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## **REPORT ON HUMAN RIGHTS ISSUES FOLLOWING THE AUGUST 2008 ARMED CONFLICT**

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

**Tbilisi, Sukhumi and Gali  
8 to 12 February 2009**

## **Executive Summary**

In his fourth visit to Georgia following the August 2008 conflict, the Commissioner took stock of the implementation of the six principles for urgent human rights and humanitarian protection which he formulated in the aftermath of the active hostilities. He also reviewed conflict-related human rights issues in Abkhazia.

### **Implementation of the Commissioner's six principles**

Right to return: Most of the people displaced by the August 2008 conflict have been able to return to their homes in the areas adjacent to South Ossetia, and most of those who fled to the Russian Federation have been able to return. However, most ethnic Georgians who have fled South Ossetia have not been in a position to return. The Commissioner continues to advocate the importance of safe, voluntary and dignified return, and emphasises the responsibility of all relevant actors to ensure its implementation.

Right of displaced persons to care and support: Decisive efforts must continue on the part of the relevant authorities and the international community to improve the very difficult situation of the large numbers of persons who remain displaced following the August 2008 conflict as well as from earlier conflicts. Displaced persons and returnees should be informed and consulted when solutions are being devised.

Right to be protected against dangers from remnants of war: De-mining in the conflict-affected areas in the Tskhinvali-Gori corridor is ongoing. The Commissioner has welcomed efforts to raise awareness among the local population, including children, of the life-threatening risks of UXOs. Alternative income-generating projects should be available in agrarian areas until the land is cleared of explosive remnants of war.

Right to protection against lawlessness: Despite improvements, the security situation in the conflict-affected areas has not stabilised entirely. There is a need for viable security arrangements in the relevant areas, as well as confidence building measures between the sides, to restore a sense of security among the population.

Protection and exchanges of detainees and prevention of hostage-taking: There remains a strong need to pursue the dialogue between the sides concerning exchanges of persons detained, and to put an end to the practice of hostage-taking, of which the Commissioner received several reports. Though several cases of missing persons have been clarified, further work is needed also in this area.

International assistance and presence: The Law on Occupied Territories of Georgia has raised concerns within the international community with regard to humanitarian access to the conflict-affected areas. Both sides are placing obstacles on such access. Political concerns relating to the status of the regions must not be used as a justification to deny or greatly hamper assistance to those who are in need.

### **Specific human rights issues in Abkhazia**

Freedom of movement and the right to return: Freedom of movement is not sufficiently protected and there is a need to find a solution which will reconcile appropriate security measures with the legitimate interest of local populations to move freely across the Inguri river. The right to return has not been guaranteed and after sixteen years of displacement caused by the earlier conflict, a thorough verification procedure in the form of an international survey is necessary to obtain accurate and up-to-date information on the persons wishing to return, resettle or integrate locally. In August 2008 some 2,000 persons departed from the Kodori valley; in December 2008, food aid was distributed to 162 people remaining in Kodori. Both the Georgian government and the de facto authorities of Abkhazia should facilitate returns, with the support of international actors.

Passports and identity documents: The Commissioner examined the highly-disputed question of passports and identity documents in the Gali district. He concluded that the question of passports and identity documents is the source of much uncertainty and anxiety to the people in that district. The Commissioner considers that the main objective should be to ensure that conditions are such that all people in the region - regardless of their ethnic background or citizenship - are in a position to sustain themselves economically, live a normal life, and contribute to the prosperity of their community. No one should be coerced, either directly or indirectly, to give up their current citizenship.

Education in the Georgian language: The Commissioner discussed the status of the Georgian language in the schools in the Gali district. Following the August 2008 conflict there have been concerns among the Georgian population on that issue. The de facto authorities indicated that of the 21 schools in the district, eleven (lower Gali district) taught their courses in Georgian, and the remainder in Russian. The Commissioner noted that language education plays a key role in multiethnic societies with minority communities. It is one of the ways for parents to pass on their culture to future generations and preserve their identity. At the same time, minorities should be given the means, through appropriate language education, to enable them to integrate fully in the wider society.

International assistance and presence: All of the Commissioner's interlocutors without exception underlined the need for a continued international presence with a clear, substantive and meaningful mandate, which can provide security and humanitarian and human rights protection to the population. The Commissioner welcomed the decision to extend the UN mission mandate, and is firmly convinced that UN presence in the region will be required beyond 15 June 2009. The present should be used to continue constructive discussions to reach agreement on concrete tasks for the renewed UN presence.

