I. Introduction	4
II. Applicability of the European Convention on Human Rights.....	5
III. Mission programme	6
IV. Right to return.....	8
V. Rights of displaced persons to care and support.....	10
<i>Displaced persons in North Ossetia</i>	10
<i>Displaced persons in Georgia</i>	11
VI. Right to be protected against the danger from explosive remnants of warfare	14
<i>Right to protection against lawlessness and inter-community violence</i>	16
<i>Right of detainees and persons in hiding to receive protection</i>	17
VIII. International presence and monitoring for the protection of human rights and addressing impunity	18
IX. Conclusions.....	21

Executive summary

1. Commissioner Thomas Hammarberg and his delegation visited Vladikavkaz, Tskhinvali, Gori, Tbilisi and Moscow from 22 to 29 August 2008 in order to assess the human rights situation in the areas affected by the South Ossetia conflict. His mission was about human rights and humanitarian protection and he did not go into other political issues. He talked with a great number of displaced persons and other victims. He also met leading representatives of the governments and international organisations and cooperated closely with the Ombudsmen.
2. Though the death toll resulting from the warfare was lower than first reported, the Commissioner concluded that a very large number of people had been victimised. More than half of the population in South Ossetia fled, the overwhelming majority of them after the Georgian artillery and tank attack on Tskhinvali and the assaults on Georgian villages by South Ossetian militia and criminal gangs. Lawlessness spread in the 'buffer zone' controlled by Russia between Tskhinvali and Karaleti and forced many to leave even from there. When several houses and apartment buildings in Gori were hit by Russian rockets, a further wave of displacement took place.
3. The return of displaced persons has now started but is delayed for the majority of them as safety has not been guaranteed. The 'policing vacuum' in the 'buffer zone' is still unresolved. Large areas must also be demined from cluster bombs, mines and unexploded ordnance devices which now threaten ordinary people, including those who normally work in the fields.
4. Though there is certainly a need for political solutions and clear decisions on effective and durable security arrangements in order for human rights to be protected, several important steps can be taken already now by the parties themselves and by the international community to meet the most urgent human rights requirements.
5. The Commissioner presents six principles for urgent protection of human rights and humanitarian security:
 - 1) *The right to return of those who fled or were displaced must be guaranteed. This requires that their safety is protected and that their homes are made liveable again. The repair of damaged houses is an urgent priority. Affected persons have the right to be informed about relevant developments, their different options, and no one must be returned against their will.*
 - 2) *Those who fled or were displaced must be ensured adequate living conditions until they can return home. This requires competent coordination of the assistance from both governmental and intergovernmental actors. Not only material needs but also psychological and psycho-social damages must be addressed.*
 - 3) *The whole area affected by the warfare must be demined. Cluster bombs, mines, unexploded ordnances and other dangerous devices must be located, removed and destroyed. Until this is done the targeted terrain must be marked and the population clearly informed about the dangers. The parties to the conflict need to declare what type of weapons and ammunition were used, when and where. International contribution to this effort will be required and should be welcomed by both parties.*

- 4) *Physical assault, torching of houses and looting must be totally stopped and persons responsible for such crimes apprehended and held to account. The problem of the 'policing vacuum' in the so-called 'buffer zone' between Tskhinvali and Karaleti must be resolved urgently.*
- 5) *Prisoners of War, other detainees and persons stranded in unsafe situations must be protected and rescued through continued humanitarian efforts. The established mechanism for dialogue and mutual exchanges of such cases – which the Commissioner assisted during his visit - should be kept in place and fully supported, also by the international community. There is a need to establish a coordinated system for assembling and acting upon information on missing persons.*
- 6) *International presence and assistance are needed in the area affected by the conflict. The programs of UNHCR, UNICEF, ICRC and other agencies should be supported and the OSCE be given authority and resources to expand its mission. Apart from cease-fire observers and police presence, there is a need for specialised human rights monitors who could also operate in coordination with the domestic ombudsmen. The protection of minorities must be a key priority and positive inter-community relations must be encouraged.*

I. Introduction

6. The Council of Europe Commissioner for Human Rights carried out a special mission to areas affected by the South Ossetian conflict from 22 to 29 August 2008. The Commissioner was accompanied by Ulrika Sundberg, ambassador, Alexandre Guesel, deputy to the Director, and Irene Kitsou-Milonas, legal advisor.
7. The purpose of the visit was to assess the human rights conditions with a focus on the situation of the victims of the hostilities. Particular attention was given to plight of persons displaced and their possibility for safe and voluntary return.
8. The Commissioner made clear throughout the visit that in accordance with his terms of reference he would not pass any political judgment on the situation. His main concern was to ensure that the human rights of the persons affected are taken into account and respected as far and thoroughly as possible.
9. The Commissioner visited South Ossetia in February 2007 and held talks with the de facto leadership and representatives of civil society on the human rights situation. During the same week, the Commissioner met the leader of the alternative Government of the South Ossetia, Dimitri Sanakoev. These meetings did not imply any form of diplomatic or political recognition and were held without prejudice to the search of a lasting solution to the conflict. Rather they were based on a strong wish from the Commissioner to contribute actively to finding solutions to immediate humanitarian or human rights concerns and to enhance the protection of the victims of the conflict. The present visit pursued the same goal.
10. Article 3 of Resolution (99) 50 regulating the Commissioner's mandate states that he shall contribute to the promotion of the effective observance and full enjoyment of human rights in the member States. In 2003, the Parliamentary Assembly of the Council of Europe adopted the recommendation 1606 on areas where the European Convention on Human Rights (the ECHR or the Convention) cannot be implemented. The main thrust of the recommendation was to ensure that there are no gaps in the

protection system of human rights throughout the European continent. In the same vein, the Committee of Ministers adopted on 21 January 2004 the Declaration on the protection of human rights during armed conflict, internal disturbances and tensions. The possible role which could be played by the Commissioner in those situations was highlighted. The Committee commended the activities already undertaken by the Commissioner on Human Rights with a view to the prevention of human rights violations and “*encourage[d] the Commissioner to continue to pay particular attention to situations where there is a threat or where there are allegations of serious and massive violations of human rights, notably by further developing fact-finding and the formulation of targeted recommendations to which appropriate follow up should be given.*”

