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SPECIAL FOLLOW-UP MISSION TO THE AREAS AFFECTED BY THE SOUTH OSSETIA CONFLICT:

**Implementation of the Commissioner's six principles
for urgent human rights and humanitarian protection**

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**25 to 27 September 2008
Tbilisi, Gori, Tskhinvali and Akhalgori**

Summary

1. The Council of Europe Commissioner for Human Rights carried out a follow-up visit to areas affected by the South Ossetia conflict from 25 to 27 September 2008. The purpose of this special mission was to follow up on his visit to Georgia and the Russian Federation from 22 to 29 August 2008 and to assess implementation of the six principles for urgent human rights and humanitarian protection, which he formulated after the August visit. Those principles were accepted by all relevant actors involved in the conflict and endorsed by the Council of Europe's Committee of Ministers and other international actors.
2. **Right to return:** The Commissioner recommended that all the relevant political decision-makers must make a clear statement of commitment to the principle of the right to return for those who wish to do so.
3. By the time of the Commissioner's visit, some 68,000 had been able to return to their homes out of the total number of displaced persons of 131,000. By mid-October, the number of returnees had increased to 96,100.
4. The principle of the right to return was discussed with the de facto authorities in Tskhinvali. They indicated to the Commissioner that they accepted and would respect this principle. This policy needs to be implemented. Safety must be guaranteed and destroyed houses rebuilt.
5. **Rights of displaced persons to care and support:** In August, the Commissioner found that neither the authorities nor the international community had done enough to provide those who fled or were displaced with adequate living conditions and support. During his latest visit, the Commissioner found that there had been progress in this area, and that there was a plan for caring for those who were not likely to be able to return to their homes in the near future. They were estimated to be around 20,000. With winter approaching, it is crucial to address their needs with urgency.
6. Work was underway to build 2,100 single-family housing units close to the highway between Tbilisi and Gori. The Commissioner visited the construction site and can confirm that, when built, the houses would provide a good solution for a large number of displaced persons who were not yet able to return to their homes. The increased activities from the Georgian government and international organisations to address the needs of those persons are to be welcomed. Similar efforts are needed to guarantee the rights of the more than 220,000 IDPs from previous displacement. The Georgian Prime Minister has stated that a durable solution will be found for all displaced persons, irrespective of whether they originate from the 2008 or 1992 conflicts.
7. The majority of the more than 37,000 Ossetians who fled to the Russian Federation have now returned and the Commissioner was assured that the needs of those remaining are being catered for in a satisfactory manner.
8. The strides taken towards improving the situation of IDPs cannot be a substitute for the right to return; individuals must be enabled to end their displaced status and go home if they so choose.
9. **Demining:** There remained a critical need to de-mine large areas affected by the conflict. There were still large quantities of unexploded ordnance and bombs – including sub-munition “duds” from cluster bombs - which continue to pose a real danger to people. The Russian army indicated to the Commissioner that they have

already picked up and neutralised some 26,500 pieces of such materials in the “buffer zone”, and that more work was needed. Organisations such as Halo Trust and UNMAS have contributed significantly to de-mining efforts in the areas under Georgian control.

10. The challenges of systematic de-mining require full cooperation and information sharing by both sides. International services should be provided to assist this important task.
11. **Protection against lawlessness:** One of the most serious remaining problems was the issue of ensuring safety for people in all areas affected by the conflict. Of particular concern during the Commissioner’s visit was the situation in the northern part of what was called the “buffer zone”. In the southern part of the “buffer zone”, the situation appeared to have stabilised and most people (some 90%) had reportedly returned. In the middle third, the rate of return was said to be approximately 50%. According to Georgian authorities, an additional 21,000 have returned to the “buffer zone” since 1 October 2008. Further returns have taken place in early October since the EU monitors moved into this area.
12. **Protection of detainees/prisoners of war and persons in hiding:** There has been an acute need to ensure the release and exchange of prisoners of war and other detainees and to enable the return of persons who are in hiding. Significant progress had been made in this area. The Commissioner offered his good offices to both sides on these problems and achieved important agreements. Progress is also being made on identifying the dead bodies exchanged and recently found, thereby reducing the number of cases of missing persons whose fate is unknown.
13. **International presence and monitoring for the protection of human rights:** The international community is now mobilised with a view to contributing to the genuine protection of human rights in areas affected by the conflict. Monitors from the international community must be aware of the potential human rights challenges and trained to handle them. There is a need to process information from the monitors to respond to urgent situations as well as to patterns of violations of human rights or humanitarian law. Good coordination between the international actors is essential. The Commissioner is ready to contribute to such efforts within his mandate provided the requisite resources are made available.
14. The problem of access of international humanitarian and early recovery aid has yet to be resolved. It is imperative that all humanitarian organisations are allowed to have access to all the relevant areas, from all directions, all the time. Lifting the existing hindrances to access is crucial so that people in need can receive the assistance necessary for their recovery and protection.