## I. Introduction

1. The present report follows a visit to Georgia by the Commissioner for Human Rights from 8 to 12 February 2009.<sup>1</sup> Since the outbreak of the South Ossetia conflict in August 2008, the Commissioner paid several visits to assess the human rights situation in the affected areas; this was his fourth such visit. The purpose of the visit was twofold: 1) to take stock of the implementation of the Commissioner's six principles for urgent human rights and humanitarian protection formulated following his first visit to the conflict-affected areas in August 2008; and 2) to review specific human rights issues in Abkhazia, a region which was also affected - though to a lesser extent - by the August 2008 conflict, and which the Commissioner had last visited in February 2007.
2. In Tbilisi, the Commissioner held consultations with representatives of the state authorities of the Republic of Georgia, including Mr Alexander Nalbandov, Deputy Minister for Foreign Affairs, Ms Eka Zghuladze, Deputy Minister of Internal Affairs, as well as Mr Shota Utiashvili, Head of the Information-Analytical Department of the Ministry of Internal Affairs. Furthermore, on 11 February, the Commissioner participated in the International conference on freedom of expression organised in Tbilisi on the occasion of the 10th anniversary of the Office of the Public Defender (Ombudsman) of Georgia. The Commissioner wishes to thank the Georgian authorities in Strasbourg and Tbilisi for their cooperation and the assistance they provided in facilitating his visit.
3. While in Tbilisi, the Commissioner's delegation returned to two collective centres for the accommodation of displaced persons: the former military headquarters and a former military hospital. These establishments had been visited previously by the Commissioner, respectively, in August and November 2008.
4. The programme in Sukhumi and Gali, which the Commissioner visited on 9 and 10 February, was arranged in cooperation with UNOMIG. It included meetings with de facto President Sergey Bagapsh, de facto Foreign Minister Sergey Shamba, Mr Georgyi Otyrba, de facto Presidential Plenipotentiary for Human Rights, and Mr Ruslan Kishmaria, the representative of the de facto President in the Gali District. The Commissioner wishes to thank UNOMIG for the organisation of this part of his visit.
5. In Gali, the Commissioner visited the primary-education School No.2, which he had visited previously in February 2007. The school provides instruction in the Russian language.
6. The Commissioner met with various representatives from the international community and civil society in each of the places he visited. The former included the Head of the European Union Monitoring Mission (EUMM), the Head of the Delegation of the European Commission to Georgia, the Head of the Independent International Fact-finding Mission on the Conflict in Georgia, the EU Special Representative for the South Caucasus, as well as the UNHCR Representative in Georgia, the Head of the UNHCR Field Office in Gali, the Head of the UN Human Rights Office in Abkhazia, Georgia, the Head of the Delegation of the ICRC in Tbilisi, and the Head of the ICRC Mission in Sukhumi.
7. The Commissioner would like to express his gratitude to all of his interlocutors – which included many ordinary people who have been affected by the regional conflicts - for the valuable information they provided.

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<sup>1</sup> The Commissioner was accompanied by two advisers, Ms Ulrika Sundberg (Special Adviser) and Ms Bojana Urumova.

8. As during previous visits in the aftermath of the August 2008 conflict, the Commissioner made clear that in accordance with his terms of reference he would not pass any political judgment on the situation. His main concern was and remains to ensure that the human rights of the persons affected are taken into account and respected as far and thoroughly as possible.

## **II. Implementation of the Commissioner's six principles for urgent human rights and humanitarian protection following the August 2008 conflict**

### *2.1 Right to return*

9. Following his visit to the region in August 2008, the Commissioner highlighted the alarming situation of the displacement of large numbers of people from their homes. According to the information available, a total number of approximately 138,000 people were displaced in Georgia. Up to 37,000 persons fled to the southern region of the Russian Federation (North Ossetia-Alanya).
10. Since the end of the active hostilities, many people displaced in Georgia - over 100,000 out of the estimated 138,000 initially displaced - have been able to return to their homes. However, according to recent estimates from the Georgian Government and UNHCR, over 30,000 persons still remain displaced. Around 18,000 individuals have been offered durable housing solutions by the Georgian Government and almost 4,000 opted for financial compensation. Approximately 12,500 still reside in collective centres or temporary private accommodation. As for the people who fled to the Russian Federation, most of them have returned to South Ossetia, except for some 1,200 who have chosen to remain in the Russian Federation.
11. It is certainly positive that most of the people displaced during the August 2008 conflict from their homes in the areas adjacent to the administrative boundary line with South Ossetia (some 95%) have been able to return, and that most of those who fled to the Russian Federation have been able to return to South Ossetia. However, it is deeply regrettable that most ethnic Georgians who have fled South Ossetia have not been in a position to return.
12. During his visit to Tskhinvali in November 2008, the Commissioner emphasised the principle of the right to return during his discussions with de facto President Eduard Kokoity. At that time, the position stated by the de facto authorities was that they were – in principle - committed to the right of return for everyone. However, the exercise of this right would not be automatic; ethnic Georgians who wished to return to their villages north of Tskhinvali would have their cases examined individually to verify that they have not participated in the hostilities, and returnees would be obliged to acquire South Ossetian passports. The Commissioner expressed his concern with that position in his previous report. More recently, Mr Kokoity has indicated that returns of Georgians to South Ossetia would be guided by international principles and dependent upon three conditions: security, voluntary return, and a guarantee of adequate living conditions.
13. The Commissioner has repeatedly emphasised that displaced persons have a right to return to their homes, regardless of their ethnicity or nationality. Full respect for the right of return is a sine qua non for finding a lasting solution to this conflict. From his very first visit to the affected areas in August 2008, the Commissioner has advocated the importance of the principles of safe, voluntary, and dignified return, as well as ensuring adequate living conditions for returnees, which in many cases will entail rebuilding destroyed houses and villages. In this respect, the Commissioner emphasises the

