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**REPORT**  
**on human rights issues following the August 2008 armed**  
**conflict in Georgia**

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## **Executive Summary**

The Commissioner visited Georgia in November-December 2009, December 2009, February 2010 and May 2010 and has followed the developments thereafter. He has taken stock of the implementation of the six principles for urgent human rights and humanitarian protection which he formulated in the aftermath of the August 2008 conflict, and devoted further efforts towards the release of detainees held by the sides and the clarification of the fate of missing persons.

Right to return: Nearly all of those who had been temporarily displaced by the conflict from the Shida Kartli region including areas adjacent to South Ossetia (over 100 000 persons) returned to their homes by the end of 2008. However, the overwhelming majority of ethnic Georgians who have fled South Ossetia have not been in a position to return. In practice, despite efforts undertaken by co-chairs in the framework of the working group addressing humanitarian issues during the Geneva Talks, hardly any progress has been achieved with regard to returns of these displaced persons. The Commissioner continues to advocate the importance of safe, voluntary and dignified return, and urges all relevant actors to ensure unimpeded freedom of movement in the areas affected by the conflict.

Right of displaced persons to care and support: Most of the persons displaced by the conflict have been granted Internally Displaced Person (IDP) status. The Commissioner urges the Georgian authorities to grant IDP status without discrimination to all persons who cannot return to their place of residence. Furthermore, efforts must continue on the part of the relevant authorities and the international community to improve the very difficult situation of those who remain displaced from the August 2008 conflict, as well as from earlier conflicts. Access to food, water, sanitation and basic services should be adequately secured. Whereas the Commissioner acknowledges the efforts from the Georgian authorities to provide durable housing solutions for displaced persons, this issue still remains unaddressed for tens of thousands of people. The evictions of over 5000 persons which took place during the summer of 2010 raised widespread concerns and were suspended at the end of August. The Commissioner continues to emphasise the principle that displaced persons and returnees should be duly informed and consulted when solutions are being devised for them.

Right to be protected against dangers from explosives and other remnants of war: The Commissioner welcomes the fact that almost all remnants of war have been removed from the areas affected by the conflict and that efforts have been undertaken to inform the local population on the dangers resulting from remnants of war. All sides should pursue their efforts in this regard, as the removal of explosives and other remnants of war is a precondition for any effective exercise of the right to return, in addition to being of crucial importance for persons remaining in the zones affected by the conflict. Moreover, the Commissioner reiterates his call to Georgia and the Russian Federation to sign and ratify the Convention on Cluster Munitions.

Right to protection against lawlessness: While the security situation in the conflict-affected areas has become more stable overall, incidents continue to occur in several locations along the administrative boundary line. Viable security arrangements must be established, which implies the good-faith implementation of the Incident Prevention and Response Mechanism (IPRM), and the institution of confidence-building measures for the population on all sides. The Commissioner also underlines the importance of the work of civil society actors in the field of human rights protection, including in cases related to the conflict. He urges all relevant authorities to enable civil society actors, including activists and lawyers, to work in an unimpeded manner and without undue pressure.

Protection and releases of detainees and prevention of hostage-taking: The Commissioner welcomes the releases of detainees on both sides which have taken place thus far and urges the sides to refrain from arresting and detaining people who cross the administrative boundary line. Efforts should be pursued in order to release all persons detained by the opposing sides as a consequence of the conflict, and the process of clarifying the fate of missing persons and returning mortal remains to relatives should continue.

International assistance and presence: The departure of the United Nations Observer Mission in Georgia (UNOMIG) and of the Organisation for Security and Cooperation in Europe (OSCE) created a gap in terms of international human rights presence and monitoring, in particular in Abkhazia and South Ossetia. Regrettably, little progress has been achieved with regard to access by international humanitarian actors to the areas affected by the conflict, which is detrimental to those who are in need. All sides should facilitate the establishment of a human rights presence in the areas affected by the conflict and support the present efforts of the Council of Europe and other relevant organisations aimed at protecting the human rights of the population.

## I. Introduction

1. At the end of 2009 the Commissioner for Human Rights visited Georgia twice in order to take stock of the implementation of the six principles for urgent human rights and humanitarian protection he formulated in the immediate aftermath of the August 2008 conflict. Those principles are: the right to return; the right of displaced persons to care and support; the right to be protected against the dangers of remnants of war; the right to protection against lawlessness; protection and releases of detainees and prevention of hostage-taking; and international assistance and presence. The Commissioner conducted two subsequent visits in February and May 2010, during which he devoted his efforts to the release of detainees held on both sides and to the clarification of the fate of some persons who went missing during and after the August 2008 conflict.<sup>1</sup>
2. In Tbilisi the Commissioner met with Mr Temuri Yakobashvili, State Minister for Reintegration, Mr Koba Subeliani, Minister for Refugees and Accommodation,<sup>2</sup> Mr Giorgi Bokeria, First Deputy Minister for Foreign Affairs, Mr Shota Utiashvili, Head of the Information-Analytical Department of the Ministry of Internal Affairs, and Mr Giorgi Tugushi, Ombudsman. The Commissioner held meetings with various representatives of international organisations and the diplomatic corps, as well as international and local non-governmental organisations (NGOs). In Tbilisi the Commissioner also met the family members of individuals detained in Tskhinvali.
3. The Commissioner visited Gori, where he met with the Governor of Shida Kartli province, Mr Vladimir Vardzelashvili.<sup>3</sup> He visited a collective centre in Gori as well as the new settlement in Karaleti and talked to various residents.
4. The Commissioner traveled to Tskhinvali on several occasions, and had talks with the de facto President Mr Eduard Kokoity, the de facto Special Representative for Post-Conflict Settlement Mr Boris Chochiev, the de facto Ombudsman Mr David Sanakoev, Bishop Georgy of the Alanian Eparchy and the families of missing persons and persons detained by the Georgian authorities. He met most of the ethnic Georgian detainees being held in Tskhinvali, some of whom were released in the meantime.
5. In the framework of his efforts towards the release of detainees and the clarification of the fate of missing persons, the Commissioner submitted a Memorandum to the parties in late March 2010. He also deployed two international experts between February and June 2010 who had the mandate to monitor the ongoing investigations into certain cases of persons who went missing during and after the August 2008 conflict (their report is published separately).