II. Applicability of the European Convention on Human Rights

11. The ECHR is applicable at all times, also during armed conflict, unless the State party has explicitly derogated from its obligation under Article 15. According to Article 15§2, no derogations may be made with respect to Article 2 (except in respect of deaths resulting from lawful acts of war), to Article 3 (prohibition of torture), to Article 4§1 (prohibition of slavery and servitude) and to Article 7 (no punishment without a law)¹. These rights are complemented by the fundamental guarantees set out in the First Additional Protocol to the Geneva Conventions of 1949 which has been ratified by both parties and is considered also customary law².
12. According to Article 15§3 of the ECHR, any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. No information on derogation had been submitted by either party, prior to the visit of the Commissioner. However, on 10 August 2008, Georgia did inform the Secretary General of the Council of Europe that on 9 August 2008, the President of Georgia had invoked his right under articles 73(1) (f) and 46 (1) of the Constitution and declared state of war in the whole territory for fifteen days. The President’s decision was approved by the Georgian Parliament. In the same *note verbale* informing of the state of war, it was specifically pointed out that no derogation for any rights under the ECHR had been made. The Government of Georgia addressed on 4 September 2008 a *note verbale* to the Secretary General of the Council of Europe informing him that it had passed Ordinance N552 on 29 August 2008, which stipulates the commencement of procedures to promptly terminate all peace keeping operations in the former autonomous provinces Abkhazia and South Ossetia as well as Georgia. Furthermore, the Permanent Representative of Georgia to the Council of Europe informed the Committee of Ministers on 3 September 2008, that a state of emergency had replaced the martial law in the country, beginning on 4 September 2008.
13. No such notification had been received from the Russian Federation. President Medvedev had given a statement on 8 August 2008 noting that the Russian Federation was exercising its right to self-defense under Article 51 on the UN Charter and had responded to a Georgian attack on its peacekeepers in the Joint Peace keeping force headquarters in Tskhinvali, which was set up under the 1992 Sochi ceasefire agreement.

¹ See also Article 4 of Protocol no 7 (right not to be tried or punished twice)

² Article 75 of the First Additional Protocol to the Geneva Conventions of 1949 relating to the Protection of Victims of International Armed Conflicts, adopted 8 June 1977

14. On 11 August 2008, the Georgian Government requested the European Court of Human Rights to indicate interim measures to the effect that the Russian Government should “refrain from taking any measures which may threaten the life or state of health of the civilian population and to allow the Georgian emergency forces to carry out all the necessary measures in order to provide assistance to the remaining injured civilian population and soldiers via humanitarian corridor”. The Agent of the Georgian Government informed the Court that this request was made in the context of an application directed against the Russian Federation alleging violations of Articles 2 (right to life) and 3 (prohibition of torture, inhuman and degrading treatment) of the CHR and Article 1 of Protocol No. 1 (protection of property) to the Convention. As of 5 September 2008, an inter-state application from Georgia had still not been received by the Court.
15. On 12 August 2008, the President of the Court decided to apply Rule 39 of the Rules of Court (interim measures) considering that the current situation gave rise to a real and continuing risk of serious violations of the Convention. With a view to preventing such violations, the President called upon *both* State Parties concerned to comply with their engagements under the Convention particularly, in respect of Articles 2 and 3 of the Convention and inform the Court as soon as possible of the measures taken by to ensure full compliance with the Convention.
16. During his visit, the Commissioner discussed with both the Russian Federation and Georgian Foreign Ministries the Rule 39§3 ruling. Information on the measures taken to ensure compliance with Articles 2 and 3 of the Convention was submitted by the Georgian Government on 21 August 2008, and the Russian Government on 22 August 2008. A new time-limit for submitting additional information in this regard has been set by the Court for 8 September 2008.
17. On 29 August 2008, diplomatic relations between the two countries were scaled down. However, both countries will retain consular presence to ensure issuance of passports and other vital documents for the victims of the conflict. The same day, the Georgian Parliament also passed a law which abrogates all bilateral treaties between the two countries.

III. Mission programme

18. The Commissioner began his special mission on 22 August 2008 in Vladikavkaz, Republic of North Ossetia of the Russian Federation, where he traveled together with the Federal Ombudsman of the Russian Federation, Vladimir Lukin. Upon arrival to Vladikavkaz, they went to the cemetery in Beslan to pay respect to the victims, who perished during the terrorist act in September 2004.
19. On 23 August 2008, the Commissioner visited the monastery in Alagir, which serves as a transit- and processing centre for the displaced arriving from South Ossetia. He met women and children who had fled from Tskhinvali and neighboring villages and held detailed interviews with them. The Commissioner visited also the central hospital in Vladikavkaz, where he talked with the medical staff and persons who had been wounded during the hostilities.
20. The Commissioner and the Federal Ombudsman then proceeded to the Georgian school in Vladikavkaz and met with leaders of the local Georgian community and the director of the school. In addition, the Commissioner had meetings with representatives

of local non- governmental and international organizations, providing assistance to the displaced. The Commissioner also met with the President of North Ossetia, Teymuraz Mamsurov, and Prime Minister, Nikolay Khlyntsov. Furthermore there were talks with the Vice Prime Minister, Yermak Dzansolov.

