



# **Review of Compliance of Domestic Legislation of Armenia, Georgia, and Azerbaijan with Guiding Principles on Internal Displacement**

## **Project Report 2001-2002**

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The views expressed in this report do not necessarily represent the official views of  
the Government of the Canada.*

## **I. Introduction**

In May 2002 the ODIHR, in co-operation with the Brookings Institution's Project on Internal Displacement and the Norwegian Refugee Council, conducted a regional workshop in Tbilisi, Georgia to introduce the Guiding Principles on Internal Displacement to governmental officials and NGOs of Armenia, Azerbaijan, and Georgia.<sup>1</sup>

At the end of the workshop, several participants proposed that as a follow-up to the workshop, review of compliance on national legislation with the Guiding Principles on Internal Displacement are undertaken. CUNY-Brookings Project on Internal Displacement (co-directed by Dr. Francis Deng, Representative of the UN Secretary General on Internally Displaced Persons) and the ODIHR sponsored the study. The study was conducted by two-lawyer teams from local NGOs in each country. Walter Kaelin, Professor of Constitutional Law at the University of Berne, supervised the project, while the Georgian Young Lawyers Association (first Zurab Burduli and, after his departure for the ICRC, Giorgii Chkheidze) coordinated the project locally. Thus the project also strengthened the capacity of local NGOs to perform legal analysis.

The project concluded with national-level round tables on findings and recommendations of reviews for each country. The round-table in Armenia was held in October 2001. In Georgia and Azerbaijan the round-tables were held in February 2002.

This summary contains the description of scope and methodology of the legal review, followed by sections on recommendations of legal reviews in each country. The round tables are covered in the last part of this report.

The complete legal reviews will shortly be published by the CUNY-Brookings Project on Internal Displacement and the ODIHR.

## **II. Scope and Methodology**

The project examined existing international and national standards applicable or relevant to internally displaced persons. The studies approached displacement from the perspective of the actual needs of persons belonging to this group of people and for each of these needs it provides a thorough analysis as to the extent of protection that the norms of international and domestic law afford and the compliance of the latter with the former's requirements.

Based on the Guiding Principles on Internal Displacement, the studies encompass an analysis of five different situations of protection, that of equality of internally displaced persons, protection from displacement, protection during

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<sup>1</sup> The report on this workshop that also contains the background on the Guiding Principles on Internal Displacement is available on [http://www.osce.org/odihr/documents/reports/displacement\\_workshop\\_2000.pdf](http://www.osce.org/odihr/documents/reports/displacement_workshop_2000.pdf)

displacement, humanitarian aid, and return, resettlement and reintegration. Since protection in these situations may call for simultaneous application of human rights law, humanitarian law and, to a very limited extent, refugee law, the study focus on these legal standards to the extent of their applicability.

### **III. Findings and Recommendations of the Legal Review for Armenia**

The results of the analysis of domestic legislation are the following:

- There exists *no specific legislation* on the protection of internally displaced persons within the meaning of the Guiding Principles. There is no law providing definition and protection for this category of persons, like the ones adopted in Georgia and Azerbaijan.
- Various decisions and resolutions of the Government referring to internally displaced persons, as a rule, are aimed at solving a part of their problems on an *ad hoc* basis, but lack a comprehensive approach to the issue.
- The lack of specific legislation for the protection of internally displaced persons has meant the absence of a definition of the internally displaced, which in turn has resulted in misinterpretations and confusion about their status. That is why the term “*internally displaced persons*” as it appeared in normative acts in some cases implies refugees and asylum seekers whereas in others the term “*refugee*” has meant internally displaced persons.
- The effective solution of the problem of IDPs requires clear identification of this category of persons. This means general legal regulation of IDP-related legislation as well as more specific laws related to the treatment of these persons.