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<sup>1</sup> On the visit from 27 November to 4 December 2009 the Commissioner was accompanied by Ms Bojana Urumova (Deputy to the Director of the Office of the Commissioner) and Ms Sabrina Buechler (Adviser). On the visit from 16 to 19 December 2009 he was accompanied by Ms Buechler. On the visits from 26 to 28 February and from 1 to 3 May 2010 he was accompanied by Ms Buechler and Mr Marsel Çapi (Adviser). Altogether, the Commissioner has visited Georgia eight times since the August 2008 conflict.

<sup>2</sup> The Ministry of Refugees and Accommodation has been renamed since the Commissioner's most recent visit to Georgia. As of June 2010, it is called Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees.

<sup>3</sup> Following the appointment of Mr Vardzelashvili as Minister for Youth and Sport Affairs, Mr Zurab Arsoshvili was appointed Governor of Shida Kartli in July 2010.

6. The Commissioner would like to express his gratitude to all of his interlocutors - which included many ordinary people who have been affected by the August 2008 conflict - for the valuable information they provided.

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

### *2.1 Right to return*

7. Ever since his first visit to the areas affected by the August 2008 conflict, the Commissioner has been drawing attention to the alarming situation of the large numbers of people displaced from their homes. As of date, the return of displaced persons remains an unresolved issue. Around 22 000 persons who were forced to flee from South Ossetia and from the Upper Kodori valley during the hostilities have still not been able to return. In Akhalgori, the situation remains volatile, and although residents can benefit from a relative freedom of movement, conditions are still not conducive to return for the almost 5200 persons who were displaced from this area. Nearly all of those who had been temporarily displaced by the conflict from the Shida Kartli region including areas adjacent to South Ossetia (over 100 000 persons) have returned to their homes. However, the administrative boundary (of South Ossetia) remains closed, with the exception of the area around Akhalgori (cf. however paragraphs 10 to 12 below).
8. On previous occasions, the de facto authorities in Tskhinvali had declared that they were committed to the right to return, albeit under certain conditions,<sup>4</sup> which raise concerns. The de facto leadership had also indicated that return would be guided by international principles.<sup>5</sup> In this respect, the Commissioner deeply regrets that subsequent statements by the de facto authorities are indicative of a policy of disfavouring returns,<sup>6</sup> and that the overwhelming majority of ethnic Georgians who were forced to flee from their homes in South Ossetia<sup>7</sup> have not been in a position to return. In practice, despite the efforts undertaken by the co-chairs in the framework of the working group addressing humanitarian issues during the Geneva Talks, hardly any progress has been achieved with regard to returns.
9. The Commissioner must reiterate yet again the fundamental principle that displaced persons have a right to return to their homes, regardless of their ethnicity or nationality. It is incumbent upon all relevant actors to ensure that those displaced individuals who wish to return are allowed to do so in a safe and dignified manner.
10. At present, movements across the administrative boundary line to and from Akhalgori continue. Such a possibility is in practice extended only to persons - including displaced persons - carrying a limited amount of goods and whose habitual place of residence is Akhalgori. Many of the approximately 5200 persons who fled the region during and after

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<sup>4</sup> During previous visits of the Commissioner and in public statements, the de facto authorities had declared that the exercise of the right to return would not be automatic, but that cases would be examined individually so as to establish whether or not someone had participated in the hostilities. Furthermore, returnees would be obliged to acquire South Ossetian identity documents.

<sup>5</sup> De facto President Eduard Kokoity indicated that return would be guided by international principles and would be dependent upon the following conditions: security, voluntariness and the guarantee of adequate housing conditions.

<sup>6</sup> It has been reported by the Representative of the United Nations Secretary General on the human rights of internally displaced persons, Walter Kälin, that he was told by the South Ossetian de facto authorities that returns would not be permitted until the Government of Georgia would agree to conclude an agreement on the non-use of force between the conflict parties. Moreover, the South Ossetian de facto authorities underscored that return would only take place to the extent that ethnic Ossetians could return to Georgian-controlled areas. Cf. Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Follow-up to the report on the mission to Georgia (A/HRC/10/13/Add.2), paragraphs 27 and 28.