- responsibility of all the relevant actors to ensure the implementation of those principles in practice.
14. International and non-governmental organisations have reported that the situation in the Akhalgori area is not yet conducive to return. The Commissioner emphasises that freedom of movement for residents of Akhalgori should be maintained and access to basic services should be ensured.
  15. According to an NGO report<sup>2</sup> which appeared in February 2009, displaced persons from Knolevi - a village in the immediate vicinity of the administrative border – have alleged that they had been pressured or effectively compelled to leave their temporary collective accommodation in Rustavi (near Tbilisi) and return to Knolevi in October and November 2008 against their will and despite their concerns about the security situation.
  16. Though the Commissioner has not been able to establish whether the above information is accurate, he wishes to emphasise that the choice of the individual displaced persons has to be respected, in accordance with the 1998 United Nations Guiding Principles on Internal Displacement. The options must be made clear to the individual: voluntary, safe and dignified return; voluntary resettlement in another part of the country; or local integration. Displaced persons should not be coerced, either directly or indirectly, to return to their former homes; on the contrary, they have the right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health may be at risk. The right to return is an individual one, and it is up to the person concerned to elect whether to exercise it or not. The Commissioner calls upon the responsible authorities to ensure that the foregoing principles are respected without exception.

## 2.2 *Rights of displaced persons to care and support*

17. The process of granting IDP status to the people displaced from the August 2008 conflict started in early May 2009. This question is important as it relates directly to their entitlements and benefits, protection and socio-economic support.
18. The Commissioner has previously welcomed the efforts by the Georgian Government, with the support provided by the international community, to meet the housing needs of those displaced persons who had little or no prospect of immediate return. By his latest visit in February 2009, some 4,000 housing units had been constructed in various localities, including the vicinity of Tbilisi, Mtskheta and Gori, and of the 18,000 persons who had been offered resettlement, some 14,000 had accepted and moved into the houses concerned. In addition, some 1,500 apartments and/or houses had been repaired.
19. According to a report by a non-governmental organisation<sup>3</sup> based on interviews with residents, conditions in the new settlements varied significantly and in some cases could be regarded as acceptable only if the persons do not have to stay for prolonged periods. A number of different challenges remained unresolved, in terms of the infrastructure, food provision, access to medical services, and prospects for the resettled persons' future livelihood. Dampness/drainage problems, the absence of waste disposal and washing/showering facilities were cited as being among the most serious deficiencies in some of the newly-built settlements. The Commissioner recognises that the difficulties

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<sup>2</sup> The report of the Tbilisi-based Human Rights Centre, a non-governmental organisation, is entitled *Human Rights in the Conflict Zone: Six months on from the August War*.

<sup>3</sup> *Ibid.*

- with the infrastructure undoubtedly relate - at least in part - to the fact that the new houses had been constructed in record time in view of the forthcoming winter season.
20. The Anti-Crisis Council of the Parliament has been raising some of the problems related to the infrastructure of the new settlements with the Minister of Refugees and Accommodation, who has indicated that the Ministry is working to rectify the shortcomings identified. More recently, it has been brought to the Commissioner's attention that newer houses of a better construction standard are being built with international support.
  21. As during the Commissioner's November 2008 visit, a number of complaints were conveyed that displaced persons did not have sufficient information about the organisation of resettlement and other matters directly affecting their lives, and that there had been a lack of consultation with displaced persons in the planning of resettlement solutions and income-generating possibilities. Therefore, the Commissioner is obliged to reiterate his previous recommendation that both displaced persons and returnees should be consulted when devising temporary and longer term solutions for them. Such persons should be informed as regards their entitlements, benefits and choices. The Commissioner strongly supports the opinion of the Representative of the UN Secretary General on the human rights of internally displaced persons, Mr Walter Kälin, that it is of prime importance to ensure that displaced persons are fully informed and consulted about developments which affect their future. To quote Mr Kälin, "[s]uch consultation would not only ensure the effective use of government resources, but also give IDPs a sense of ownership and control over their lives. Full and transparent information will be a key component in ensuring the sustainability of resettlement." The Commissioner agrees with this position, and urges the Georgian authorities to apply the above-mentioned principles in practice.
  22. As already noted, of the estimated 37,000 remaining displaced persons in Georgia, over 12,000 are still in collective centres or temporary private accommodation in Tbilisi and in other parts of the country. The Commissioner and his delegation returned to two collective centres accommodating displaced persons in Tbilisi: the former military headquarters (previously visited in August 2008) and the former military hospital (visited in November 2008). At the time of the February 2009 visit, the approximate occupancy figures in those establishments were respectively 1500 and 800. Whereas it was positive that electricity had been installed in each of the eight storeys of the former military hospital, hardly any change was discernible in the former military headquarters but for the plywood covers used to block the previously-exposed lift (elevator) shafts. The overall conditions in each of those facilities remained substandard, unsanitary, as well as potentially hazardous, especially for children.
  23. Once again, many of the Commissioner's interlocutors referred to the persons displaced from earlier conflicts in the 1990s, who have yet to be integrated and whose situation remains very difficult. The Georgian authorities have indicated that there remain at least 220,000 "old" IDPs, mostly from Abkhazia.
  24. Clearly, decisive efforts must continue on the part of the relevant authorities and the international community to improve the very difficult situation of the large numbers of persons who remain displaced following the August 2008 conflict as well as those displaced from earlier conflicts. The efforts must be comprehensive and non-discriminatory to cover the different groups of displaced persons, but also with due regard to the persons' own views and preferences and with priority given to vulnerable cases.
  25. In this regard, the Commissioner has noted that the revision of the Georgian Action Plan for Internally Displaced Persons (IDPs), the establishment of which is foreseen under the 2007 State Strategy for IDPs, is about to be finalised with the participation of a Steering