Introduction

15. The Council of Europe Commissioner for Human Rights visited areas affected by the South Ossetia conflict from 25 to 27 September 2008. The purpose of this special mission was to follow up on his previous visit and to assess implementation of the six principles for urgent human rights and humanitarian protection, which the Commissioner formulated after his visit to Georgia and the Russian Federation from 22 to 29 August 2008. These principles were accepted by all relevant actors involved in the conflict and endorsed by the Council of Europe's Committee of Ministers as well as other international actors¹.
16. The Commissioner had delivered an oral report on his preliminary findings from the August visit to the Committee of Ministers of the Council of Europe on 3 September 2008, presenting six principles for human rights and humanitarian protection of the victims of the conflict, whose situation was dire. He called upon the parties and the international community to address urgently the problems identified. These principles are incorporated in the Commissioner's report of 8 September 2008 and are enumerated here for easy reference²:

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 and no one may be returned against his or her 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 conflict must be de-mined. Cluster bombs, mines, unexploded ordnance 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, including by the international community. There is a need to establish a coordinated system for assembling and acting upon information on missing persons.

¹ The Commissioner was accompanied by Ulrika Sundberg, Special Adviser and Bojana Urumova, Adviser from his office.

² Cf. CommDH(2008)22, paragraph 5.

6. International presence and assistance are needed in the area affected by the conflict. The programmes of UNHCR, UNICEF, ICRC and other agencies should be supported and the OSCE 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.

The mission programme

17. The Commissioner began his follow-up visit on 25 September 2008 in Tbilisi, where he met the UN Resident and Humanitarian Coordinator and representatives of the European Union, the OSCE Mission to Georgia, OSCE/ODIHR, UNHCR, and ICRC, as well as the delegation of the Parliamentary Assembly of the Council of Europe, which was concluding its visit to the region.³
18. On 26 September 2008, the Commissioner visited two establishments in Tbilisi hosting displaced persons, accompanied by Tamar Martiashvili, Minister for Refugees and Resettlement, and Koba Subeliani, Member of the Parliamentary Committee for the Protection of Human Rights and Civil Integration. The first centre was a nursing home for elderly persons, where 25 displaced persons were accommodated at the time of the visit. The second was Kindergarten No. 11, where some 30 families were living. In both centres, the Commissioner spoke to displaced persons. The Commissioner then proceeded to visit the village of Rene, situated along the road to Gori, which is populated primarily by ethnic Ossetians. He also saw a nearby construction site for housing for displaced families. In Gori, he visited the temporary camp for IDPs and had talks with the Governor of the Gori district, Vladimer Vardzelashvili.
19. In the afternoon of 26 September 2008, the Commissioner proceeded to Tskhinvali, where he visited villages north of the town that, prior to the August 2008 conflict, had been populated predominantly by ethnic Georgians - Tamarasheni, Kvemo Achebeti and Zemo Achebeti as well as the village of Arkneti, which has a mixed ethnic population⁴. The Commissioner met with Major General Marat Kulakhmetov, who was in charge of the Russian military presence in South Ossetia. He also had talks with the de facto acting Prime Minister of South Ossetia, Boris Chochiev. Throughout his visit, he was accompanied by David Sanakoev, the de facto Ombudsman in South Ossetia.
20. On 27 September 2008, the Commissioner went to the town of Akhagori, where he met Anatoliy Margiev, the acting Governor, representing the de facto authorities of South Ossetia. He visited an orphanage and the town hospital and met with children and other residents in Akhagori. The Commissioner also met the Head of the EU Monitoring Mission, and concluded this visit with a meeting with the following senior officials of the Georgian Government: Batu Kutelia and Giorgi Muchaidze, Deputy Defence Ministers, Tina Burjaliani, Deputy Minister of Justice, Giorgi Vashadze, Chairman of the Civil Registry Agency of the Ministry of Justice, as well as officials from the Ministry of Interior and the Ministry of Justice.

³ Cf. Doc 11720 Addendum II report prepared by the Chairman of the Ad hoc Committee of the Bureau of the Assembly, Mr. Luc van den Brande and Parliamentary Assembly resolution 1846 (2008).