The analysis of existing domestic legislation on IDPs in terms of the Guiding Principles suggests the following:

- The Guiding Principles restate existing international legal norms addressing the specific needs of internally displaced persons so that Armenia’s participation in the main international human rights instruments supposes its compliance with the Guiding Principles.
- Armenian legislation does not have discriminatory provisions; thus it complies with the Guiding Principles. The laws analysed in the present report do not provide limitations and restrictions on the rights of the individual by virtue of his or her being displaced and thus, in this respect, provide equality in the enjoyment of human rights as provided by the Constitution and international human rights instruments.
- There are no laws or normative acts providing special treatment for IDPs or addressing the specific needs of this category of persons. At the same time, it should be mentioned that provision of such treatment to IDPs has been on an *ad hoc* basis as contained in various resolutions and decisions of the Government.

- The analysis of domestic legislation shows that sometimes displacement may be carried out as a means of protecting the population; however, such evacuation can only be ordered in cases of emergency situations as provided by the Law on the Protection of the Population in Emergency Situations. The legislation of the Republic of Armenia clearly defines the situations where decisions on displacement can be made. It also identifies the State bodies competent to implement the aforementioned decision, as well as their obligations in undertaking all the necessary means to satisfy the special needs of the displaced population. However, the term “*emergency situation*” in the aforementioned law covers only certain situations whereby the displacement may occur, falling short of others provided by the Guiding Principles. In particular, the law does not cover situations of war, conflicts or situations of general violence.
- In cases where displacement is not necessitated by emergency situations and the need to protect IDPs, the decision on displacement can be made only with the consent of the displaced population. This is explained by the corresponding provisions of Armenian legislation, for example by the Constitution, which provides for full and prior compensation in cases of forced deprivation of property.
- Though the laws empower State bodies to adopt decisions on the special needs of IDPs, it is not always the case that these decisions are implemented. As the analysis shows, this is due to the scarce financial resources of the Government and is therefore more a problem of an economic and social nature than a legal one.

With respect to the aforementioned paragraph, it is important to mention the role of the Department of Migration and Refugees in dealing with IDP-related issues. The Department of Migration and Refugees (DMR) has elaborated its plan of actions, called “*Concept Paper of State Regulation of Migration of Population of the Republic of Armenia*”, which defines the general provisions of State migration policy, its priorities and means of implementation. It consists of four parts: introduction, general provisions of the Republic of Armenia State Migration Policy, legal analysis of the legal environment focusing on the changes to be made in the legal sphere, and the list of State institutions dealing with migration issues and their specific functions. Foremost, it lists the laws that need to be amended as well as proposes new legislation with respect to migration and suggests the list of international treaties that need to be signed.

The analysis of the legal framework of the Republic of Armenia has led to the conclusion that there is a need to improve the legislative basis of IDP regulation. However, as the analysis shows, IDP-related problems are very diverse and relate to political, civil, administrative, social, economic and cultural spheres. Based on the latter, it can be said that there is a need for the adoption of complex measures aimed at the improvement of the legislative bases of IDP regulation. Within the context of the existing legal framework of Armenia, the most adequate solution of the problem would be the adoption of a plan of legislative reforms by the Government of the Republic of Armenia including adoption of new legislation and changes to existing laws.

The plan in the first place, would foresee the *adoption of the legislative act, a law on Internally Displaced Persons*, which will set the general legal framework and the basis for the regulation of IDP-related issues. In particular, the law will provide for the definition of IDPs in accordance with the Guiding Principles which will help to fill the existing gap in the legislation. Furthermore, it will provide for social and economic guarantees as well as identify the State bodies, their obligations and the competences with respect to IDP-related problems.

More specifically, it will set forth a *simplified order of registration of internally displaced persons* by a corresponding State body, the order of granting the status of the internally displaced person as well as the term of validity with the possibility of extension; the right of displaced persons to temporary residence with the possibility of choice if such an option is provided by the State body; provision of subsidies and loans on beneficial terms for construction of a new house; provision of houses on a permanent basis for certain categories of displaced persons identified by the Government (pensioners, handicapped, etc) if their return is no longer a possibility; guarantees for them to start and continue education in the new areas of their displacement; assistance in finding a job by providing at minimum access to information on the availability of jobs in the areas of displacement; assistance in designating land for internally displaced persons displaced to rural as well as other areas.