<sup>7</sup> The Independent International Fact-Finding Mission on the Conflict in Georgia (IIFMCG) found that "a systematic campaign of arson against homes and other civilian buildings in villages populated predominantly by ethnic Georgians" had taken place. It concluded that in the same context "the prohibition against arbitrary and forced displacement [was] violated" and identified several elements suggesting that "ethnic cleansing was carried out against ethnic Georgians in South Ossetia both during and after the August 2008 conflict". Cf. pp. 370, 389 and 394 of Volume II of the Report of the Independent International Fact-Finding Mission on the Conflict in Georgia (IIFMCG). 7

the August 2008 hostilities spent a part of the summers of 2009 and 2010 in their houses in Akhagori and worked in their fields and orchards. Most returned to their cottages in new settlements located on Georgian-controlled territory once the agricultural season was over. According to estimates by international organisations, approximately 300-350 individuals move to and from Akhagori daily depending on the season, days of the week and religious and/or school holidays.

11. However, there have been reports of certain requirements being imposed on persons wishing to cross the administrative boundary line adjacent to Akhagori, such as the apparent requirement for notarised translations of identity cards.<sup>8</sup> Moreover, there have reportedly been occasional demands for "passage fees".<sup>9</sup> In addition, the Georgian Law on Occupied Territories has apparently been invoked by Georgian law enforcement officials as the legal basis for limiting freedom of movement towards Akhagori for both persons and goods.<sup>10</sup>
12. The Commissioner underlines the need to protect the legitimate interest of local populations to move freely to and from Akhagori (across the administrative boundary line) and urges all parties to refrain from taking any measures which inhibit this movement or prevent returns - whether permanent or temporary - of persons to their habitual places of residence in Akhagori.
13. The Commissioner visited Kindergarten No. 1 in Gori where he talked with displaced families from the villages of Zardiantkari and Zemo Nikozi. Their homes are located in the immediate proximity of the administrative boundary line, beyond the checkpoints of the Georgian police. They do not feel safe enough to return, and the Georgian authorities share this position. The Georgian Minister for Refugees and Accommodation assured the Commissioner that these individuals would benefit from the same standard of treatment as internally displaced persons (IDPs). Unfortunately, as of September 2010, the specific situation of these families has not been addressed by the national or regional (Shida Kartli) authorities.
14. During his November 2009 visit, the Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons, Walter Kälin, noted that "Lack of shelter is the main problem faced by those displaced within South Ossetia. Reconstruction is progressing far too slowly".<sup>11</sup> The Commissioner expresses the hope that, in line with Mr Kälin's recommendations, a durable solution for the affected population will be found.
15. Despite efforts undertaken by various actors, the issue of energy and water supplies to various areas near the administrative boundary line remains unresolved two years after the end of the active hostilities, hindering farming and other livelihood activities. When the Representative of the United Nations Secretary General on the human rights of internally displaced persons visited Georgia in November 2009, he was informed in Akhagori that gas and often also electricity supplies were being cut off from the south.<sup>12</sup> More recently, persons displaced from Akhagori have reported that while electricity is being supplied

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<sup>8</sup> Starting from January 2010, Russian officers stationed along the administrative boundary line have reportedly been requiring local residents to have their identification documents translated into Russian and notarised. According to observers, this has not had a significant impact upon freedom of movement.

<sup>9</sup> Cf. Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Follow-up to the report on the mission to Georgia (A/HRC/10/13/Add.2), paragraph 19: "The Representative is concerned about allegations of acts of harassment and extortion of civilians crossing checkpoints, which are reportedly committed by individual soldiers on both sides." In the same report, there is a reference indicating that the Government of Georgia has insisted that individual soldiers on the Georgian side have not engaged in such conduct.

<sup>10</sup> The Commissioner was informed by various interlocutors, including international actors and displaced persons, that for persons whose original place of residence is not Akhagori a special permit to enter Akhagori is required by the Georgian side and that the procedure to obtain it can be somewhat cumbersome.

<sup>11</sup> Press release: Displaced from Ossetia conflict need more pragmatism, less politics, says U.N. Representative, 10 November 2009, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9607&LangID=E>

<sup>12</sup> Press release: Displaced from Ossetia conflict need more pragmatism, less politics, says U.N. Representative, 10 November 2009. <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9607&LangID=E>

from the north, gas has remained unavailable throughout the winter of 2009/2010 and up to now. As for water, the irrigation systems in various Georgian-controlled areas close to the administrative boundary line originate in South Ossetia and in some cases are being deliberately blocked by the de facto authorities, according to information collected by international actors.

16. The stance taken by the sides concerned vis-à-vis the provision of energy and water has a highly deleterious effect upon the daily lives of thousands of ordinary people living on both sides of the administrative boundary line, including returnees. The Commissioner calls upon all sides to undertake efforts in order to restore the water and gas supplies to the local population without any conditionality and in line with basic humanitarian principles.