⁴ Cf. also paragraph 5.12 of the Report of the UN humanitarian assessment mission to South Ossetia 16-20 September, 2008.

21. In the course of the visit, the Commissioner had meetings with Sozar Subari, the Ombudsman of Georgia, as well as with Givi Targamadze, Chairman of the Defence and Security Committee of the Parliament.
22. Major developments have taken place on the ground, since the conclusion of the Commissioner's follow-up mission, in particular the withdrawal of the Russian troops from the so-called "buffer zone" and, in parallel, the deployment of over 200 EU monitors into the area together with Georgian police and special forces. The situation in the northern part of the zone is still reported to be volatile.
23. Displaced persons have started to return in substantial numbers to this area. As of 13 October 2008, 96,100 persons have returned.

The right to return

24. In his report on the special mission in August, the Commissioner called upon all the relevant political decision-makers to recognise the importance of the unconditional implementation of the right to return for all persons displaced during the conflict. In his view, full respect for the right to return was *a sine qua non* for finding a durable solution to the conflict, which would offer protection for everyone's human rights.⁵
25. During the September visit, the Commissioner reiterated this principle with all the parties concerned and stressed the importance of the unconditional implementation of this right for all victims, without any distinction whatsoever. He insisted that the dispute about the future status of South Ossetia is no justification for denying any of the displaced persons their right to return home.
26. The Commissioner is pleased to report that the principle of the right to return has been endorsed by the parties. He notes that the de facto South Ossetian authorities expressed to him their commitment to the right of return, including for ethnic Georgians who fled during the hostilities. The Commissioner envisages holding further discussions with the relevant authorities in order to ensure the full implementation of this principle.
27. The Commissioner welcomed the fact that the UNHCR and ICRC had been given access to all areas in the 'buffer zone' and could monitor the conditions of return and ensure that return is voluntary, and that individuals wishing to return were being enabled to do so in dignity and safety.
28. According to the UN, some 131,000 persons have been displaced in Georgia due to the conflict. Of these, 107,000 originate from South Ossetia and adjacent areas, notably the "buffer zone". The Georgian authorities have stated that up to 22,000 have been displaced from South Ossetia. The UN humanitarian assessment mission to South Ossetia estimated that between 10-15,000 were displaced from villages in South Ossetia. According to the local de facto authorities, around 3,000 have been displaced from the Akhagori district.
29. Out of the total of 107,000 persons displaced from South Ossetia and the "buffer zone", around 68,000 had returned to their homes by the time of the Commissioner's visit, mainly to the city of Gori, villages in the Gori district, and other accessible and safe villages in the former 'buffer zone'.

⁵ Cf. CommDH(2008)22, paragraphs 31 to 37.

30. According to the Russian authorities, up to 37,000 South Ossetians fled to North Ossetia. Out of these, an overwhelming majority has returned, except for some 2,000 - mainly women and children - who have chosen to stay on in the Russian Federation.
31. During his visit, the Commissioner was informed by the ICRC that in the southern part of the "buffer zone", the return was as high as 90%. In the middle part, around 50% had returned. However, in the area closest to South Ossetia, far fewer returns had taken place, due to security concerns and a high crime rate. In order to enable returns to this area, it is imperative to proceed with mine clearance and to restore law and order. There is also an urgent need to reconstruct houses and provide for education and health care.
32. With the deployment of EU monitors, the expectations are high that this area will become safe and accessible for civilians, as well as for international and non-governmental organisations engaging in rehabilitation and reconstruction work. According to the Georgian Ministry of Refugees and Accommodation, some additional 21,100 have returned to their villages in the former "buffer zone" by 13 October 2008. The overall number of returns is today 96,100 persons. The Georgian government intends to provide the remaining 34,900 with durable housing by 15 December 2008.
33. As regards the actual return of the approximately 11,000 ethnic Georgians to the Tskhinvali and Kurta districts, this will depend greatly on the progress in de-mining in the area and reconstruction efforts in the destroyed villages. The UN humanitarian assessment mission to South Ossetia found that the immediate needs of the returnees had been met by the Russian EMERCOM (the emergencies ministry), ICRC and the de facto authorities' efforts. Nevertheless, there were gaps and points of humanitarian risk which, if unaddressed, could lead to a new humanitarian emergency. Protection of civilians was signalled as urgent concern, especially as regards conditions for return and finding durable solutions for elderly and other vulnerable displaced persons. Restoring essential social services, building local service capacity and the issue of livelihoods were priority areas for intervention, as well as re-establishing mass vaccination campaigns against polio and measles.
34. About half of the population in Akhagori had fled out of fear of possible future armed clashes. In the Commissioner's conversations with persons displaced from this area, the lack of functioning schools, health care and social services were cited as other push factors, which prompted them to leave and were seen as disincentives for any return.
35. The Commissioner raised the issue of new passports with the acting de facto Governor – in particular, whether all persons wishing to return to or remain in Akhagori were required to get new or additional passports if they wished to continue to reside in the area. At the time of the visit, the inhabitants could move freely, and buses were operating to and from Tbilisi. The Commissioner intends to pursue his talks on this subject with the de facto authorities.