Committee under the Prime Minister comprised of representatives of governmental entities, major donors, international NGOs and local IDP NGOs. The Action Plan foresees the provision of durable housing solutions for the persons displaced in the early 1990s, including options such as rehabilitation and privatisation of collective centres, resettlement, or lump-sum financial assistance. The Commissioner trusts that the Action Plan will fully reflect the different dimensions of integration mentioned in the State Strategy and that implementation of the plan will be carried out in a participatory and inclusive manner, with necessary attention given to individual cases with special needs. Finding effective and comprehensive solutions for displaced persons, which will place them in a position to enjoy the full range of their rights and freedoms, must be given the highest priority.

### 2.3 *Right to be protected against dangers from remnants of war*

26. As the Commissioner has repeatedly stressed, removal of explosives and other remnants of war is a precondition for any effective exercise of the right to return as well as the stabilisation and normalisation process in general. Remnants of war – which pose a risk to returning civilians, peace-keepers, observers or monitors, and humanitarian workers alike – 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 essential to the protection of civilians.
27. Much of the explosive remnants of war have been found in a 10 km-wide area along a 20 km corridor between Tskhinvali and Gori, where the August 2008 hostilities took place. A total of 25 villages in that area have been affected by the remnants of war, 16 of which display impacts of cluster bomb strikes, and nine of unexploded ordnance (UXO) contamination. Due to the fertile land in the areas concerned, time-consuming sub-surface clearance is needed; it is anticipated that this will be completed by the end of the summer of 2009. As for South Ossetia, the Russian Ministry for Emergency Situations (EMERCOM) has completed basic UXO clearance around Tskhinvali.
28. The Commissioner welcomes the efforts – including by international organisations, specialised NGOs, the Georgian authorities and EMERCOM - to raise awareness among the local population, including children, of the life-threatening risks of UXOs, and to provide risk education in schools to prevent further injuries and loss of life. These programmes should be ongoing in order to maximise their effectiveness. The Commissioner also noted with interest the inauguration in February 2009 of an Explosive Remnants of War Coordination Centre in Tbilisi as a result of joint efforts by the Georgian Ministry of Defence, the Ministry of Interior and international actors.
29. The Commissioner received worrying information that, due to the upcoming cultivation season, people from agrarian areas were trying to work on land which was not yet cleared of hazardous remnants of war, thereby exposing themselves to serious risks. To prevent any casualties, alternative income-generating projects should be available for a period sufficiently long to allow for thorough demining and risk elimination. The converse is also true: there should be ongoing information efforts to provide reliable information to the population about areas which are safe, so that no one is unnecessarily deprived of access to land and livelihood.
30. The question of the use of cluster bombs in the August 2008 conflict, including against civilian targets, continues to be the subject of much controversy and mutual accusations. The use of cluster bombs against military targets has been acknowledged by the Georgian authorities, whereas the Russian authorities have stated that they have not used cluster munitions during the hostilities. According to a report on the South Ossetia conflict released in January 2009 by Human Rights Watch, both Georgian and Russian



forces used cluster munitions during the armed conflict. The report, which was strongly criticised by the Russian Foreign Ministry,<sup>4</sup> claimed that Russian forces used such munitions in strikes against populated areas in the Gori and Kareli districts south of the administrative border, and could consequently be characterised as indiscriminate. As for the use of cluster munitions by Georgia, Human Rights Watch indicated that while it had no information about the impact of those attacks on civilians in South Ossetia, certain types of cluster munitions (M85) fired by Georgian forces struck nine villages in the Tskhinvali-Gori corridor south of the administrative boundary line.