21. On 24 August 2008, the Commissioner left the Russian Federation and traveled to Tskhinvali, South Ossetia. He used the same road as the fleeing civilians and went through the Roki tunnel. Before arriving in the regional capital Tskhinvali, the Commissioner passed through the Georgian villages south of Java. In Tskhinvali, he visited severely damaged residential areas, the hospital and the base of the Russian peace keeping monitors, where he spoke with the representative of the Military Procurator. The Commissioner had meetings with the de facto acting Prime Minister, Boris Chochiev, and the de facto Ombudsman of South Ossetia, David Sanakoev.
22. He also went to neighbouring villages, which had all been affected by the active hostilities. During his visit to the village of Khetagurovo, two Georgian soldiers were discovered, who had been captured by the villagers during the hostilities. The Commissioner managed to convince the village leadership to allow the two military men to go with the Commissioner's convoy to be exchanged at the Karaleti checkpoint. Through telephone contacts with the Vice Minister of Defence and the Chairman of the Defence and Security Committee of the Parliament, Mr. Givi Targamadze, in Tbilisi an exchange of seventeen persons was organised that evening.
23. On 25 August 2008, the Commissioner visited a collective center in Tbilisi as well as a temporary camp, near to the airport, where he talked to displaced persons. Further, he had meetings with the diplomatic community and with representatives of the international and regional organisations. He then traveled to the city of Gori, where he met the Governor of the Gori district, Vladimer Vardzelashvili, and representatives of local authorities in charge of catering for the internally displaced. He visited a majority of the houses affected by bombs, shellings or fire together with the Georgian Ombudsman, Sozar Subari.
24. On 26 August 2008, the Commissioner met with the State Minister for Reintegration, Temur Yakobashvili, the Minister of Justice, Nika Gvaramia, the Deputy Minister of Interior, Eka Zguladze, the Minister for Refugees and Resettlement, Tamar Martiashvili, the Minister of Foreign Affairs, Eka Tkheshelashvili, and the Deputy Minister, Giga Bokeria.
25. On 27 August 2008, the Commissioner had numerous conversations with the two negotiators, David Sanakoev and Givi Targamadze, and decided to return to Tskhinvali to assist in the release and exchange of detained persons, including 85 civilians who were kept in the police station in severe conditions (see also chapter on *Protection of detainees and persons in hiding*). He again traveled through the Georgian villages in the 'buffer zone', established by the Russian military forces, between Tskhinvali and the check point in Karaleti.
26. Part of the Commissioner's delegation returned on 27 August 2008 to Gori to visit the new reception camp, as well as schools and kindergartens hosting displaced persons, where they met victims, transferred from Tbilisi as well as newly arrived displaced persons.
27. Before leaving Georgia, the Commissioner reported 27 August 2008 on his preliminary findings and areas of concern to the President of Georgia, Mikheil Saakashvili.

28. On 28 August 2008 he went to Moscow and reported to the Speaker of the Duma, Boris Gryzlov, the Chairman of the Council of the Federation, Sergey Mironov, and the Deputy Minister of Foreign Affairs, Grigory Karasin. On the 1 September 2008, he had a telephone conversation with the Minister of Foreign Affairs, Sergey Lavrov, speaking on behalf of the President Medvedev.
29. The Commissioner wishes to thank the Georgian Government, the Government of the Russian Federation, the authorities of North Ossetia and the de facto authorities of South Ossetia for inviting him and for facilitating his visit throughout the region. The level of cooperation on both sides was very positive. Furthermore, the Commissioner would in particular like to thank the Russian Federal Ombudsman, Vladimir Lukin, the Georgian Ombudsman, Sozar Subari, and the de facto Ombudsman in South Ossetia, David Sanakoev, for their relentless efforts in facilitating his visit and for their active contribution in trying to find solutions to the acute humanitarian and human rights problems. The contribution by these institutions - under difficult circumstances - underlines the importance of their independence. Finally, the Commissioner would like to thank the Parliamentarian, Givi Targamadze, for his efforts on the Georgian side to ensure that exchanges of prisoners of war, detained or stranded civilians actually could occur.
30. The Commissioner reported to the Committee of Ministers of the Council of Europe on 3 September 2008, where he presented six principles for urgent protection of human rights and humanitarian security. The underpinning of these six principles are developed in the present report.

IV. Right to return

31. The Commissioner met a great number of displaced persons, who had left their homes due to the hostilities. All the victims with whom the Commissioner met in North and South Ossetia as well as in Georgia, stated very clearly that they wanted to return to their homes, but only if and when their security was fully guaranteed. They all said they felt that they had been forced to leave.
32. Displaced persons have a right to return to their homes, irrespective of their religion, ethnicity or nationality³. Though international human rights law has focused more on the right of return from another country, there is sufficient basis for a conclusion that it is an obligation of concerned governments to do everything possible in order to protect the right to return also inside countries⁴. The dispute about the future status of South Ossetia is no justification for denying anyone of those displaced persons their right to return home.
33. It should be noted that the displaced persons' right to return is underpinned by provisions of the ECHR, such as those regarding the peaceful enjoyment of one's

³ The right to return to one's country has been enshrined in Article 3, paragraph 2, of Protocol No. 4 to the ECHR. No one shall be deprived of the right to enter the territory of the state of which he is a national. Also Article 12§4 of the ICCPR states "No one shall be arbitrarily deprived of the right to enter his own country". See also Human Rights Committee General Comment on Article 12 of the ICCPR (November 1999): "§20. The wording of article 12, paragraph 4, does not distinguish between nationals and aliens ("no one"). Thus, the persons entitled to exercise this right can be identified only by interpreting the meaning of the phrase "his own country". The scope of "his own country" is broader than the concept "country of his nationality". It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien.

⁴ See also Principle No. 28 of the UN Guiding Principles on Internal Displacement

possessions (Article 1 of Protocol No.1) and the right to respect for one's home (Article 8)⁵.

34. In the Commissioner's view, the full respect for the right to return is a *sine qua non* for finding a solution to this conflict, which would be durable and offer protection for everyone's human rights. The Commissioner raised the right of return with high government officials in both Tbilisi and Moscow and noted positively that they all recognized the importance of the unconditional implementation of the right to return for all victims, without any distinction whatsoever.
35. This right must be fully and effectively respected in any attempt to broker a sustainable peace agreement. The right to return should encompass the whole area of conflict, not only the 'buffer zone', but also South Ossetia itself. Of course such a return must be accompanied with actions and measures which secure the respect of all human rights, including the specific minority rights and the voluntariness, dignity and safety of the individuals concerned.
36. Respecting the choice of the individual victims has to be the guiding principle - in accordance with the 1998 UN Guiding Principles on Internal Displacement⁶. The options must be made clear to the individual: voluntary, safe and dignified return or voluntary resettlement in another part of the country or local integration.
37. Displaced persons should, however, not be coerced either directly or indirectly to return to their former homes, particularly not at this stage where many of them have gone through very traumatic experiences. The right to return is an individual one, thus only the person concerned may elect not to exercise it. This right persists, even when sovereignty over the territory is contested or has changed hands.
38. Those who are unable to return to their homes, because they are occupied or have been destroyed, are entitled to restitution or compensation. However, compensation cannot be seen as a substitute for the right to return to one's former home, if that is the individual's choice⁷. The right to restitution or full and effective compensation is a distinct right from the right to return and should be considered part of any restorative justice initiative.
39. The international community has a duty to ensure that claims of a right to return are resolved fairly, that individual holders of this right are permitted freely and in an informed manner to choose whether or not to exercise it, and that returns proceed in an orderly manner, without arbitrary or unlawful time limitations. The international community must contribute generously and support those who choose to exercise their right to return as well as those who seek resettlement.
40. The international community must also offer aid to assist the permanent settlement of those who choose to remain locally. However, neither the options of local integration and resettlement, nor their absence, should extinguish the right to return; the purpose must be to allow the individual to end his or her displaced status.