Rights of displaced persons to care and support

36. The Commissioner welcomes the progress made by international humanitarian organisations, working together with the relevant Georgian authorities, towards meeting the needs of the displaced persons accommodated in private families, collective centres, kindergartens or temporary camps. However, he is still concerned over inadequate material conditions in the collective centres, as he continues to receive reports of unaddressed urgent material needs of the displaced.

37. Certain centres, some of which were visited in August, remain in a dilapidated and sub-standard state and lack electricity, water, heating and sanitation facilities. Kitchens are grossly insufficient and inadequate for the number of occupants. Rehabilitation of these centres by the international donor community is allegedly hampered by the Government's intent to sell major public buildings to private investors and to privatise schools and hospitals. None of the collective centres that the Commissioner visited during his August mission was safe or child-friendly. At the time of the September visit, there were still 35,000 displaced persons in Tbilisi, according to the Georgian government.
38. Since the Commissioner's previous visit, the UNHCR and ICRC had stepped up their efforts to meet the immediate needs of the displaced persons, notably in the collective centres and hospitals, providing the displaced with food, kitchen utensils, and mattresses, as well as other non-food items.
39. Minister for Refugees and Resettlement Tamar Martiashvili and member of the Parliamentary Committee for the Protection of Human Rights and Civil Integration, Koba Subeliani accompanied the Commissioner to a nursing home for elderly persons in the outskirts of Tbilisi, where 25 persons including children were accommodated. The facility was new, clean and appeared to offer good conditions. The Commissioner also visited Kindergarten No. 11 in Tbilisi, where some 30 families had been placed. The material conditions were less satisfactory in this centre.
40. In the two places, the Commissioner had conversations with displaced persons. They all expressed the wish to go home, and a majority of them had gone to their villages in the daytime to check the conditions of their houses and other property. Most of them indicated that they were afraid to return permanently, which apparently was based partially on media reports on the conditions of return and the security situation.
41. The decision by the Government to continue to use the kindergartens to host displaced persons is valid until the beginning of 2009. This decision has affected adversely other segments of society, i.e. the families who rely on kindergartens for childcare during working hours. Very few of them can afford to resort to private childcare. The problem, which was acknowledged by the authorities, was expected to dissipate once the number of returns of displaced persons increased.
42. On his way to Gori, the Commissioner visited a construction site of some 2,100 houses⁶. According to information provided by MP Subeliani, the houses would be donated to the displaced persons considered unable to return. The number of such persons was estimated to be between 17,000 and 20,000. In order to cater for all displaced persons in need of a long-term solution, approximately 5,000 houses would be needed. Families from villages in South Ossetia would be given first priority in terms of allocation of the houses; however, the procedure to be followed to qualify for these free houses was not fully clear. Nevertheless, the Commissioner considers it positive that there are plans to provide adequate support and housing to people who are not able or willing to return.
43. Near the construction site, the Commissioner visited the village of Rene, which is populated by ethnic Ossetians. Representatives said that they had faced no discrimination as a consequence of the conflict.
44. The UNHCR was running the temporary camp in Gori, where approximately 2,500 displaced persons were accommodated. The camp was fully operational; the displaced

⁶ The building cost for each house was estimated to 27,000 Georgian Lari - approximately 10,300 euros and the market value of these houses to the double.

persons had now been given beds and mattresses, and were being served hot meals twice a day by the Italian Red Cross. It was envisaged that the camp would close before the winter and UNHCR reported on 17 October that this had been done, but indicated at the same time that more resources were needed to “ensure continued assistance... and reconstruction programmes”. Humanitarian organisations indicated that many of the displaced were afraid to return, and they stressed the urgency of the need for the Government authorities to undertake serious and comprehensive confidence building efforts, starting with mine awareness campaigns, re-establishing schools and health care services as well as infrastructure, including water supply, in the areas of return.