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

17. The question of granting IDP (internally displaced person) status to the people displaced from the August 2008 conflict remains central, as it entitles the bearer to benefit from certain rights, including access to social and health care assistance. The Commissioner welcomes the fact that the Georgian authorities have granted IDP status to the majority of the displaced persons who have been resettled to newly-built cottages or refurbished apartments.<sup>13</sup> Of the remaining displaced persons who have been resettled, half were registered as IDP status seekers and the other half do not fall in the IDP category, mainly because they do not possess the necessary documents for status formalisation. In addition, approximately 2000 displaced persons who found shelter in the private sector have been granted IDP status to date. The foregoing persons are mainly those who opted for financial compensation instead of accommodation. However, the Ministry for Refugees and Accommodation has not yet granted IDP status to displaced persons who remain in collective centres. Furthermore, persons originating from villages in close proximity to the administrative boundary line<sup>14</sup> and from Akhlagori have also not been granted status to date.
18. The Commissioner urges the competent authorities to grant IDP status swiftly and without discrimination to all those persons who cannot return to their places of habitual residence and thus remain effectively displaced, having regard to the fact that those who have not yet benefited from a durable housing solution are in a particularly vulnerable situation.
19. The Commissioner has also repeatedly drawn attention to the situation of the approximately 230 000 persons displaced as a result of the conflicts in the early 1990s, of whom almost 100 000 live in collective centres.
20. The housing needs of the several thousand internally displaced persons (both from the conflicts in the early 1990s and from the August 2008 conflict) who remain in collective centres and the private sector have yet to be addressed. Many people who opted for financial compensation have indicated that they have not received it.
21. According to the Commissioner's interlocutors, food deficiencies persist in certain collective centres, where the residents remain largely dependent on humanitarian aid. It has also been reported that the residents of some new settlements have limited access to food provisions, mainly due to the lack of cash (related inter alia to the very limited possibilities for livelihood), the long distance to the nearest market and the limited access to arable land and/or lack of irrigation water. In contrast, other new settlements - such as Tserovani - seem to do remarkably well and signs of sustainability become increasingly apparent.
22. As reported to the Commissioner, access to water and sanitation remains problematic in a number of collective centres, given that many of these buildings were not originally

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<sup>13</sup> Norwegian Refugee Council, Monitoring results following the formalization of IDP status in the settlements, Summary report for the period of 11.05.09-29.06.09, 15 July 2009.

<sup>14</sup> These villages include Zemo Nikozi, Akhali Khurvaleti, Zardiantkari and Gugudiantkari (cf. also paragraph 13 above).

conceived as living space. Most new settlements do not have a central sewage system and some were constructed without bathrooms at all. This, combined with the high concentration of residents on a relatively small space, creates significant sanitation problems during the summer period. While international actors have built private or collective bathrooms in some of the new settlements, some residents continue to complain about limited water supplies, which may be related to a more general problem of access to water in particular areas. The Commissioner wishes to reiterate the importance of ensuring access to basic services and an adequate standard of living to the displaced persons concerned.

23. The Commissioner has already made reference in previous reports to the significant variation in construction quality of the new settlements (cottages and apartments) from one location to another. For instance, poor construction quality in the Khurvaleti settlement caused difficulties in heating during the winter, leading to high consumption of electrical power and unaffordable electricity bills for the residents. Transparency International conducted an assessment of cottage quality and concluded that it was not the quick construction period but rather oversights in the initial architectural design which led to the subsequent problems.<sup>15</sup>
24. In May 2009 a revised Action Plan to implement the 2007 State Strategy for Internally Displaced Persons was adopted. The document was further updated, in a participatory manner (involving, for example, civil society organisations of displaced persons), in spring 2010. The plan has a twofold objective: to improve the living conditions of all displaced persons by ensuring alternative durable housing solutions and to ameliorate their socio-economic conditions. The Minister for Refugees and Accommodation, Koba Subeliani, informed the Commissioner in December 2009 that within the next two years up to 90000 families would be provided with a durable housing solution. By June 2010, durable housing solutions could be identified for 50,000 displaced families, which is a considerable improvement from the situation in 2009, when only 15,000 families were given such prospects. Nevertheless, the Ministry of Refugees and Accommodation has indicated that the housing needs of 30,000 families remain unaddressed.
25. The adoption of the Action Plan, together with the recently-introduced Guiding Principles on allocation of durable housing solutions,<sup>16</sup> are important steps forward. However, during his visits in Georgia the Commissioner's attention was drawn to the need for additional funding to implement the objectives set in the Action Plan. Therefore, it is essential that the Government of Georgia and its partners remain committed to this process. At present, major shortcomings persist in the provision of durable housing solutions for displaced persons, including as regards ensuring the effective protection against forced evictions (security of tenure). As during the Commissioner's previous visits, interlocutors reported to him that the most widespread problem is the lack of information on the different options available, including as regards the responsibilities deriving from opting for a transfer of ownership<sup>17</sup> (known as 'privatisation') and other alternative housing solutions. In this regard, information brochures prepared by the Ministry for Refugees and Accommodation in cooperation with UNHCR and the Ministry of Justice are welcome steps. Nevertheless, impartial information-provision efforts and the participation of displaced persons in decision-making processes must continue to be pursued.
26. It is inevitable that the ongoing process of providing durable housing to displaced persons will require some relocation of residents. However, the Commissioner was greatly concerned to learn that in the summer of 2010 over 5000 persons were evicted in a manner which, according to the information available, failed to meet both the requirements of domestic legislation and policy as well as international standards.<sup>18</sup> Some

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<sup>15</sup> Transparency International Georgia, Cottage Settlements for Georgia's New IDPs: Accountability in Aid and Construction, Tbilisi, April 2010.

<sup>16</sup> Full title of the document: Guiding principles, criteria and procedures governing the process of Durable Housing Allocation

<sup>17</sup> The ownership is transferred to the displaced persons themselves.

<sup>18</sup> Cf. Article 5, paragraph 4, of the Georgian Law on Internally Displaced Persons (IDPs), which spells out the requirements which must be fulfilled for an eviction to be lawful (written agreement with the IDPs in question, the new

of the problems observed in this context - which have already been highlighted by the Georgian Public Defender (Ombudsman) and the international representatives, including UNHCR (United Nations High Commissioner for Refugees)<sup>19</sup> - are as follows: evictions were carried out following a verbal notification given between one and three days in advance of the eviction; in some cases, no notification whatsoever was given; lack of information about the place of relocation, rendering informed choices extremely difficult; cases where the alternative shelter does not satisfy minimum standards of living; an absence of alternatives available near the present place of residence; and cases of verbal and even physical abuse during the eviction process. A number of the persons evicted were not provided with any alternative shelter or compensation. According to the Public Defender (Ombudsman), the process has resulted in significant tensions and dissatisfaction within the IDP community.

