

**ROUND TABLE ON
“COMPLIANCE OF LEGISLATION OF GEORGIA WITH THE GUIDING
PRINCIPLES ON INTERNAL DISPLACEMENT”
TBILISI, FEBRUARY 18, 2002**

Report

On February 18, 2002 in Tbilisi, Georgia, a round table entitled "Compliance of Legislation of Georgia with the Guiding Principles on Internal Displacement" was convened by the Office of Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE), the Brookings Institution–City University of New York (CUNY) Project on Internal Displacement and the Georgian Young Lawyers' Association (GYLA).

The round table was organized within the framework of a joint project involving the three countries of the South Caucasus: Georgia, Armenia and Azerbaijan. The project was initiated and sponsored by the Brookings–CUNY Project, OSCE's ODIHR and GYLA, the latter acting as project coordinator. Two legal experts from each of the South Caucasus countries were recruited to produce research papers on the compatibility of their respective national laws with the Guiding Principles on Internal Displacement. Following the preparation of the research papers, round tables were organized in each of the South Caucasus countries to serve as a forum for presenting the findings of the research and to discuss internal displacement problems in each country and the region. The first round table was organized in Yerevan, Armenia in October 2001.

The agenda of the round table in Georgia covered introductory remarks by the organizers, presentations by the national experts and discussion of the report and other issues (see attached agenda). A broad range of participants attended the meeting, in particular representatives from Government agencies, non-governmental organizations, international and regional organizations and research institutions (see attached list of participants). The meeting was co-chaired by Dr. Walter Kälin of the University of Bern, who had chaired the South Caucasus legal process, and Mr. Vladimir Shkolnikov of OSCE/ODIHR.

The Ambassador of the OSCE Mission to Georgia, His Excellency Mr. Jean-Michel Lacombe, opened the meeting. Noting that assistance to internally displaced persons is one of the activities of the OSCE Mission to Georgia, the Ambassador welcomed the organization of such round tables, noting that they were of great importance to the work of the OSCE in promoting and protecting the rights of the internally displaced. The OSCE Mission regards the Guiding Principles as a useful tool for its activities with the internally displaced, in particular as a source of legal reference on the rights of IDPs. Research into the protection of the rights of internally displaced persons under national legislation is of great scholarly and practical importance. Ambassador Lacombe welcomed the organization of the round table as very important and timely, and wished all participants fruitful discussion on this issue.

Mr. Vladimir Shkolnikov of OSCE/ODIHR noted that the issue of internal displacement recently had entered the OSCE agenda and that monitoring of the situation of IDPs is an

integral part of the mandates of many OSCE missions. Turning to the topic of the round table, he explained that the initiative for the project to assess the compliance of national legislation with the Guiding Principles in Georgia, as well as Armenia and Azerbaijan, had emerged from the regional seminar on internal displacement in the South Caucasus region that had been held in Tbilisi in May 2000, organized by OSCE/ODIHR, the Brookings Institution Project on Internal Displacement and the Norwegian Refugee Council. He commended the legal review prepared for the round table as a well researched and balanced document, which gives due regard to legislation that already has been developed for the protection and assistance of IDPs, while identifying weaknesses and other areas that need improvement. Noting that steps have been taken in Georgia to adopt a “New Approach” to IDPs, based on the recognition that IDPs have the same rights as all Georgian citizens and that greater self-sufficiency of the displaced will contribute to the development of the whole country, Mr. Shkolnikov expressed the hope that the round table would be another positive step towards realization of the full range of rights of citizens of Georgia who have been internally displaced.