45. The Commissioner fully agrees with the aforementioned proposals for government action, and reiterates the importance of providing alternative solutions for those who are unable or unwilling to return. He intends to collaborate on these and other aspects relating to IDPs with the Representative of the UN Secretary General on the Human Rights of Displaced Persons, the UNHCR and, as appropriate, with ICRC.
46. The UN, the European Commission and the World Bank structures have carried out a joint needs assessment of humanitarian, recovery and reconstruction as well as development needs. The needs of South Ossetia and Abkhazia for reconstruction and rehabilitation could only be assessed partially, due to lack of access. The physical damage to infrastructure and environment was found to be tangible but not extensive and all transportation networks were functioning. The problems that Georgia is facing were perceived as being mainly economic and related to the conflict's impact on the consumer and foreign investor confidence.
47. The Georgian Prime Minister has stated publicly that all IDPs will be given a durable solution within 36 months after the adoption of the joint needs assessment of the World Bank, UN and European Commission. All IDPs from the 2008 conflict will be resettled or returned during the early recovery phase. The 220,000 displaced from the 1992 conflicts would be given a durable housing solution within three years.

Demining in the areas affected by the conflict:

48. Since the Commissioner's previous visit, demining activities have commenced in the areas affected by the armed conflict. A memorandum of understanding on Humanitarian Mine Action Assistance was signed between the Defence Ministry of Georgia and the Norwegian People's Aid organisation on 17 September 2008. The city of Gori and its surrounding territory, as well as agricultural fields where local people work, have already been cleared of such devices.
49. The Georgian Ministry of Defence has acknowledged the use of cluster munitions and Grad rocket launchers during the recent conflict. However, the Georgian authorities have maintained that such weapons were only used against military targets, such as the Roki Tunnel, the Gufta bridge, north of Java and on Dzara road, to stop Russian troops from advancing.
50. During discussions with the Commissioner, the First Deputy Minister of Defence of Georgia argued that cluster bombs were highly effective and that it was justified to use them in order to stop the advance of Russian troops from the Roki tunnel. He also indicated that the munitions used had self-destructing devices. However, it is known that many sub-munitions do not explode, even if equipped with self-destruction component; such devices become de facto antipersonnel mines, which could cause civilian casualties months or even years after the hostilities.

51. The Russian authorities have informed the Commissioner that the Russian forces did not use inhumane types of weapons and munitions, including cluster munitions during the hostilities.
52. The Commissioner wishes to reiterate his call for ratification of all humanitarian instruments, in particular the UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (CCW) and its relevant protocols, which prohibit or restrict the use of certain conventional weapons, such as antipersonnel mines or cluster munitions.
53. Georgia and the Russian Federation have ratified the UN CCW and its Protocol II on Prohibitions or restrictions on the use of mines, booby-traps and other devices as well as the version of Protocol II as amended on 3 May 1996. In addition, the Russian Federation has signed Protocol V to the CCW on Explosive remnants of war. All these protocols stipulate a duty for the State parties to the conflict to clear the areas which 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 mines, booby traps and other devices or ordnance. In areas not controlled by the party to the conflict, Protocol II also requires the provision of detailed information on all munitions used and the provision of international assistance to clear explosive remnants of war from such territory.
54. The protocols also provide for the release and exchange of the necessary information on what type of weapon was used, when and where. In this regard, the Commissioner was informed by the Georgian First Deputy Minister of Defence that no requests for such information have been made by the parties to the recent armed conflict.
55. Following his previous visit, the Commissioner urged the parties to the conflict to declare what type of weapons and ammunition were used, when and where. The Commissioner wishes to reiterate his call and to emphasise that the exchange of such information will greatly facilitate and speed up de-mining work and enable large areas to become inhabitable again. This is essential for the safe return of the displaced persons; it is also necessary to enable the ceasefire monitors to operate and representatives of humanitarian organisations to deliver safely humanitarian assistance to persons in need. Moreover, international cooperation and assistance in demining is urgently needed for the rehabilitation and reconstruction efforts of infrastructure, hospitals, schools and houses as well as the repair of damaged cultural heritage.
56. According to the First Deputy Minister of Defence, the Georgian army lacks military engineers with the capacity to clear unexploded devices. The Government has therefore requested additional assistance from UNMAS, the Governments of Latvia and Norway to help with the removal of unexploded devices and ordnance and cluster sub munitions.
57. Major General Marat Kulakhmetov informed the Commissioner that some 26,500 pieces of ordnance had been removed in the buffer zone, but stressed that more work was needed. A complicating factor in the removal of sub-munitions “duds” - unexploded sub-munitions from cluster munitions- was the need to explode them on the spot where they were found, which increased the risk of additional destruction of property. Some sub-munitions and other unexploded devices were located in the fields or in the gardens of private persons, who did not want their crops, harvests or houses to be destroyed in the act of clearance or removal.