Thus, the law on internally displaced persons will set the general legal basis of regulation supplemented by normative acts to ensure the implementation of the law. This will help, *inter alia*, to avoid an *ad hoc* approach to this issue and will create a normative base for regulation. An example of it can be a resolution of the Government on the order of registration of internally displaced persons with regard to provision of subsidies and other types of benefits. Finally, the full realisation of the guarantees provided by the Guiding Principles, the new law and subsequently the plan of action requires additional financial resources to be sought from donor organisations operating on the territory of the Republic of Armenia as well as from outside. Thus, the Government of Armenia together with the bodies in charge (DMR) should take all the steps to provide the legal bases of the protection of internally displaced persons and based on that try to seek the funds for the implementation of the law. The latter will not be an easy task and will require the cooperation of State bodies with intergovernmental organisations, as well as national and international non-governmental organisations.

#### **IV. Conclusions and Recommendations of the Legal Review For Georgia**

From the standpoint of the conformity of the law of Georgia with the *Guiding Principles*, there are two types of legal acts in Georgian law that regulate the rights of internally displaced persons:

- Legal acts with a scope of application limited to internally displaced persons. These acts regulate issues related to specific conditions of internally displaced

persons (e.g. receiving humanitarian assistance). The main relevant law is *the Law of Georgia on “Internally Displaced - Persecuted Persons”*

- Legal acts with a scope of application not limited to internally displaced persons. These legal acts apply to the entire population of Georgia (and foreigners), including internally displaced persons.

The main recommendations of the review for Georgia are the following:

- It would be appropriate to include a provision in the Law of Georgia on “Internally Displaced - Persecuted Persons”, declaring that IDPs enjoy all the rights granted to the rest of the population together with such additional rights that are necessary to address their special needs because of their displacement.
- The legislation of Georgia on state of emergency/martial law should be revised in order to grant special powers and responsibilities to the Ministry of Refugees and Accommodation.
- The Organic Law of Georgia on “Rule of deprivation of property for urgent social necessity“ needs to be revised since it excludes the right of affected persons *to appeal to a court for protection of his/her rights and freedoms* during a state of emergency.
- Rules and conditions for registration of persons enjoying a special status (displaced due to a conflict) should be laid down in the law dealing with this status itself.
- A system of registration for internally displaced persons (“temporary registration”) should be brought into conformity with the system of registration employed for citizens of Georgia and foreign citizens.
- The legislation of Georgia needs to be amended to enshrine the right of family members to not be separated, the right to reunification of families separated by displacement or the right of members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps to remain together.
- The definition on what is meant by “adequate” in provisions calling for adequate housing needs to be clarified.
- Based on the *Guiding Principles*, it is necessary to reaffirm in the legislation in force (the Law of Georgia on “Internally Displaced - Persecuted Persons”) the right of internally displaced persons to make a free choice and either return home or resettle in another place and reintegrate there. The principle of non-discrimination among these persons should also be observed.

- Before the actual resolution of conflicts, relevant by-laws should be put in place based on Article 7 of the Law of Georgia on “Internally Displaced - Persecuted Persons” to ensure provision of the guarantees reaffirmed in the law to the returned persons.
- A legal basis needs to be created to regulate the issues of housing and property restitution for internally displaced persons. Effective mechanisms should be created (in the form of a special commission or granting the courts of general jurisdiction the right to deal with such cases) acceptable to all the parties to the conflict, which would promote an efficient and timely solution of the problem.

## **V. Findings and Recommendations of the Legal Review for Azerbaijan**

In addition to the Constitution of Azerbaijan, legislative acts directly regulating the legal status of IDPs in Azerbaijan are the following:

- Law of the Azerbaijan Republic on “The status of refugees and persons forcibly displaced inside the country, signed by the President of the Azerbaijan Republic on May 21, 1999;
- Law of the Azerbaijan Republic on “social protection of forcibly displaced persons and persons comparable to them” (hereinafter “Law on social protection of forcibly displaced persons”), signed by the President of the Azerbaijan Republic on May 21, 1999;
- Decree of the President of the Azerbaijan Republic on “Application of the ‘Law of the Azerbaijan Republic on Social Protection of Forcibly Displaced Persons and Persons Comparable to Them’” of July 8, 1999;
- Decree of the President of the Azerbaijan Republic on “Application of the ‘Law of the Azerbaijan Republic on the status of refugees and forcibly displaced persons’” of July 8, 1999;
- State Program of “Resolution of problems of refugees and forcibly displaced persons”, approved by Presidential Order of September 17, 1998;
- “Procedure for providing lump sum, regular monetary assistance, food and industrial products to forcibly displaced persons”, approved by a Decree of the Cabinet of Ministers of the Azerbaijan Republic of December 6, 1999;
- “Procedure for settlement of forcibly displaced persons in residential, administrative, auxiliary or other premises that are suitable for living or capable of being transformed in suitable-for-living conditions”, approved by a Decree of the Cabinet of Ministers of the Azerbaijan Republic of December 24, 1999 (hereinafter “Procedure for settlement of forcibly displaced persons”).

The main recommendations of the legal review for Azerbaijan are:

- In conformity with international standards, to elaborate and adopt separate laws on “Refugees” and on “Internally Displaced Persons”. These laws should replace

the existing single law on “the Status of Refugees and Forcibly Displaced Persons” (persons displaced within the country).

- To elaborate and adopt a legal act on “Granting IDP Status” (procedures and regulation for granting IDP status)
- To elaborate and adopt a normative act regulating the legal status of those persons seeking refuge.
- To introduce in the definition of “internally displaced person” (persons displaced within the country), stipulated in the Laws of the Azerbaijan Republic on “Status of Refugees and IDPs” and on “Social Protection of IDPs and Persons Comparable to Them”, such criteria as generalized violence and violation of human rights.
- To introduce in the current legislation of the Azerbaijan Republic certain legal norms, which would envisage circumstances under which the Status of Forcibly Displaced Person could be granted to foreigners and stateless persons.
- To introduce in the laws of the Azerbaijan Republic on “Status of Refugees and IDPs” and on “Social Protection of IDPs and Persons Comparable to Them” separate norms prohibiting any form of discrimination against IDPs in the enjoyment of all their rights and freedoms, if such discrimination is based on the fact of their being IDPs.
- To introduce in the Laws of the Azerbaijan Republic on “Status of Refugees and IDPs” and on “Social Protection of IDPs and Persons Comparable to Them” special measures aimed at protecting and assisting IDP pregnant women and mothers with small children as well as those who are bread-winners for their families.
- To adopt a legislative act on the Protection of the Population in case of Emergencies.
- To create a State body to deal with emergencies as well as the protection of the population during emergencies.
- To introduce additions to the Law of the Azerbaijan Republic on “The Protection of the Civilian Population and the Protection of the Rights of Prisoners of War” with the view of incorporating legal norms into the law reflecting the following provisions: to protect the civilian population from genocide, violent disappearances, including abduction or secret custody posing a danger to life or causing death, direct or indiscriminate assaults or other acts of violence, including the creation of zones in which assaults on civilians are widely practiced, the use of starvation as a method of military campaign and the application of anti-personnel land mines.
- In the Law of the Azerbaijan Republic on “The Protection of Civilians and Protection of the Rights of Prisoners of War” to introduce supplementary articles



prohibiting threats of genocide against the civilian population, assassinations, executions without proper trial or any arbitrary executions, violent disappearances, including abduction or holding persons in secret under guard, posing danger to their life or causing death, and prohibiting any actions instigating the aforementioned violations.

- To introduce legal norms into the existing legislation of the Azerbaijan Republic, which would envisage the right of citizens, including IDPs, to seek asylum in another country and the right of IDPs to be protected from forcible return and resettlement to any place where their lives, security, freedom or health could be endangered.
- To amend and modify the existing legislation of the Azerbaijan Republic relating to family reunification issues for IDPs.
- To introduce legal norms into the existing legislation of the Azerbaijan Republic, which would envisage full participation of women IDPs in the planning and distribution of foodstuffs, industrial goods, medicines and accommodation.
- To consider the introduction into Article 9 of the Law of the Azerbaijan Republic on “Social Protection of IDPs and Persons Comparable to Them” of supplementary provisions which would reflect the necessity to make sure that humanitarian assistance for IDPs is not used in an improper manner, in particular, for political or military reasons.
- It is necessary to introduce into Article 9 of the Law of the Azerbaijan Republic on “Social Protection of IDPs and Persons Comparable to Them” supplementary provisions that would declare that persons providing humanitarian assistance, their means of transport and consignments are protected by the law and should not be exposed to assaults or other acts of violence.