31. Clearly, the issue of the use of cluster munitions during the conflict merits further attention, and should be subjected to an international, independent, and impartial investigation. The use of such munitions against civilian targets is unlawful under humanitarian law because of their broad, long-term and indiscriminate effects. The new Convention on Cluster Munitions, which was opened for signature in December 2008,<sup>5</sup> prohibits all use, stockpiling, production and transfer of cluster munitions, as well as containing provisions on assistance to victims, clearance of contaminated areas, and destruction of stockpiles. To date (13 May 2009), 96 countries - 31 of them Council of Europe member States - have signed the Convention and seven (including three Council of Europe member States) have ratified it; however, Georgia and the Russian Federation are not among the signatories. The Commissioner reiterates his call to both States to join this treaty. In the meantime, he urges the sides to act in accordance with the spirit of this Convention and humanitarian law; all affected areas must be cleared from cluster duds as soon as possible and comprehensive assistance provided to victims.

#### 2.4 *Right to protection against lawlessness*

32. Overall, the security situation in the conflict-affected areas has improved over the last months, according to international observers. However, this is not to say that conditions have stabilised entirely; on the contrary, incidents do continue to be reported, some of them serious, and tensions persist in the areas adjacent to the administrative border. Such incidents and tensions continue to have a negative impact on local residents' sense of security and constitute a significant impediment to returns and reconstruction. The Georgian authorities have indicated that two civilians and 12 policemen were killed in the areas concerned since October 2008.
33. All of the Commissioner's interlocutors emphasised the need for viable security arrangements in the relevant areas, as well as confidence building measures between the sides. This is essential to restoring the population's sense of security, both in the areas adjacent to the administrative boundary line and within South Ossetia.
34. A memorandum of understanding (MOU), signed between the EUMM and the Georgian Ministry of Defence on 26 January 2009, contains transparency provisions as to the movement and deployment of Georgian troops in the areas adjacent to the administrative border, and provides for a 15-kilometer wide zone which must be kept free of heavy weapons. The EUMM has proposed that these arrangements be reciprocated for the other side of the administrative border;<sup>6</sup> however, this has not been accepted to date. A

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<sup>4</sup> On 26 January 2009, the Press and Information Department of the Russian Foreign Ministry stated via its website that the Human Rights Watch Report is "based on a series of threadbare and groundless theses, which are being actively hyped in certain foreign political and media circles, and on the subject of which we have repeatedly given explanations".

<sup>5</sup> The Convention is a result of the Oslo process, which included States, the Cluster Muniton Coalition, the International Committee of the Red Cross and the United Nations.

<sup>6</sup> In a statement announcing the MOU with the Georgian Ministry of Defence, EUMM Head Ambassador Hansjörg Haber said: "If Russia decides to reciprocate this agreement, I am sure that even more security

further memorandum of understanding was signed between the EUMM and the Georgian Ministry of Internal Affairs, providing for inspections of police stations by the former.

35. Despite the encouraging development of the EUMM-Georgia MOUs, it will take sustained efforts to assuage the fears of the population and re-establish confidence between the sides.
36. The Commissioner has also taken note of the decision, reached by the parties at the Geneva talks on 17 February 2009, to establish a joint incident prevention mechanism. The aim of the mechanism is to promote stability and security by providing a timely and adequate response to security incidents and/or criminal activities, ensuring the security of vital installations and infrastructure, as well as ensuring the effective delivery of humanitarian aid. Under the agreement, the security forces of all parties to the conflict and international monitors (UN, EU and OSCE) are to meet at least every week, or more often if needed, and may agree to conduct joint visits. The Commissioner considers that this mechanism has the potential to contribute to improving security in the conflict-affected areas, and calls upon all of the actors to implement it in practice and in good faith.

#### *2.5 Protection and exchanges of detainees and prevention of hostage-taking*

37. There remains a strong need to pursue the dialogue between the sides concerning exchanges of persons detained, and to eliminate the practice of hostage taking, of which the Commissioner received several reports during his February visit and thereafter.
38. The sides have requested the Commissioner to continue to contribute to the important process of exchanges. A number of challenges lie ahead, with several cases yet to be resolved and the fate of missing persons clarified. For this process to move forward, the rather tenuous trust between the sides must be restored and strengthened.
39. The Commissioner is as committed as ever to ensuring the protection and exchanges of detainees, and strongly appeals to the relevant actors to take decisive steps in this regard, though they may be difficult. An end must be put to the vicious cycle of hostage-taking and the use of human beings as bargaining chips. This is essential to enable confidence-building and family reunification.
40. The Commissioner would also like to reiterate that from a human rights standpoint, it is important to ensure that any persons arrested in the former conflict areas are afforded all the necessary safeguards of the European Convention on Human Rights, in particular Articles 5 and 6. Any minors who are arrested should be given special attention to ensure that their physical and mental well-being is adequately protected. At the same time, a firm stance should be taken by all the relevant authorities against kidnapping and hostage-taking. A clear message must be delivered that such acts are serious crimes which will not be tolerated, and that perpetrators will be prosecuted.

#### *2.6 International assistance and presence*

41. The August 2008 conflict generated a humanitarian disaster and numerous human rights violations. The magnitude of the crisis required urgent and extensive international assistance to protect the tens of thousands of people who had been rendered extremely vulnerable.