58. According to the Russian Ministry of Defence, during the period from 15 August to 6 October, Russian field engineering units cleared 98,240 unexploded remnants of war in the South Ossetian zone of conflict. These measures were undertaken based on information passed by local authorities as well as inhabitants and reconnaissance operations.

Right to protection against lawlessness

59. In his August report, the Commissioner expressed serious concerns over the “police vacuum” in South Ossetia and in the “buffer zone” and the lack of protection against rampant criminal activities in the area⁷. This security problem needed to be resolved urgently. Both ICRC and UNHCR expressed concern over the level of lawlessness in the northern part of the “buffer zone”. Marauders had been observed in that area, and there had been reports of looting, torching as well as physical abuses and threats. The same types of criminality were reported again during the Commissioner’s follow-up visit.
60. Even if these criminal activities were brought to a stop, there are more long-term concerns relating to ensuring professionalism and respect for human rights among the law enforcement agencies in the relevant areas. The de facto South Ossetian authorities are currently replacing discredited militia forces with a new police force, which initially is receiving technical advice and training from the North Ossetian authorities.
61. Major General Kulakhmetov informed the Commissioner that the Russian troops were attempting to address the security problem temporarily by having more frequent patrolling rounds to deter marauders and other criminal activity. According to the Major General, the presence of Russian troops has had a deterrent effect on the criminality, in spite of the fact that the soldiers deployed were not trained to do police work.
62. Major General Kulakhmetov underlined in his conversation with the Commissioner the need for cooperation and coordination between the relevant actors on this issue, in particular between the Russian forces and the EUMM. He indicated that Russian troops would be patrolling the administrative border of South Ossetia and the EU mission would be monitoring south of this border. In order to quickly re-establish law and order in this area, where criminal gangs were known to operate, close collaboration was needed.
63. So far, there are few reports of violent acts due to tension between ethnic Georgians and ethnic Ossetians in areas outside the Tskhinvali region and the former “buffer zone”. In Tskhinvali, however, the Commissioner met a group of young Ossetians, who reported that they had to leave their villages in Eastern Georgia after harassment from the local police. The international community must keep a close watch in order to detect and defuse any tendencies of ethnic targeting in the areas affected by this conflict.
64. The EU decision on a “Joint Action on the European Union Monitoring Mission in Georgia”⁸ describes the tasks of the mission: stabilisation, normalisation, confidence building, and contribution to informing EU policy and engagement.
65. To promote *stabilisation*, the mission is tasked with monitoring, analysis and reporting on the situation pertaining to the stabilisation process, centred on full compliance with the six-point ceasefire agreement of 15-16 August 2008, including troop withdrawals,

⁷ Cf. paragraphs 87 to 92 of CommDH(2008)22.

⁸ Cf. Council Joint Action 2008/736/CFSP of 15 September 2008.

and on freedom of movement and actions of spoilers, as well as violations of human rights and international humanitarian law.

66. To promote *normalisation*, the mission will monitor, analyse and report on the situation pertaining to the normalisation process of civil governance, focusing on rule of law, effective law enforcement structures and adequate public order. The mission will also monitor the security of transport links, energy infrastructures and utilities as well as the political and security aspects of the return of internally displaced persons and refugees.
67. To *build confidence* between the parties, the mission is to contribute to the reduction of tensions through liaison, facilitation of contacts and other confidence building measures.
68. The Commissioner was informed by the Head of the EUMM that the monitoring mission included police advisers as well as human rights, humanitarian and rule of law advisers.
69. Shortly after the Commissioner's visit, on 1 October 2008, the Russians troops commenced their withdrawal from the "buffer zone". On 8 October 2008, the EU Presidency and the EUMM publicly confirmed that the Russian troops had left the areas adjacent to South Ossetia and Abkhazia, ahead of the deadline stipulated in the implementation protocol of 8 September 2008 agreed between Presidents Sarkozy and Medvedev.
70. International discussions on security and stability arrangements around Abkhazia and South Ossetia were launched on 15 October 2008 in Geneva. These talks will also cover return of displaced and refugees. The Commissioner believes that it is crucial that the Geneva discussions include representatives from the de facto authorities and are based on the human rights obligations of the parties stemming from the European Convention on Human Rights. Discussions are scheduled to resume on 18 November 2008.