27. The UNHCR Office in Georgia addressed a letter to the Ministry of Refugees and Accommodation on 11 August 2010, emphasising that evictions should only be undertaken if they are fully in line with Georgian and international law, and proposing a one-month moratorium on the evictions. The Ministry initially rejected the foregoing proposal. However, following further intervention by the relevant actors, evictions were suspended in late August 2010.
28. The Commissioner fully supports the recommendations already made by UNHCR, the Georgian Public Defender (Ombudsman) and others who have expressed concerns about the handling of the evictions during the summer of 2010. In future, residents should be notified in writing sufficiently in advance and be fully informed about the alternatives offered. The authorities should also bear in mind that the transfer to remote areas of individuals who have resided in the capital for almost twenty years is likely to cause considerable hardships, including the loss of income-generation opportunities (cf. in this regard paragraphs 31 to 33 below). In addition, special attention must be given to the needs of children already affected by the recent evictions as well as those who are likely to be affected by any future relocations, and care should be taken to ensure the continuity of their education.
29. The Commissioner invites the Georgian authorities to take into consideration the key principles outlined by the Representative of the UN Secretary General on the human rights for internally displaced persons Walter Kälin in his Framework for Durable Solutions for IDPs. The Commissioner hopes that these principles will guide the implementation of the Georgian Action Plan with regard to provision of housing solutions for IDPs. It is particularly important to ensure that displaced persons make voluntary and informed choices, participate in the planning and management of durable solutions, and benefit from access to humanitarian and development actors as well as to effective monitoring mechanisms. The importance of peacebuilding to reinforce the process has also been underlined.<sup>20</sup>
30. The Law of Georgia on Internally Displaced Persons foresees free healthcare for IDPs. However, persons who have not yet received IDP status do not have this entitlement automatically, even if they live in collective centres. As for the psychological needs of the conflict-affected population – many of whom have been deeply affected by traumatic experiences - most of the Commissioner's interlocutors indicated that very little has been done to address them. The Commissioner strongly encourages all relevant actors to undertake further efforts in this direction, and to resolve the problem of access to health care for persons who lack IDP status.

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accommodation must not be inferior to the persons' present living conditions, etc.). The judgment of the European Court in *Saghinadze and others v. Georgia* (Application no. 18768/05, 27 May 2010) makes ample reference to both domestic and international standards. Cf. also General Comment n. 7 of the Committee on Social, Economic and Cultural Rights (CESCR) on the right to adequate housing (Art.11.1): forced evictions, available on <http://www.unhcr.ch/tbs/doc.nsf/0/959f71e476284596802564c3005d8d50?Opendocument>

<sup>19</sup> Apart from UNHCR, international actors who expressed concern about the evictions include the EU and other donors, the Chairman of the Committee on Migration, Refugees, and Population of the Parliamentary Assembly of the Council of Europe (PACE), etc.

<sup>20</sup> Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum: Framework on Durable Solutions for Internally Displaced Persons, 29 December 2009.



31. Local and international aid organisations are undertaking numerous efforts to increase self-reliance and livelihood possibilities for residents in the new settlements. In addition to the significant unemployment rate among the general population, obstacles to income-generating and employment opportunities for residents of the new settlements include the sometimes remote location of the latter, as well as the fact that in some instances the arable land which was distributed could not be used due to lack of irrigation water or because it was otherwise not fertile. Income-generation and self-reliance opportunities for persons still residing in collective centres and those in the private-sector accommodation are even more limited.
32. During his December 2009 visit the Commissioner met with the Governor of Shida Kartli province to whom he handed over a set of recommendations<sup>21</sup> pertaining to the specific needs of conflict-affected individuals from villages in close proximity to the administrative boundary. The Commissioner was pleased to learn that the budget in a number of municipalities of this region was tailored to address the needs of the conflict-affected population by including them in social assistance, healthcare and municipality employment programs. It is important to maintain and further develop such efforts, since the residents of these areas have increasingly limited access to humanitarian aid provided by international agencies, while the consequences of the conflict continue to have a severe impact on the lives of many of them.
33. In some villages close to the administrative boundary line, numerous families have lost access to their agricultural and/or pasture land and thus to their primary source of subsistence. Based on interviews conducted with residents<sup>22</sup> it seems that the primary sources of income are pensions, social assistance and salaries of civil servants. The practice of barter has also been frequently observed. Families whose house was destroyed during the hostilities received compensation from the State in the amount of 10000 USD (approximately 7800 Euros). UNHCR constructed small one-room cottages for them in the garden next to their original houses. A number of the families concerned are still living in these small cottages and residents state that they remain reluctant to invest in reconstruction or have already spent the money for other purposes. Reconstruction efforts are far more visible in places located further away from the administrative boundary.
34. The villages of the Shida Kartli region dispose of a limited number of health ambulatories, which are sometimes poorly equipped and/or located far away from some villages and thus difficult to access, especially for elderly or disabled persons. Many residents indicate that they are unable to pay for medicine. As mentioned above, the need for psychosocial assistance is still constantly expressed by the inhabitants of this area. More decisive efforts to address those needs should be undertaken by the authorities and the international community.