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and stability is possible along the administrative boundary lines. [...] There can be real stability if both sides contribute to it.”

42. The Commissioner welcomes the generous response of the international community following the August 2008 conflict. He notes that the European Commission has already paid out some 60 million Euros for care, winterisation and durable housing for displaced persons within Georgia. Urgent humanitarian assistance to people in South Ossetia in the aftermath of the hostilities was provided by the Russian Ministry for Emergency Situations (EMERCOM) and ICRC.
43. Unfortunately, international humanitarian actors continue to face major obstacles in terms of access to the affected areas and the very people who are in need of assistance. The situation effectively amounts to an impasse, with the positions of the sides being even more entrenched than previously.
44. The Law on Occupied Territories of Georgia, which was adopted on 23 October 2008 and is currently in force, has raised concerns within the international community with regard to humanitarian access to the conflict-affected areas. This law restricts access to Abkhazia and South Ossetia for foreigners and Stateless persons, who may enter those territories only from the Georgian side. The European Commission for Democracy Through Law (the Venice Commission) reviewed the law, and found inter alia that “the criminalisation of irregular entry into the occupied territories with no exclusion of humanitarian aid and no exception for emergency situations, the restriction and criminalisation of economic activities necessary for the survival of the population [...] as well as a (potential) restriction and criminalisation of humanitarian aid is contrary to the rule of customary international law.”
45. The position of the de facto authorities of South Ossetia has not changed on the question of access for international assistance. All such assistance can only enter the region through the Russian Federation.
46. The obstacles being placed by the sides on humanitarian access are deeply regrettable. Political concerns relating to the status of the regions must not be used as a justification to deny or greatly hamper assistance to those who are in need; such people must not be made hostages to political processes or stalemates. In this regard, the Commissioner would like to recall that UN Security Council Resolution 1866(2009), adopted on 13 February 2009, calls for facilitating, and refraining from placing and impediment to, humanitarian access. He appeals to the respective sides to respect this provision in practice, with full regard to the pressing needs of the people affected.
47. Apart from the provision of humanitarian assistance, international organisations have an important role to play in the stabilisation and normalisation process as well as human rights monitoring. The Council of Europe has provided training in the European Convention on Human Rights to EUMM observers at the end of 2009 (November and December); there may be a need to envisage further training sessions to ensure that newly arrived monitors are equipped to address human rights challenges. However, the Commissioner has already noted in his previous report (November 2008 visit) that while the EUMM and the OSCE military monitors have been patrolling the areas adjacent to the administrative border, neither of them has access to South Ossetia; this was still the case in May 2009.
48. The Commissioner welcomes the decision by the European Union to set up an international investigation to look into the August 2008 conflict, including its origins and its course, with a sufficiently broad scope (geographical and time-span) to determine all possible causes of the conflict. The fact-finding commission, which is composed of lawyers, historians, military staff, and human rights experts, is expected to present its report by 31 July 2009. The Commissioner has had two meetings with the Head of the Commissioner, Ambassador Heidi Tagliavini.

49. The Commissioner is also pleased to note that the next session of the Geneva talks, planned for May 2009, will be dedicated to the situation of the refugees and the internally displaced, humanitarian access and provision of aid. Once again, it is important to highlight that for the negotiations to be successful there is a need to delink the political discussions on status from efforts to address the very considerable and urgent humanitarian problems.

### **III. Specific human rights issues in Abkhazia**

#### *3.1 General remarks*

50. The August 2008 armed conflict also affected directly the Kodori valley in Abkhazia. Following a military operation by Abkhaz forces up to 2,000 people fled or were evacuated from the area. Moreover, the crisis has undoubtedly had adverse repercussions in a broader sense, and has rendered already vulnerable groups of people even more so.
51. During the Commissioner's previous visit to this region in February 2007, he examined a number of questions resulting from the earlier conflict in the 1990s; these are still relevant today. The main issues include further returns and security of returnees, freedom of movement, issues related to passports and identity documents, and education in the Georgian language in the Gali district. In addition, the need for a continued international presence was underlined by all of the Commissioner's interlocutors. The Commissioner's observations on those issues are set out in the following sections.

#### *3.2 Freedom of movement and the right to return*

52. While any general solution of the return of the large numbers of persons (over 200,000) displaced between 1989 and 1994 depends on a global settlement of the conflict concerned, a limited return to Abkhazia has been allowed. This only applies to Gali, a town and surrounding district facing the Georgian-controlled town of Zugdidi across the Inguri river that constitutes the cease-fire line (and administrative boundary), and exclusively benefits the people who originally lived in Gali. The leadership in Sukhumi has cited overarching peace and security concerns as a justification for not allowing returns outside the Gali district, and has stressed in particular that more extensive returns would trigger further internecine violence and disrupt the demographic balance. One of the considerations which has been set forth is that returnees must be accepted by the local community into which they are returning, in order to make the return fully "voluntary".
53. The people who departed from Kodori in August 2008 sought refuge in other parts of Georgia, including Tbilisi, Zugdidi and Kutaisi, where some of them were staying with relatives and many others were being accommodated in collective centres. In December 2008 ICRC distributed food to the 162 persons who remained in Kodori.
54. Once again, the Commissioner wishes to emphasise the principle of safe, voluntary and dignified return. After sixteen years of displacement caused by the earlier conflict, a thorough verification procedure in the form of a survey conducted by a respected international body is necessary to ascertain whether the persons concerned wish to return, resettle or integrate locally. Once accurate and up-to-date information is obtained as to the number of people wishing to return, both the Georgian government and the de facto authorities of Abkhazia should be encouraged to devise support plans to facilitate such returns, with the support of international actors.