## **VI. The Round Tables**

Round-table meetings to present and discuss the findings and recommendations of legal reviews were held in capital cities of each of the countries of Southern Caucasus. The participants included governmental officials, representatives of international organizations, and local and international NGOs. The roundtables were chaired by the ODIHR and the CUNY-Brookings Institution on Internal Displacement.

### **Armenia**

The discussion in Yerevan focused on lack of a legal definition of an IDP in the Armenian legislation. The government, through the Department of Refugees and Migration, is carrying out assistance programs to displaced persons according to their place of origin. This carries a significant risk of discriminatory practices. The review conducted under this project recommends that Armenia introduce a law on IDPs that would contain a definition consistent with the Guiding Principles on

Internal Displacement and would list key rights of IDPs as well procedures for registration of IDPs. Although most of the participants agreed with this recommendation, some government officials remained unconvinced, arguing that IDPs, being citizens of Armenia, are already adequately protected by the Constitution and laws of Armenia.

The OSCE Office in Yerevan assisted with the organization of the round-table and provided the logistical support.

## **Georgia**

The round table in Georgia featured a business-like discussion of gaps in the existing legislation. Government officials and local NGOs appeared to understand the issues well. While they did not agree on every point, there was a general consensus that legislation on IDPs has to be clarified and amended, in particular on the issues of right to own property, of freedom of choice of residence, on registration of IDPs, and on benefits due to IDPs. Another curious point that needs to be eliminated is that a woman IDP loses her IDP status if she marries a regular (non-displaced) male citizen of Georgia. However, if a regular (non-displaced) female citizen of Georgia marries an IDP man, she acquires a status of IDP.

There seemed to be general acceptance that in absence of opportunities to return, IDPs from Abkhazia and South Ossetia should be given an opportunity to acquire skills that would enable them to earn income rather than rely on humanitarian assistance. Even representatives of the Parliament-in-Exile agreed that self-reliance would not undermine the right of IDPs to return. This is a positive change from some years ago when the prevailing attitude was to keep IDPs from becoming self-reliant in fear that they would consequently lose interest in returning to the places they fled.

The Human Rights Office of the OSCE Mission to Georgia and the Georgian Young Lawyers association organized the round table and provided necessary logistical support.

## **Azerbaijan**

The discussion at the Baku primarily focused on many problems connected to having a single law on refugees and IDPs rather than a law for each of these categories. *The best solution seems to be to draft new separate law on IDPs and a separate law on refugees rather than try to amend existing laws.*

In addition, there is no law regulating return of IDPs to the places of their habitual residence. Some returns have taken place by IDPs who returned to the Fizuli district that is partially under the Azerbaijan control. While the government continues providing assistance to them, this is not regulated by legislation.

There are also concerns about recent government decree abolition of some benefits to IDPs. They will be replaced by a system of allowances. The head of the legal department of the State Committee on Refugees and IDPs attempted to explain how the new system would work without harming the IDPs. However, the attempt was

not fully successful, leading to concerns that assistance to IDPs will be reduced in reality.

The OSCE Office in Baku and the Center for Legal and Economic Education of Azerbaijan assisted with the organization of the round-table and provided the logistical support.

## **VII. Concluding remarks**

As mentioned in the introduction, the full legal review will soon be published by the ODIHR. The received prominent mention in the report of Dr. Francis Deng, the Representative of the UN Secretary General on Internal Displacement, to the UN Human Rights Commission in year 2001 and will get same mention in the 2002 report.

The project also showed that the ODIHR has been able to take practical action on the IDP issue. The legal reviews can serve as a basis for future discussion between governmental agencies, NGOs, and the international community. No such systematic reviews existed in the countries Southern Caucasus and, therefore, the discussions on IDPs were based on perceptions rather than on analysis.