⁵ See e.g. *Loizidou v Turkey*, judgment of 18/12/1996, concerning the applicant's lack of access to her property and loss of control thereof after she became a displaced person in Cyprus, *Khamidov v Russia*, judgment of 15/11/2007, concerning, inter alia, the violation of the displaced applicant's right to respect for his home and his right to peaceful enjoyment of his possessions in Chechnya.

⁶ <http://www2.ohchr.org/english/issues/idp/standards.htm>.

⁷ See also the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons – the Pinheiro Principles

V. Rights of displaced persons to care and support

41. The number of people who were killed as a consequence of the armed conflict appears to be lower than first indicated. The estimate the Commissioner received from the Russian authorities on confirmed deaths was 133 persons. The number of wounded attended to in Tskhinvali was 220 persons. In Vladikavkaz, 250 patients had been treated, out of whom 30 had to be transferred to Moscow for intensive care. The Georgian authorities gave information that 216 persons had been killed - out of which 73 had died during the hostilities in Gori - and around 1,000 persons have been injured.
42. Assuming that there is little overlap between these figures from the two sides, it appears still that the death toll when established will be in the hundreds, rather than in the thousands. However, several displaced persons the Commissioner met reported that dead bodies had been buried in gardens or in the fields by locals, when the corpses had begun to decompose. Estimates are also made difficult by the fact that there are a number of people whose fate is unknown and are missing.
43. The statistics on displacement are more certain and they are clearly overwhelming. As of 22 August 2008, the total number of persons affected by the conflict and forcibly displaced on both sides was estimated by UNHCR to 158,700. 120 700 persons were displaced in Georgia and 38 000 had sought refuge in North Ossetia. By 5 September 2008, according to OCHA, only 6,828 persons, including 480 children, still remained in North Ossetia. As of 5 September, the UNHCR estimated that the number of displaced persons in Georgia proper amounted to 80,000.

Displaced persons in North Ossetia

44. According to the Russian authorities, on 22 August 2008, 17,912 had returned to South Ossetia and 12,995 had remained in North Ossetia, awaiting the finalization of the ongoing reconstruction effort. The majority were staying with relatives. 4,252 displaced persons were accommodated in 58 temporary shelters.
45. The monastery in Alagir, which the Commissioner visited, accommodated elderly, single mothers and children. This monastery had served as a registration point and transfer centre during the initial days of the conflict and the material conditions of the reception centre were quite good.
46. By the time of the Commissioner's visit, most men had returned to assess the damages and assist in the reconstruction efforts. There were no reports of unmet humanitarian needs among the victims. Certain UN agencies praised the Russian authorities, in particular EMERCOM, for their prompt and effective response to the humanitarian needs of the victims of the conflict. No special appeal has been made for international humanitarian relief or reconstruction efforts in North or South Ossetia.
47. The Russian authorities were establishing lists concerning all the displaced persons as well as their damaged or lost property. 50,000 rubles (approximately 2000 USD) per family were awarded as initial compensation for losses. Most of the interlocutors expressed their satisfaction with this amount, but some added that the money would only take them through the winter. The local authorities were starting to assess the real extent of the damages in the affected areas. The Commissioner was told that the Russian authorities estimate the total damages of the conflict in South Ossetia to amount to 4, 5 billion rubles (approximately 1,8 BUSD).

48. Though massive reconstruction work was on its way, many of the interviewed victims hesitated to go back, mainly out of fear. However, they all wanted to return in time for school start on 1 September, and the local authorities were organising returns by buses. The Commissioner met some of those returning. The local North Ossetian authorities were prepared to accommodate an additional 2,250 school children this year for those who choose not to go back yet. As the humanitarian and security situation was improving for Ossetians, great numbers of displaced have now returned.
49. The displaced persons wanted to have firm assurances and guarantees that violence would not break out again. Some of them said that it was the second or third time they had had to flee from Georgian attacks. They described to the Commissioner the events that forced them to leave.
50. According to them, the Georgian attack on Tskhinvali and neighbouring villages started just before midnight on the night between 7-8 August 2008. They had initially sought shelter in the basements of their houses or with neighbours, where some of them had spent up to three days without little or no water and food. A few reported having to keep dead bodies with them. Most of them had tried to flee on 9-10 August, through the forests or using the upper bypass road or the main road, Dzara road. Some said that Georgian troops had dropped bombs on the civilians running on Dzara road and were shelling evacuation convoys. They told the Commissioner that they had seen unexploded ordnances lying around. One elderly lady had tried to escape through the forests with her children, after having spent two nights in her basement, but then the South Ossetian militia had found her and taken her to Java, north of Tskhinvali.
51. In the hospital of Vladikavkaz, the Commissioner met one wounded person, who told him that he and his friends had been injured when the Georgian troops shelled his basement. Another patient said that he had been forced out of his hiding place, when Georgian troops had flooded his basement. One patient, who was severely injured, said she was wounded when she was fleeing on Dzara road under the shelling of Georgians troops. The patient further said that the Georgian troops were dropping bombs on civilians who were fleeing. Another patient told the Commissioner that the Georgian troops had used *grad* multiple rocket launchers against her village, when the villagers were trying to flee.
52. Some of what the Commissioner was told may in fact be second-hand information which easily could get exaggerated in the existing atmosphere. Clearly, however, many of those who fled had gone through deeply traumatizing experiences. It is important that their versions will be heard when consolidated work is started in order to clarify the truth of what happened during these devastating days.