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

35. The Commissioner was pleased to note that in December 2009 the removal of remnants of war in the 25 affected villages of the Shida Kartli region was almost completed. Halo Trust destroyed around 1700 cluster munitions and over 2000 other potentially dangerous devices in an area inhabited by almost 38000 people. By mid-June 2010, another organisation active in clearance work, Norwegian People's Aid, had also completed its operations in Shida Kartli.
36. In his previous reports, the Commissioner welcomed the efforts of various actors, including international organisations, specialised governmental agencies, the Georgian authorities and EMERCOM, to raise awareness about dangers resulting from remnants of

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<sup>21</sup> Package of Recommendations to improve the Living Conditions of the Conflict-Affected Population in Shida Kartli Region, based on the findings and work of different UN agencies, Council of Europe and civil society organisations, November 2009.

<sup>22</sup> In the framework of a joint UNIFEM/Council of Europe Human Rights Observation project in villages affected by the conflict.

war for the local population, in particular children. These efforts have certainly contributed to keeping the number of incidents relatively low. The Commissioner encourages the Georgian authorities to keep awareness-raising related to remnants of war in the school curriculum, since it cannot be excluded that dangerous objects remain or have been placed in the intervening period.

37. The Commissioner was informed that EMERCOM has removed remnants of war on the territory controlled by the de facto authorities in South Ossetia. However, little is known about the results of this work and any awareness-raising efforts conducted to inform the population. In the Upper Kodori valley, Halo Trust is conducting demining activities, which should be completed by March 2011. As the Commissioner has repeatedly stressed, the removal of explosives and other remnants of war is a precondition for any effective exercise of the right of return for those displaced, in addition to being of crucial importance for persons remaining in the zones affected by the conflict. All parties concerned should continue to pursue efforts in this regard.
38. On previous occasions, the Commissioner expressed great concern about the alleged use of cluster bombs by both Georgia and Russia during the conflict. On this issue, the IFFMCG reached the same conclusion as the non-governmental organisations Human Rights Watch and Amnesty International, which is that both Russia and Georgia used such weapons (in the case of Georgia, both cluster munitions and Grad Multiple Launch Rocket Systems), leading to "indiscriminate attacks and the violations of rules on precautions".<sup>23</sup> The nature of the removed remnants of war also confirms this finding.
39. The Commissioner regrets that, to date, neither the Russian Federation nor Georgia have undertaken any steps to sign and ratify the Convention on Cluster Munitions. This convention, which entered into force on 1 August 2010, has been signed by 108 States (including 32 Council of Europe member States) and ratified by 39 States (of which 18 are Council of Europe member States).<sup>24</sup> The Commissioner is obliged to reiterate his call – as many other international actors have done - to both States to sign and ratify this instrument within the briefest possible timeframe. The violations of international humanitarian law committed during the August 2008 conflict in this context should be subjected to an investigation.

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

40. The security situation in the conflict-affected areas has become much more stable overall. The presence of the European Union Monitoring Mission (EUMM) has contributed to the normalisation of the situation. However, incidents and tensions can be observed periodically, in particular along the administrative boundary line. In certain areas regular (and generally untargeted) shooting is reported, and in specific parts of a very limited number of villages return remains impossible due to the geographic location of certain houses. Some residents have a strong perception of insecurity, which can itself constitute an impediment to reconstruction, normalisation and return to stability. No fatal incidents have occurred in the areas adjacent to the administrative boundary line (of South Ossetia) since the Commissioner's last report was published (May 2009), which constitutes a major step forward.
41. The Commissioner reiterates his call for the establishment of viable security arrangements and confidence-building measures addressing both the population of the areas adjacent to the administrative boundary line and within South Ossetia and Abkhazia. Even if they are unable to exercise their right to return, many people nevertheless cross the administrative boundary in order to visit their relatives, religious and burial sites or simply to obtain food provisions. The Commissioner strongly encourages all initiatives taken to facilitate and further develop such movements (cf. also paragraphs 10, 12, 48 and 52 of the present report).

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<sup>23</sup> IFFMCG Report, September 2009, Volume II, p. 343. The Russian authorities have previously stated that they have not used cluster munitions during the hostilities.