55. The population in Gali comprises some 50,000 inhabitants, most of whom are said to be returnees. Certain of the returnees have been residing in the Gali district on a temporary or part time basis. The people living in that district have been relying – for various reasons, including commercial purposes, commuting for employment, family ties, medical care or social needs, education, security concerns, etc. - on freedom of movement across the Inguri river to the Zugdidi area. Prior to the summer of 2008, such movement was essentially unrestricted.
56. Since the summer of 2008, new restrictions have been imposed on movement across the administrative border, which has rendered the population in Gali more isolated than before. The restrictions on movement have reportedly led to cases of bribery at crossing points. Crossing the administrative border is apparently allowed for medical emergencies or for those who work at the Inguri hydroelectric station, and special passes or permits could be obtained from the (de facto) police in the Gali district upon a written request indicating the purpose of the trip into Georgian-controlled territory. It is envisaged that there would be certain “official border crossing points”, in addition to the main bridge over the Inguri river.
57. According to international observers, the situation in the Gali district has been tense, due in part to an increase in criminal activities and cross-ceasefire line incidents. The Abkhaz side has underlined that the closing of the administrative border is a temporary measure which is necessary for security reasons and in order to thwart criminality.
58. Clearly, there is a need to find a solution which will reconcile appropriate security measures with the legitimate interest of local populations to enjoy free movement across the Inguri river. This is a key factor which militates for the extension of a meaningful and substantive UN presence, which should work together with all the relevant actors and forces with the aim of preventing tensions, resolving incidents and ensuring freedom of movement for the people in the areas concerned.

### 3.3 *Passports and identity documents*

59. The Commissioner discussed with the Abkhaz leadership and other interlocutors the policy as regards issuance of passports and identity documents to the Georgian minority in the Gali district, most of whom hold Georgian passports. The officials concerned have emphatically stated that the process of giving Abkhaz passports to Georgians who reside in Gali is carried out exclusively on a voluntary basis. However, according to Abkhaz law, an Abkhaz citizen is not allowed to concurrently hold Georgian citizenship.<sup>7</sup>
60. Apparently, the new Abkhaz passports are one of the main forms of identification within Abkhazia, and are said to be mandatory when filing court claims or collecting pensions. An alternative option for people who do not wish to obtain an Abkhaz passport is to obtain a residence permit; this is the option that most Gali residents have taken. However, the information as to the rights and entitlements applying to holders of residence permits is somewhat unclear. According to the representative of the de facto President in the Gali district, having a passport was a requirement for entering into any transaction involving real property (buying or selling); however, persons without an Abkhaz passport would not be deprived of property they already owned.
61. Certain NGOs considered the possibility to have a residence permit was “the worst option” for the people in Gali, as it inherently implied that holders of such permits can only remain on the territory for a limited period of time. Various interlocutors indicated that

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<sup>7</sup> The law in question does allow concurrent citizenship with the Russian Federation.

- apart from being deprived of the possibility to engage in real estate transactions, people with a residence permit but no Abkhaz passport were prevented from any public sector employment (including in the health care and education professions), inheriting property, performing bank operations, establishing an organisation, enrolling in Sukhumi university, obtaining a driver's licence or other business and administrative activities.
62. Within the Gali district, up to 10% of the population had applied for Abkhaz passports and nearly 250 had been issued as of February 2009. Most of those persons are apparently employees of the local administration. The reluctance of the large majority of Gali residents to apply for such passports is reportedly due to the requirement that they must renounce their Georgian citizenship (because of the lack of possibility of concurrent Abkhaz and Georgian citizenship under Abkhaz law), which for them would entail a number of disadvantages and difficulties, e.g. loss of social benefits, and which many experience as a distressing prospect directly affecting their sense of identity.
63. Obviously, the question of passports and identity documents is the source of much uncertainty and anxiety to the people from the Gali district. This population, which has been the target of suspicions and mistrust coming from both sides of the conflict, must not be kept in a hostage-like situation, where they have to choose between renouncing Georgian citizenship and being placed in a situation where their legal status prevents them from making a living.
64. The leadership in Sukhumi has indicated that they are open to different recommendations on the question of identity documents. While the Commissioner would refrain from making any ready prescription for a solution for this highly disputed and sensitive question, he does not exclude that there can be pragmatic ways to address the problem. Clearly, no one should be coerced, either directly or indirectly, to renounce their current citizenship. The main objective should be to ensure that conditions are such that all people in the region - regardless of their ethnic background or citizenship - are in a position to sustain themselves economically, live a normal life, and contribute to the prosperity of their community.