Displaced persons in Georgia

53. Every eleventh person in Georgia is now an internally displaced person. The country has more than 220,000 internally displaced persons from the 1991-92 conflict, most of them from Abkhazia. According to Georgian authorities, the number of displaced due to the recent hostilities amounted to 121,000 persons, out of which 80,000 are considered able to return. 40-50,000 persons emanate from the active hostilities in the Gori-district, and during the stay of the Commissioner many of them were able to return to their homes except for those whose houses were damaged. The Deputy Minister of Interior told the Commissioner that there are 158 children, separated from their parents. The displaced had been accommodated temporarily in 645 schools, in collective centers, kindergartens or temporary camps, but the majority was staying with relatives.

However, around 30,000 persons are expected to become long term internally displaced, in dire need of more permanent accommodation.

54. Some 5,000 internally displaced persons came from the villages in the 'buffer zone' between Tskhinvali and the checkpoint in Karaleti. They were not expected to be able to return before a new satisfactory security arrangement had been found. Their personal security needed to be assured and reconstruction work needed to begin. The Governor of Gori told the Commissioner that 31 villages in the 'buffer zone' were inaccessible to the Georgian authorities, at the moment of the visit, for an assessment of the reconstruction needs.
55. Properly registered displaced persons are given legal status as internally displaced and are eligible for social allowances, 22 LAR (approximately 30 USD) per month, and access to all social services. However, all displaced persons due to the conflict had not yet been properly registered by the end of August. The Georgian authorities, notably the Civil Registry Agency, planned to remedy this situation as well as issuing new identification documents to those who needed, once all the displaced had arrived in Gori.
56. The Georgian authorities seemed to face great challenges in creating the proper infrastructure for managing the flows of displaced persons and in ensuring that humanitarian assistance reached the victims. The UN has launched an emergency appeal for Georgia of 59 MUSD, in order to cover the immediate needs of the displaced.
57. The Commissioner visited a collective center, set up in a former military headquarter, for internally displaced in Tbilisi. The majority of those he met had left their home with nothing and still lacked almost everything: from beds, mattresses, blankets, food, medical assistance, trauma treatment to access to education for the children and proper information about available services and entitlements. One single mother and her child had only the floor to sleep on. The displaced persons appeared to be traumatized and in need of psychological and psycho-social care. The premises was clearly unsafe for the children, who were running in the staircase, which lacked banisters. Broken windows were lying around in the corridors. Lift shafts were wide open and debris was being thrown down in them. There was only one kitchen per floor for 80 families, no reception or information booth and no TV. The displaced had not been informed of the options available to them and several said they felt pushed to go to Gori.
58. A great number of the displaced with whom the Commissioner met originated from the Georgian villages north of Tskhinvali. Some of them told the Commissioner that locals had organised evacuation already on 4 and 5 August 2008. Some elderly persons had opted to stay on, as they did not want to leave their homes. The evacuation buses or cars had gone either to Gori or Tbilisi. Those who stayed on had been forced to hide until 11-13 August 2008, before they could attempt to flee. A number of elderly men from the Georgian villages told the Commissioner that the militia had found them and had beaten them, robbed and looted as well as put fire to their houses. Some of them had been forced to watch their houses burning down. The Georgian villagers also told the Commissioner that they had been taken to the police station in Tskhinvali by the South Ossetian militia. The Georgians, who had been found by Russian troops, told the Commissioner they had been taken to the closest checkpoint and released.
59. During the Commissioner's visit to Tbilisi, the Georgian Government decided to move the displaced persons from the capital to Gori, which still bears traces of the hostilities.

The Government officials argued that this decision was taken in order to evacuate the schools so that the ordinary school activities could start at least around mid-October. However, the kindergartens would remain closed, in order to continue to host the displaced.

60. On 27 August 2008, a part of the Commissioner's delegation visited the new reception camp in Gori, which was being set up by the UN's humanitarian organisations. They were informed by the local authorities that the arriving displaced persons were going to be hosted either in the kindergartens or in the new temporary tent camp. The displaced had already started to arrive on 27 August, despite the fact that the camp was not formally opened or fully operational yet. The UN-system emphasized to the delegation that the camp was a temporary solution. By 5 September, some 250 persons had arrived from Tbilisi. Most of them said that they had felt compelled to leave as no food had been distributed to them for several days in Tbilisi. In total some 6,400 displaced are currently hosted in Gori.
61. The delegation was informed by the Gori authorities that the longer term displaced persons, some 4,000 families, would be accommodated in wooden prefabricated houses over the winter. The total need is however estimated to 10,000 families, around 40,000 persons.
62. The Commissioner emphasized in his conversations with the responsible Georgian ministers the principle of voluntary return. He noted that those affected civilians with whom he had talked, especially those who were sent from Tbilisi to Gori, had not received information about their options. He also stressed that the move of displaced persons out of Tbilisi to Gori should not include those from Abkhazia or other areas in the western part of the country, as they should preferably be staying as close to home as possible. Several victims told the Commissioner that they had been informed about the move to Gori through hearsay. They had no official source of information and they were not aware of their options. The Georgian authorities told the Commissioner that they relied on TV to disseminate information and a telephone hotline.
63. There is a return movement to homes in Gori and other safe neighbouring villages. At the same time there are new flows of displacement coming from areas where inter-community violence was reported. Georgian authorities stated that ethnic Georgians were chased out by South Ossetians of the village Akhagori and the Commissioner's delegation tried to locate the persons, who had fled from there with the help of the local authorities in Gori. However, they were not able to locate these displaced during the time of the visit.
64. The Commissioner is concerned over the delays that have occurred in providing the victims in particular the internally displaced persons with locally acceptable food and adequate relief and support. He welcomes the fact that there is now a permanent Government-appointed Humanitarian Coordinator and that coordination of national and international efforts now seem to be on its way to ensure swift and effective delivery of the aid to the remaining some 80,000 displaced.
65. The humanitarian assistance must be provided on a fair, transparent and non-discriminatory basis to all persons in need, also the long term displaced persons. Particular attention needs to be paid to providing psychological and psycho-social care to the traumatized population and special attention must be given to the affected children. In this regard, he welcomes the decision by the European Union to hold a donor conference for the victims of this conflict.