Protection of detainees/prisoners of war and persons in hiding

71. A number of detained persons, including prisoners of war, have been exchanged between the two sides. Some 179 persons have been handed over by the de facto authorities of South Ossetia to the Georgian authorities. In return, the Georgian authorities have handed over 41 persons to the de facto authorities of South Ossetia. In addition, the remains of 43 people who died have been handed over from Tskhinvali to Tbilisi. The Georgian side has given the remains of two persons to South Ossetia.
72. Since the August visit ICRC has facilitated a limited number of exchanges of civilians in hiding and family reunifications. During the Commissioner's visit, the negotiations on exchanges of prisoners of war and other detained persons could restart and an agreement was reached about a further exchange within the near future. In this respect, David Sanakoev, de facto Ombudsman of South Ossetia, and Georgian Member of Parliament Givi Targamadze (Chairman of the Defence and Security Committee of the Parliament) continued to play an important role.
73. Ten more corpses shall also be delivered from Tskhinvali in the near future. With the help of DNA testing, work is underway to establish the identity of bodies delivered. The Commissioner has also made inquiries about three missing Georgian soldiers, who – according to certain unconfirmed information – may have been taken to Vladikavkaz for surgical operations. It now seems possible to establish the fate of most of the names on the Georgian list of missing soldiers, which would be extremely important for family members.

74. It is unfortunately likely that there will be some cases - on both sides - of missing persons whose fate cannot be established. It is of greatest importance to demonstrate that the relevant authorities have taken every possible step to find missing persons and to clarify what has happened in each case. The Commissioner is asking for precise information in this regard, and will invite two international experts with relevant experience and high credibility to assist him in the assessment of these reports, with a view to recommending further steps to clarify the fate of the missing persons, or – if it is determined that every possible measure has indeed been taken in this regard - to close the books with a confirmation to this effect. It is essential that relatives' right to know the truth is respected, and that they are given access to social benefits and compensated as well as supported.
75. "Turning every stone" in the cases of missing persons is also important to avoid the risk of kidnappings perpetrated with the purpose of pressuring the other side for information or releases. Such hostage-takings have already taken place and it is of greatest importance that such crimes be prevented and punished.

International presence and monitoring for the protection of human rights:

76. In his August report, the Commissioner appealed to all parties to the conflict to grant access to international humanitarian organisations from every direction so that humanitarian aid and early recovery support could reach the victims of the conflict, wherever such persons might be.
77. The Commissioner is very concerned by the fact that the issue of the access for humanitarian actors has not yet been resolved. While it is positive that the UN agencies, notably the UNHCR, have been granted access on an ad hoc basis to the "buffer zone" and that the UN agencies' humanitarian assessment mission was allowed to go to South Ossetia, it is regrettable that obstacles are still being placed before humanitarian actors. In fact, the positions of the different sides on this issue seem to have become even more entrenched after the introduction of a draft law on occupied territories in the Georgian Parliament.
78. The Commissioner has received reports that the Georgian Ministry for Reintegration has sent *Notes verbales* to all humanitarian actors, indicating that the Georgian Government would not allow any humanitarian or early recovery aid to be channelled to South Ossetia from the Roki tunnel. Further, any humanitarian, recovery or reconstruction aid to Abkhazia needs to be approved by the Georgian Government. In the *note verbale*, the Deputy State Minister for Reintegration, Dimitri Manjavidze, added that: "we deem it appropriate to offer to freeze indefinitely all rehabilitation and economic development projects that are already running in both regions."
79. The Georgian Parliament has before it a draft law on Occupied Territories which envisages a special legal regime and restrictions on freedom of movement, conduct of economic activities and real estate transactions and other issues. Amendments to the draft law, providing for an exception for organisations involved in the delivery of humanitarian aid from its scope of application, have been put forward by the UN and consultations on this issue are under way.
80. According to the draft law on occupied territories, freedom of movement will be restricted for foreigners and stateless persons to the occupied territories and marine zones of the territory of the Abkhazian Autonomous Republic, the Tskhinvali region - territory of the former Autonomous District of South Ossetia, and in the Black Sea. Entry into these areas without proper authorisation from the Georgian Government will be considered a criminal offence. The right to property will only be recognised as legal

after Tbilisi's control over these areas has been restored. The right to carry out business activities will be restricted and any real estate or other investment in the two regions prohibited. The afore-mentioned restrictions are likely to have an adverse effect on the work of humanitarian organisations.