#### 3.4 *Education in the Georgian language*

65. The issue of education in the Georgian language for the population in Gali was already examined briefly by the Commissioner during his previous visit to the region in 2007. During his latest visit, the Commissioner returned to the primary-education School No.2 in the town of Gali and discussed the language issue with representatives of civil society.
66. The overall situation in terms of language education appeared to be similar in February 2009 as during the Commissioner's previous visit. However, following the August 2008 conflict there has been a renewed sense of concern among the Georgian population on the issue of language in schools. The de facto authorities indicated that of the 21 schools in the Gali district, eleven (lower Gali district) had Georgian as main the language of instruction, and the remainder taught their courses in Russian. The textbooks used in the Georgian-language schools were the same as those used in the curriculum approved by the Georgian Ministry of Education, except for the contentious subjects of history and geography. Textbooks on those subjects which were approved by the Abkhaz de facto Ministry of Education did not exist in Georgian. In schools where the primary language of instruction was Russian, Georgian was taught as a foreign language three times a week, and there were also courses in the Abkhaz language. There are no higher education institutions in Gali; in Sukhumi University, the language of instruction is Russian.
67. School No.2 in Gali town, which the commissioner re-visited, provides instruction in Russian. It was evident that the school was struggling because of meagre resources and teaching materials, dilapidated infrastructure, and low teacher salaries. The Georgian

- government has been supplementing teacher salaries throughout the district; however, this has been disrupted, possibly due to the restrictions on freedom of movement across the administrative boundary (cf. above).
68. According to statements and information provided by the Georgian authorities, schoolteachers in the Gali district have been forced to teach their pupils in Russian. This was strongly denied by the Abkhaz leadership. Nevertheless, there have been many assertions about a deterioration of the situation following the August 2008 conflict. Non-governmental organisations in Gali reported that hours of instruction in Georgian were being reduced and that teachers were teaching in Georgian “at their own risk”.
69. The Commissioner notes that a good quality education for children should ensure them equality of access and treatment; it should enable them to develop their capabilities and personalities, and to become full members in the societies in which they reside and to live decent lives.<sup>8</sup> In multiethnic societies with minority communities, language education plays a key role. It is one of the ways for parents to pass on their culture to future generations and preserve their identity. At the same time, authorities have a responsibility to ensure that minorities are given the means, through appropriate language education (in the present case, Russian and/or Abkhaz), which enable them to integrate fully in the wider society.
70. The aim should be to reconcile the objective of protecting the identity of persons belonging to national minorities with that of making integration possible. The Commissioner recommends that steps be taken to ensure that these precepts are applied in practice. An additional important step towards confidence building would be to develop common textbooks, even on highly disputed and sensitive subjects such as history, so as to eliminate stereotypes and prejudices and foster critical thinking.

### 3.5 *International assistance and presence*

71. During the Commissioner’s visit to the region, discussions were ongoing about the renewal of the mandate of the United Nations Observer Mission in Georgia (UNOMIG), which has been monitoring the situation in Abkhazia and the neighbouring region as stipulated by the Moscow Ceasefire Agreement of 1994.
72. The August 2008 conflict dramatically changed the context in which UNOMIG was operating. Georgia withdrew from the Moscow agreement, and the Collective Peacekeeping Forces of the CIS departed; Russian forces remained deployed in the Abkhaz-controlled zone, and there was military build-up on each side of the ceasefire line. Both UNOMIG and the main international human rights institution in Abkhazia, the UN-mandated Human Rights Office in Abkhazia, Georgia (HROAG), continued to function, albeit UNOMIG found itself in something of a legal vacuum.
73. All of the Commissioner’s interlocutors without exception underlined the need for a continued international presence with a clear, substantive and meaningful mandate, which can provide security and humanitarian and human rights protection to the population. On 13 February 2009, the UN Security Council adopted a decision extending the mandate of the United Nations mission until 15 June 2009, and expressed its intention to outline the elements of a further United Nations mission in the region in the meantime. The UN Secretary General was requested to submit a new report by mid-May 2009, containing information on the situation on the ground as well as recommendations on future activities.

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<sup>8</sup> Cf. Commentary on Education under the Framework Convention for the Protection of National Minorities, ACFC/25DOC(2006)002.

74. The Commissioner welcomed the decision to extend the UN mission mandate, and is firmly convinced that UN presence in the region will be required beyond 15 June 2009. This period should be used to continue constructive discussions to reach agreement on concrete tasks for the UN presence.
75. Once again, the Commissioner calls upon all concerned parties to allow free and unhindered access for international organisations to all the conflict-affected areas (including those which were indirectly affected), from all directions, at all times, so that the population can be provided with all the necessary humanitarian assistance and human rights support and the work of confidence-building can proceed. The region and its people must not continue to be isolated; they are part of Europe and are bound to have a European future once an appropriate settlement is reached.