66. The Commissioner is of the view that the Georgian authorities need international assistance in order to coordinate efforts and manage the population movements. He therefore welcomes the setting up of a national task force within the Government structures to coordinate the national response. Besides internal coordination, there is indeed also a need to coordinate with the international organisations. Attempts in this direction were being made, notably in Gori. The Commissioner hopes that these first steps will bear fruit and quickly ensure adequate and non-discriminatory provision of humanitarian aid to the victims, wherever they are.

VI. Right to be protected against the danger from explosive remnants of warfare

67. International humanitarian law imposes a duty on all parties to a conflict to protect civilians and respect the distinction between military targets and civilian objects.
68. The parties should under all circumstances take precautionary measures and avoid or minimize harm to civilians and civilian objects. Direct attacks against civilians and civilian objects, whether for reprisal or any other reason, are prohibited.
69. Indiscriminate attacks which do not attempt to distinguish between military targets and civilians or civilian objects are prohibited. Also the use of inherently indiscriminate weapons is prohibited.
70. Disproportionate attacks aimed at legitimate military target, but with a disproportionate impact on the civilians are also prohibited. No party is allowed to use civilian objects such as schools or hospitals to shield fighters or weapons.
71. There are a number of reports from the displaced persons directed against one of the parties to the conflict regarding indiscriminate or disproportionate use of force resulting in civilian casualties. There have also been reports of deliberate targeting of civilians or sites which are protected under humanitarian law, such as hospitals, schools or even peace keepers.
72. The reported use of certain weapon types by the civilian victims in densely populated areas does raise questions of legality under humanitarian law. Among such reports are those which claim that the Georgian forces used *grad* multiple rocket launchers in their attacks against residential areas in Tskhinvali.
73. The main hospital building in Tskhinvali, particularly its main surgery room, had been hit by rockets, and all the in-patients and wounded had had to go to the basement and be attended to under severely difficult circumstances. He also saw completely destroyed residential areas in the city. In a neighbouring village, the school building had been shelled. Also a house belonging to a Georgian elderly woman had been hit by a rocket.
74. During his visit in Tskhinvali, the Commissioner observed also that the main building of the Russian peace keeping force as well as the base's medical dispensary had been hit by heavy artillery. Also, the OSCE headquarters had been hit and caused damage.
75. It has further been reported that both Georgia and Russia have used different types of cluster bombs of the types M85S (Georgia) and RBK 250 (Russian Federation), resulting in civilian casualties.

76. The Georgian forces have been reported to have used them on two occasions against civilians who were trying to flee on Dzara road, which was the main escape route. The Georgian government has officially admitted using cluster bombs in the area of Roki Tunnel and on Russian troops moving on Dzara road.
77. The Russian forces have been reported by Human Rights Watch to have used cluster bombs in its attacks against Gori and Ruisi. There have also been reports of disproportional use of force by the Russian forces, when attacking military installations in Gori. The Commissioner saw several houses and apartment buildings which had been damaged in the city, including a couple of apartment houses which had been severely burnt out.
78. Very severe damages have been caused on the villages in South Ossetia with a majority Georgian population. Those villages between Tskhinvali and Java have been destroyed, reportedly by South Ossetian militia and criminal gangs.
79. At this juncture, the Commissioner will not venture into issues of accountability for these alleged grave breaches of humanitarian law. Clearly, they should be investigated and the perpetrators brought to justice.
80. The Commissioner adds his voice to the calls for ratification of all humanitarian instruments which prohibit or restrict the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects, such as antipersonnel landmines or cluster munitions. However, in this report, he wishes to emphasize the urgent need to now start clearing and removing the explosive remnants of war in the affected areas, so that the displaced persons can start to go back home as soon as possible and return to normal life.
81. Demining is a precondition for any effective exercise of the victims' right to return. Remnants of war pose a risk not only to the returning civilians but also to the peace keepers or observers, other monitors and humanitarian workers and must be removed and destroyed. In the meantime, it is imperative that the affected areas be marked, fenced and monitored to protect the civilian population. Appropriate awareness raising campaigns about the risks are urgent to protect the civilians and prevent further losses of life. The Commissioner also takes note of the fact that both parties have ratified key international humanitarian instruments, which oblige them to demine after the cessation of hostilities⁸.
82. The Commissioner raised his concerns in this regard with both parties and they both agreed to cooperate, also with relevant international actors, to speed up the clearance, removal and destruction of unexploded ordnance devices. He repeats his call on both parties to honour their humanitarian obligations and commitment and to remove as far as possible the unexploded and abandoned ordnance laid down before withdrawing

⁸ Both Georgia and Russia have ratified the 1980 Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (CCW). Both have also ratified Protocol II on Prohibitions or Restrictions on the Use of Mine, Booby-traps and Other Devices from 1980. Georgia has also ratified the Rome Statute of the International Criminal Court (ICC). The Russian Federation, contrary to Georgia, has ratified Protocol II on Prohibitions or Restrictions on the Use of Mine, Booby-traps and Other Devices as amended on 3 May 1996 and signed in July 2008 Protocol V on Explosive Remnants of War to the CCW. Protocols II and V regulates the duties of the state parties to the conflict to clear the areas they control after the cessation of hostilities and to facilitate the clearance of explosive remnants of war caused by their munitions in areas they do not control. It requires the parties to locate, mark, fence, remove and destroy all unexploded and abandoned ordnance. In areas not controlled by the party to the conflict the Protocol also requires the provision of detailed information on all munitions used and the provision of assistance to clear explosive remnants of war from such territory.

from specific territories. In his talks he also insisted on the need for both parties to declare what type of weapons and ammunition were used, when and where and he noted with satisfaction that both parties agreed to do so.