<sup>24</sup> <http://www.clusterconvention.org/>

42. In his last report, the Commissioner welcomed the creation of an Incident Prevention and Response Mechanism (IPRM) and called upon all actors to implement it in good faith. A first meeting with the South Ossetian side took place in May 2009 and some further meetings were held between August and October 2009. Since then, it has not been possible to convene meetings with the South Ossetian side (with the exception of a brief meeting in June 2010 at which a statement by the Commissioner was presented over the telephone). The Commissioner remains of the view that the IPRM can contribute to improving the security and the protection of individuals living in the conflict-affected areas and hopes that meetings will be resumed in the near future.
43. The Commissioner has taken note of the establishment, in July 2009, of IPRM meetings with the Abkhaz side. During these meetings a number of incidents were addressed constructively, although the security situation in the Gali district remains a matter of concern. In this regard, the Commissioner supports the call of the IFFMMCG for further efforts “to provide for an independent, neutral and effective international presence for the purpose of peacekeeping in the conflict area”<sup>25</sup> (cf. also section. 2.6 below).
44. As mentioned by the Council of Europe on previous occasions,<sup>26</sup> the specific situation in the village of Perevi remains worrisome. The village is located in the Sachkhere district (a Georgian-controlled area) but it is of strategic importance because the only road connecting certain South Ossetian villages leads through it. Despite repeated calls of the international community, armed South Ossetian and Russian security personnel have not withdrawn from Perevi. The security situation remains volatile and a number of incidents have been reported. The fact that UN aid agencies have not been given access to Perevi since November 2009, apart from a single visit in May 2010, is a matter of great concern. The Commissioner calls upon the relevant actors to allow unhindered access to humanitarian agencies.
45. The Commissioner has in his previous reports pointed to the need for documenting and investigating violations of humanitarian law and human rights committed by all parties to the conflict. The establishment and work of the IFFMMCG as well as the mission’s findings constitute an important contribution to the work of the international judicial institutions which have received individual and/or interstate complaints related to the conflict, notably the European Court of Human Rights, the International Court of Justice and the International Criminal Court.
46. Over 3 000 individual applications related to the August 2008 conflict have been lodged in the European Court of Human Rights. During his visits at the end of 2009, the Commissioner received worrying information that local NGOs representing certain individual applicants to the Court in conflict-related cases against Georgia have faced criticism, including of a public nature, expressed by some Georgian officials. The Commissioner has also received several credible reports of difficulties faced by civil society groups performing human rights work in South Ossetia. On 24 July 2010, Timur Tskhovrebov, a journalist and civil society activist, was assaulted in Tskhinvali and subsequently hospitalised. Prior to the incident, Mr Tskhovrebov participated in a confidence-building event in the Netherlands. In this framework, an appeal to the participants of the Geneva discussions aiming at finding solutions to a number of human rights issues and humanitarian problems stemming from the August 2008 conflict was published. The latter triggered criticism and public condemnation by the de facto authorities in Tskhinvali. Reportedly, other participants in the event were also subjected to pressure and threats.
47. The Commissioner strongly supports the confidence-building and human rights work of the civil society organisations and other actors being conducted on all sides. He deplores the physical assault on Timur Tskhovrebov and urges the de facto authorities to take

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<sup>25</sup> IFFMGC Report, September 2009, Volume I, p. 35.

<sup>26</sup> See the three Reports on the human rights situation in the areas affected by the conflict in Georgia presented by the Secretary General: SG/Inf(2009)7, SG/Inf(2009)9 and SG/Inf(2009)15 final.

direct action to prevent pressure, threats and attacks of this kind. The Commissioner also has concerns when authorities make negative statements about the work of activists and lawyers working on human rights cases related to the conflict. These persons play an important role in facilitating access to justice for victims of the conflict and must be allowed to conduct their work in an unhindered manner and without undue pressure. In this regard, the Commissioner wishes to stress that violations of international humanitarian law and international human rights law should not go unaccounted for and those responsible should be brought to justice.

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

48. In the immediate aftermath of the hostilities of August 2008 scores of people were detained or held in captivity. The International Committee of the Red Cross (ICRC), the Commissioner and other actors contributed to the release of a number of detainees and to the return of mortal remains to relatives. In the summer of 2009, the parties had agreed informally in the framework of the IPRM with South Ossetia, based on which 'accidental trespassers' (i.e., persons crossing the administrative boundary line) would not be detained. Regrettably, in the second half of 2009, the number of individuals arrested by de facto authorities for 'illegal crossing' of the administrative boundary line increased significantly. The Georgian side also arrested a small number of nationals of the Russian Federation, who had entered Georgia in violation of the Georgian Law on Occupied Territories, as well as South Ossetian residents, some of whom were allegedly carrying weapons.
49. Against this background, the Commissioner resumed his efforts towards the release of detainees and the clarification of the fate of missing persons. His action has always been guided by the desire to alleviate – if possible - the suffering of the persons concerned and their families, who have a right to be reunited with their loved ones or to know their fate.
50. In November and December 2009, the Commissioner conducted two visits in Georgia to negotiate the release of detainees on both sides. During his second visit in December 2009 the South Ossetian side released five ethnic Georgian minors held in detention in Tskhinvali. Five ethnic Ossetians detained after the conflict by the Georgian side were also released.
51. The Commissioner considers that the case of seventeen year-old Giorgi Archvadze, who was displaced during the August 2008 conflict, is an illustrative one. The teenager, who had resided in South Ossetia his whole life, was arrested whilst visiting his home in Beloti (in the Patara Liakhvi valley) in early July 2009, and a Tskhinvali court reportedly sentenced him to a six-month prison sentence for 'illegal border crossing'. On 19 December 2009, some two weeks before the expiration of his prison term, he was released. The Commissioner urges the de facto authorities in Tskhinvali and the security personnel of the Russian Federation to refrain from punishing persons from the conflict-affected areas for no reason other than the fact they have crossed the administrative boundary line.
52. In his public reports and statements, as well as his discussions with the parties and the international community, the Commissioner has repeatedly stressed that the relevant authorities should take a firm stance against kidnapping as well as the taking and keeping of people as hostages. Such acts are serious crimes, which should under no circumstances be tolerated.
53. In March 2010, the Commissioner submitted a Memorandum to the relevant decision-makers in Tbilisi and Tskhinvali outlining a number of recommendations to address the situation with detainees and missing persons occurring as a consequence of the August 2008 conflict. In particular, the Memorandum called upon the sides to release all detainees without delay, in parallel, and without step-by-step conditionality or "bargaining" based on head-counting. The Memorandum also recommended that various avenues such as early release, pardon or amnesty be considered for this purpose.