81. The draft legislation also suggests that any certificate issued by the de facto authorities would be considered null and void. It is questionable whether the proposed prohibition of the issuance of civil acts such as birth certificates, missing persons or death certificates, (which would enable relatives to access social benefits), as well as marriage certificates, can be considered to be in line with international human rights standards, notably the UN Convention on the Rights of the Child. Such a prohibition unduly deprives the already victimised persons from benefiting from their rights and entitlements; arguably, this contravenes humanitarian law, the UN Guiding Principles on IDPs and the Committee of Ministers Recommendation 2006(6) on internally displaced, which reflects Council of Europe standards in this regard.
82. The compliance of the proposed legislative measures with the European Convention on Human Rights, other international human rights and humanitarian law is questionable and needs to be studied in detail.
83. The de facto authorities of South Ossetia have said that they do not accept any aid coming from the southern administrative border, and asserted that the Georgian authorities are trying to deprive South Ossetia of recovery and development by their position. While the immediate needs of the returning South Ossetians appear to be catered for by the Russian EMERCOM, the UN needs assessment mission concluded that most households in the conflict areas would start the winter without their usual stock of food and other essential items.
84. Based on the information received, the Commissioner considers that the working conditions for international organisations have deteriorated and that there is a need for a concerted and unified effort from the international community to influence both parties to allow humanitarian and early recovery aid from whichever direction is feasible or practical in order to reach those in need. Otherwise, the effective result of the two positions will be a continued humanitarian crisis, which will be exacerbated with the arrival of the winter. The Commissioner reiterates the obligation of the competent authorities to secure, in the area of origin, conditions which are conducive to a lasting reintegration of the returnees.
85. There is a need for a systematic and competent international contribution to human rights monitoring. In his conversations with the UNHCR, OSCE, ODIHR, EU and EUMM, the Commissioner discussed the important human rights challenges that the different international actors will be facing, in particular the EUMM monitors, who should be trained to meet those challenges. The issue of providing human rights training to the monitors in the European Convention on Human Rights and other relevant Council of Europe standards was raised in this context and such training is now being organised.
86. The EUMM will also receive and report on a considerable volume of information on the human rights situation, including on human rights and humanitarian law violations, through its internal structures. There is a need to process and analyse all information from the different sources in order to respond swiftly to urgent or immediate crisis situations as well as to patterns of human rights or humanitarian law violations. This requires coordination among the various actors. The Commissioner is ready to contribute to such efforts within the framework of his mandate, provided the requisite financial and personnel resources are made available to him.

87. In his previous report, the Commissioner proposed that particular attention be paid to the promotion and protection of minority rights. Promoting respect for these rights will be particularly important now that displaced persons have started to return. The monitoring should be accompanied by reconciliation and other confidence-building measures between the communities. In parallel, the Council of Europe's monitoring bodies, with their respective expertise, should be encouraged to visit the areas affected by the conflict to assess the situation.
88. Efforts must be planned for a systematic, impartial collection of evidence about violations committed in connection with the hostilities. There are indications of destruction of civilian infrastructure, water, electricity, gas networks, educational and administrative buildings as well as civilian homes. In the Commissioner's view, it is also important to establish the course of events leading up to and occurring during the active hostilities. This should preferably be done either through an international fact-finding mission or an international commission of inquiry, as has been done in similar situations under the auspices of the UN Secretary General. The mandate of such a fact-finding body needs to be discussed further. Such efforts could contribute to ensuring accountability for those responsible for violations of humanitarian law and human rights, starting at the national level⁹.
89. Some 2,900 individual applications against Georgia had been received by the European Court of Human Rights as of 9 October 2008. The Court has not yet received a full submission of the inter-State complaint by the Georgian Government against the Russian Federation. The President of the Court has prolonged the interim protection measures and requested new written information from the Parties by 7 November 2008.
90. On 15 October, the International Court of Justice ordered that provisional protection measures be taken by both Parties to comply with the provisions of the International Convention of the Elimination of All Forms of Discrimination ICERD under Article 41 of the Court's Statute¹⁰.
91. The UN Security Council decided on 10 October to prolong the mandate of UNOMIG until 15 February 2009, pending further discussions on the future role and presence of the UN in Abkhazia.
92. It is important that international human rights expertise is made available in all areas affected by the South Ossetia conflict. In this respect, it is important to develop local human rights monitoring and capacity as well as credible local national human rights protection system. Both civil society and ombudsmen have a critical, constructive role to play in this respect; this deserves political and economic support.

⁹ Parliamentary Assembly resolution 1633(2008)Op 22.3 on the establishment of an independent international investigation, and Op 22.8 on the duty to investigate human rights violations committed during the war.

¹⁰ See Summary 2008/4 of 15 October 2008.