83. International cooperation and assistance are needed for the urgent clearance and destruction of remnants of war, for the rehabilitation and reconstruction efforts of infrastructure, hospitals, schools, houses as well as the repair of damaged cultural heritage.
84. The Commissioner encouraged the parties to make maximum use of available international demining assistance. The parties must facilitate the demining work by giving access to all actors involved in demining to the affected areas. The parties should also provide -where feasible- all available technical, material or human resources assistance, bilaterally or through an agreed third party, like the International Committee of the Red Cross or UNMAS, so that they can swiftly contribute to the needed demining.
85. The relevant international organisations and other actors should consider providing assistance, at the request of the parties, in locating, marking, removing and destroying all exploded, unexploded and abandoned ordnances. Awareness raising campaigns among the population are key preventing further losses of lives and severe injuries.
86. The Commissioner welcomes the fact that the two parties responded positively to his suggestions and that a demining work now has been started. It is of outmost importance that the situation on the ground quickly moves from emergency relief to recovery in order to allow the displaced, who so wish, to return in safety and in dignity top their homes. This should preferably happen before the winter.

Right to protection against lawlessness and inter-community violence

87. The Commissioner received a great number of reports of physical assault, robbery, kidnapping for ransom, looting and torching of houses as well as personal harassment by South Ossentian militia or other armed men both in the Georgian villages in South Ossetia and in the 'buffer zone'.
88. The Commissioner was alarmed over the ramping criminality in the 'buffer zone', as some civilians have remained there or are attempting to go back, if only for short visits. The Commissioner observed for an hour a number civilians passing through the checkpoint in Karaleti on their way to their homes to look after their gardens and property.
89. Under the current situation, the Russian forces have the duty under humanitarian law to maintain law and order in the zone they control. The Commissioner raised his serious concerns about the security of the civilians with all sides. In his conversation, notably with the Russian head of the peace keepers presence in the zone, general Marat Koulakhmetov, and other high level officials, they acknowledged that policing and maintaining law and order were major challenges. According to them, the area had been infiltrated by marauders, criminal gangs and militia, who were committing serious crimes.
90. This information was confirmed also by the OSCE mission, which had proposed to its Permanent Council to include a police component as well as human rights monitors in its mission to Georgia. As a first step the Permanent Council had strengthened the

mission with twenty additional military observers on 19 August 2008. Furthermore, the deployment of an additional eighty military observers was agreed on 1 September 2008⁹.

91. Representatives at the highest level of the Russian Federation have said they would welcome an international police presence to secure the area. On 4 September 2008, the Russian Federation proposed the setting up of an OSCE civil police operation in Georgia, inviting the EU and other member states of the OSCE to contribute to this mission.
92. The Commissioner urges all relevant actors to urgently address the law and order problem that has now occurred in the 'buffer zone'. Clearly, this policing vacuum needs to be resolved urgently, so that those who reportedly have remained there, are safe and that those who wish to go back can do so without fear for their personal safety and property.

Right of detainees and persons in hiding to receive protection

93. The programme of the Commissioner had to change when he arrived to Tskhinvali and observed that one of the most pressing human rights concerns in relation to the conflict was the return from both sides of persons held in captivity. Apart from prisoners of war there were other detainees kept by official or unofficial authorities for different reasons. Some had been apprehended for their own security but there were also allegations of hostage taking. Moreover, a number of people had gone into hiding, obviously fearing for their lives.
94. The ICRC had negotiated the release of 75 civilians by the de facto South Ossetian authorities, a couple days prior to the Commissioner's arrival. But there were still innocent civilians being held in the local police station. The justification for their detention given by the de facto authorities was their physical protection. They felt they needed to prevent harassment and possibly lynching of these Georgian civilians. Under human rights and humanitarian law, no one should be arbitrarily detained. Furthermore, to detain innocent civilians for the purpose of bargaining amounts to hostage taking and is therefore to be seen as a war crime.
95. On his way to South Ossetia, the Commissioner had been informed that there were a number of prisoners of war who were supposed to be exchanged and some exchanges had already taken place between the two sides. The contacts had been facilitated by the Georgian Ombudsman, who had good contact with both the local Ombudsman in Tskhinvali and the Chairman of the Defence Committee of the Georgian Parliament. However, the process of negotiations had been stalled. The working climate between the parties was at the time of the arrival of the Commissioner full of mistrust.
96. When the Commissioner visited the village of Khetagurovo, on 24 August, the local population handed him a list of five men from the village, which had been taken away by the Georgian forces. As already mentioned above, it turned out that the village had captured two Georgian soldiers, which they intended to use as bargaining chip to get their loved ones back. The Commissioner managed to convince the villagers to hand over the two soldiers to him. He decided to encourage a restart the exchange negotiations with a view of saving lives.

⁹ PC.Decision 861 of 18 August PC.DEL/720/08 and PC.DD/29/08

97. The Commissioner then raised the issue of release and exchanges with the de facto South Ossetian authorities and the Georgian authorities. He managed to convince both parties of them to liberate a number of detained persons. An exchange of a total of 17 detainees on both sides took place late in the evening at the check point of Karateli between the Commissioner and the Georgian parliamentarian Givi Targamadze, in the presence of the Georgian Minister of Justice, Mr. Nika Gvaramia. The Ombudsman of Georgia, Mr. Sozar Subari, and the de facto Ombudsman of South Ossetia, Mr. David Sanakoev, were also present.
98. But further exchanges were necessary. The following day on 25 August, the Georgian authorities unilaterally hand over of three prisoners of war to the South Ossetian. These good-will gestures from both sides were important humanitarian acts and served as building blocks for a renewed mutual confidence between the parties. Once in Tbilisi, the Commissioner contacted the International Committee of the Red Cross (ICRC) for an exchange of information.
99. On 26 August 2008, a follow up exchange was made, where the South Ossetians handed over 43 corpses to the Georgian side and on the 27 August, the Commissioner decided to return to Tskhinvali to try to get all the remaining civilians in detention released. All 85 persons detained in the local police station in Tskhinvali were handed over to the Georgian authorities. 13 prisoners and two bodies were handed over by the Georgian authorities to the South Ossetians.
100. The Commissioner stresses the importance of these humanitarian negotiations continuing. It is possible that there are more persons that are held by private persons as bargaining chips. The Commissioner has received reports that there are civilians still in hiding in the areas of conflict or otherwise stranded and who are in desperate need of being evacuated. Some of them are apparently elderly or disabled. There is a clear need to establish a coordinated system for assembling and acting upon information on missing persons. All such cases must be resolved and respect for human rights must be given highest priority. He also underlines the need for all parties to fully support and cooperate with this established informal mechanism to ensure future humanitarian exchanges.