54. The Georgian authorities immediately released all six persons deprived of their liberty after the August 2008 hostilities, whereas the South Ossetian side released six out of the thirteen detainees mentioned in the Memorandum. The Commissioner welcomes the initial steps taken by both sides further to the proposals in the Memorandum. Moreover, it is very positive that hardly any prolonged detentions have occurred since the memorandum was submitted to the sides. However, the Commissioner notes with concern that a number of persons remain deprived of their liberty in Tskhinvali. These persons should be released and immediate steps should be taken to allow them to join their families.
55. The Commissioner is particularly concerned that some of the detainees in Tskhinvali are in bad health, and urges the relevant decision-makers to treat these cases as a matter of priority on humanitarian grounds. In the meantime, efforts should be made to ensure that family members have the possibility to visit their relatives who are in prison. In this regard, the Commissioner welcomes the fact that such visits have resumed in June 2010 - in both directions - with the assistance of the ICRC.<sup>27</sup>
56. ICRC continues to assist the parties in the clarification of the fate of persons who went missing during and after the August 2008 conflict and in the hand-over of mortal remains to relatives. In February 2010 a coordination mechanism on these matters was initiated under the auspices of ICRC, and to date two meetings have taken place in February and April 2010. According to ICRC, preliminary lists of 47 missing persons have been shared between the sides.<sup>28</sup> The Commissioner reiterates that it is of greatest importance that the relevant authorities demonstrate that they have taken every possible step to clarify the fate of the missing persons and the circumstances of each disappearance. This obligation is well-anchored in international humanitarian and human rights law. In addition to the persons that disappeared during the August 2008 conflict, there are still over 1900 persons missing from the conflicts of the early 1990s.
57. In an attempt to contribute to these efforts, in February 2010 the Commissioner mandated two independent experts with considerable experience in the field of police investigations into serious crimes, including an international and post-conflict context, to monitor the investigations on some cases of disappearances on all sides which took place both during and after the active hostilities in August 2008, and including the cases of three young Ossetians who went missing in October 2008. The experts concluded their work in Georgia in June 2010. In the course of their work, the experts issued a number of recommendations to their interlocutors with a view to ensuring that the relevant investigations are effective. The report of the experts is published separately.

#### *2.6 International assistance and presence*

58. Despite considerable efforts by the OSCE Chairmanship, it has so far not been possible for the Organisation to re-establish a presence in Georgia. In addition, on 15 June 2009, the UN Security Council failed to approve a resolution on the continuation of the UNOMIG, thus putting an end to its 16-year presence in the conflict zone. With the closure of the Human Rights Office in Abkhazia under UNOMIG, the only international human rights presence on that territory disappeared.
59. The European Union Monitoring Mission (EUMM) remains at present the only international presence on the ground with a conflict-related monitoring mandate. The mandate of the EUMM has been extended until September 2011. However, the mission does not have access to the breakaway regions.
60. No substantial progress was made in terms of access of international humanitarian actors to South Ossetia. The Commissioner would like to join the Secretary General of the

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<sup>27</sup> Cf. <http://www.icrc.org/web/eng/siteeng0.nsf/html/georgia-news-110610!OpenDocument>

<sup>28</sup> [ICRC news release 10/73 of 29/04/2010](#)

Council of Europe in his call for immediate pragmatic steps to remove at least the most urgent concerns of the affected population, in the absence of an agreement on a lasting political solution.<sup>29</sup>

61. Eleven rounds of peace talks in Geneva have taken place to date. Since May 2009, a second working group has been created, to discuss humanitarian questions, in addition to the working group debating security arrangements; this is a positive development. The Commissioner is convinced that a strong commitment from all sides to the existing arrangements (Geneva peace discussions and IPRM) is necessary to ensure stability in the region, as well as human rights and humanitarian protection for the conflict-affected population.
62. As already mentioned, access to the conflict-affected areas remains difficult, including for humanitarian purposes; these obstacles have related in part to the Law on Occupied Territories of Georgia. In 2009, the European Commission for Democracy through Law (Venice Commission) prepared a first opinion on the Law on Occupied Territories and two subsequent opinions (an interim and a final opinion) on the amendments that the Georgian Parliament proposed based on the Venice Commission's first opinion. In February 2010 the final amendments were adopted by the Georgian Parliament. The Commissioner welcomes the fact that these amendments address several concerns of the Venice Commission with respect to the Law on Occupied Territories. He expresses his hope that the Law will be interpreted and implemented in line with international humanitarian and human rights standards and that humanitarian and peacebuilding efforts will not be hindered.
63. Understandably, in the immediate aftermath of the conflict, most efforts were concentrated on meeting the immediate material needs of the displaced persons and returnees. Following the departure of two major international actors, the OSCE and UNOMIG, decisive steps are needed to ensure proper support and monitoring on human rights matters in Abkhazia and South Ossetia. The view shared by many actors is that currently, monitoring of the human rights situation in the areas affected by the conflict is insufficient, even though the Council of Europe and other organisations have tried to fill in this gap to the extent possible.
64. Finally, the Commissioner calls upon all the sides to facilitate the establishment of an international human rights presence in the areas affected by the conflict and to support the present efforts of the Council of Europe and other relevant organisations aimed at protecting the human rights of the population.

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<sup>29</sup> Report on the human rights situation in the areas affected by the conflict in Georgia Third report (July – September 2009), SG/Inf(2009)15 final, Document presented by the Secretary General, 4 November 2009.