VIII. International presence and monitoring for the protection of human rights and addressing impunity

101. The Russian authorities are providing assistance to those who fled to Russia and have made it possible for the majority of them to return. Though the material assistance and needs appear to be well taken care of, it is still essential that for instance United Nations agencies can operate also in South Ossetia and contribute with its expertise in key areas. This would also be a crucial element in preparing for the return of ethnic Georgians who left.
102. Due to the deterioration of the inter-community relations it is also important that there can be an international police presence in both South Ossetia and the 'buffer zone' (as long as it exists). Police officers from outside would give advice and training to local policemen but also guarantee a professional police behaviour in the present crisis situation.
103. It has been suggested that the OSCE military cease-fire monitors would include a clear human rights component. This would be positive. Indeed, all the monitors should have

basic human rights training and the contingent as a whole should include experienced human rights experts.

104. In view of the bitter background and the very tense inter-community relationships, there is a need of further specialised human rights monitoring. One of the challenges for the relevant international and European inter-governmental organisations is to design an effective contribution to such monitoring – in cooperation with the domestic ombudsmen. Among the pressing issues are the protection of IDPs *during* displacement but also their protection *from* displacement, by addressing its root causes. Specialised competence is needed not least to monitor the conditions for voluntary return and in relation to methods of minority protection.
105. For a successful relief and recovery operation of the areas affected by the conflict, it is imperative that all humanitarian actors are given access to these areas so that the assistance can be delivered to the places where the victims are. During the Commissioner's visit only ICRC had been given access to the affected areas in South Ossetia, and to the 'buffer zone'. This must change. More actors are needed to ensure speedy reconstruction and rehabilitation of these places.
106. According to the UN organisations, they still do not have access to South Ossetia from Georgia as well as to areas in the 'buffer zone'. The reasons given relate to security concerns which only underlines the need for the international community to address quickly the issue of maintaining law and order in the zone.
107. The de facto South Ossetian authorities are denying access from Georgia proper, arguing that they can only accept UN emergency assistance if it comes in through the Roki tunnel and North Ossetia. On the other hand, the Georgian authorities do not accept such channeling of international assistance, as they consider that this can be interpreted as an infringement of Georgia's sovereignty and territorial integrity. The Commissioner notes with concern that the actual result of these different positions may well be continued suffering of the already victimized civilians. The Commissioner raised the issue of free and unhindered access for humanitarian actors with all parties concerned and he notes their positive responses in this regard.
108. The Commissioner believes that particular attention should be paid to the promotion and protection of minority rights. Promoting respect for these rights will be particularly important when the displaced persons begin to return. The monitoring should be accompanied by reconciliation and other confidence building measures between the two communities.
109. Crimes have been committed for which those responsible must be held to account. The Commissioner has received a number of reports from displaced persons and other victims from both communities which tell about breaches of international humanitarian law as well as serious violations of human rights. Their testimonies range from attacks on peace keeping soldiers, indiscriminate or disproportionate use of force to extra-judicial, summary or arbitrary executions, hostage taking, kidnappings for ransoms, forced disappearances, forced displacement, forced labour, ill-treatment, rape, robbery, looting, torching of houses and physical assaults. All of these alleged acts need to be effectively and promptly investigated, the perpetrators brought to justice and if found guilty after a fair, independent and impartial trial, sentenced and punished.
110. Proposals have been put forward to establish an international commission of inquiry or using the procedures based on declaration made under Article 90 of the Additional

Protocol I to the Geneva Conventions of 1949. These proposals merit serious consideration and discussion.

111. At the same time, the Commissioner notes that the Military Prosecutor of the Russian Federation has already initiated criminal investigations into alleged war crimes. Also the Prosecutor General of Georgia has been asked to investigate facts around alleged war crimes committed on territory of Georgia. The Prosecutor of the International Criminal Court is considering launching a criminal investigation. The Ombudsmen in Russia and Georgia have received information about abuses and a number of non-governmental organizations have already collected a wealth of material about all above mentioned crimes. The Commissioner also notes that the Georgian Government has declared its intent to submit an inter-state application to the European Court on Human Rights and has already instituted proceedings before the International Court of Justice against the Russian Federation for violations of the Convention on the Elimination of All Forms of Racial Discrimination.
112. The Commissioner believes that all the above legal actions need to be taken into account in any further discussion on how the issue of accountability -on both sides- should best be addressed for the serious abuses committed.

IX. Conclusions

- The conflict has had a devastating effect on the human rights of the population. Thousands of people are still displaced waiting for security and help to rebuild damaged houses. *This requires that the principle of the right to voluntary return is upheld and fully recognized by all decision-makers.*
- Unfortunately, there is a need to prepare for the grave risk that several thousand, perhaps as many as 30,000, will not be able to return home within the foreseeable future. They must be cared for and assisted to lead a life as normal as possible. *This requires that material resources are allocated and that the assistance is well organized by the national and international agencies and that the displaced persons themselves are invited to participate in the decision-making.*
- One major threat against the return is the fact that large areas are infected by bombs, shells, unexploded ordnances and other dangerous remnants of the warfare. Systematic demining must be undertaken as a matter of highest priority. The population must be fully informed about the dangers and how to avoid them. *This requires that the demining efforts that have started will continue and that international expertise is welcomed to contribute.*
- The policing vacuum in the 'buffer zone' has to be addressed. *This requires agreements between the Russian and Georgian governments and it seems necessary that representatives of the international community contribute to an active and prompt solution, for instance through providing on an interim basis a contingent of police advisors.*
- The efforts to trace persons detained or in hiding must continue and a system must be established to assemble and act upon information about people missing. The contacts established for exchanges should be strengthened. *This requires that the two key negotiators and the ICRC are given all necessary support.*
- The remaining problem about international access in the area must be resolved. Apart from cease-fire monitors and police presence there is a need of a systematic and competent international contribution to human rights monitoring. Efforts must also be planned for a systematic, impartial collection of evidence about violations committed in connection with the hostilities. *This requires urgent contacts between international human rights organisations in order to develop a package of international contribution, which would be effective for the genuine protection of human rights in the area.*