The Deputy Minister for Refugees and Accommodation, Mr. Gaioz Nozadze, delivered a statement of welcome on behalf of the Government of Georgia, expressing gratitude to the organizers for the convening of the round table. Mr. Nozadze provided a brief historical overview of the situation of internal displacement in Georgia and the plight of the country’s some 300,000 internally displaced persons. He noted that the Government has been devoting special attention to this problem, in particular through the creation of the Ministry for Refugees and Accommodation, which is charged with addressing the social and legal concerns of internally displaced persons in Georgia. Special mention was made of the national legislation on internally displaced persons and the recent adoption by the Government of amendments and additions to the Law of Georgia on Forcibly Displaced Persons – Persecuted Persons, which were designed to ensure better protection for IDPs. For example, the amended Law contains important new provisions regarding the status of IDP children, exemption for IDPs from agricultural land tax, and regulations regarding the resettlement of IDPs from their current place of dwelling. In addition, in accordance with a Presidential Decree of January 2002, the Ministry would be providing IDPs who have only the old Soviet passport with a new Georgian passport free of charge.

At the same time, the Deputy Minister acknowledged that obstacles to the right to employment and the right to temporary resettlement remain serious problems for IDPs. In this connection, he noted that the “New Approach to IDP Assistance in Georgia” that had been formulated by the UN in 2000 and the related Georgian Self-Reliance Fund were of great importance to resolving the problems of IDPs in Georgia but, unfortunately, had been slow to be implemented. For instance, he noted that of the some 268 project proposals submitted for funding under the Self-Reliance Fund, only 2 or 3 projects had been approved and even these had yet to receive funding and be implemented. Mr. Nozadze urged the UN and other international organizations to focus attention on ensuring more effective implementation of the New Approach and expressed the readiness of the Government of Georgia to cooperate in this regard.

Mr. Nozadze welcomed the findings and conclusions of the legal analysis prepared for the round table and endorsed the approach that the Guiding Principles should be a point of reference for national legislation pertaining to internally displaced persons. The Deputy Minister ended his opening remarks by noting that the Government of Georgia was ready

to do its utmost to protect the human rights of IDPs and to ensure that they enjoy equal rights with other citizens of Georgia.

Ms. Erin Mooney, Deputy Director of the Brookings-CUNY Project on Internal Displacement, extended words of welcome on behalf of both the Brookings-CUNY Project as well as the Representative of the UN Secretary General on Internally Displaced Persons (see attached statement). She discussed the activities of the mandate of the Representative, in particular the development and promotion of the Guiding Principles on Internal Displacement, the promotion of enhanced institutional arrangements for internally displaced persons, country visits, and research. She then explained the framework in which the round table was organized, noting that in addition to proving valuable to the three countries of the South Caucasus, it was expected that this process would serve as a model for countries affected by internal displacement in other parts of the world as well.

Focusing on Georgia, Ms. Mooney recalled the main findings and recommendations of the Representative's mission to the country in May 2000, in which she had participated. Overall, the Representative had stressed the importance of ensuring the full realization of the rights of internally displaced persons in Georgia. In particular, while continuing to support the pursuit of durable solutions for the internally displaced, including the right to return to their areas of origin, there was a need to ensure that internally displaced persons could live in dignity and lead productive lives in their current place of residence. In this connection, the Representative had welcomed the initiative of the "New Approach"; at the time of the round table, its full and effective implementation remained as critical as ever. Other key issues that remained relevant included ensuring the right of internally displaced persons to political participation and to property restitution or compensation. In closing, Ms. Mooney recalled that to address these and other issues identified by the Representative's mission, it had been recommended that the Government of Georgia design national policies and programs in accordance with the Guiding Principles. She expressed the hope that the discussions at the round table would both facilitate and further this aim.

Professor Walter Kälin, one of the principal drafters of the Guiding Principles, then provided background to the Principles and a summary of their legal content and current status (see attached statement). He explained that the Principles are based on the following concepts: (1) although internally displaced persons have left their homes, they continue to enjoy the full range of human rights as well as guarantees under humanitarian law; (2) internally displaced persons have special needs by virtue of their displacement; and (3) it is necessary to tailor existing law to the specific needs of internally displaced persons in order to facilitate its application in situations of internal displacement. Prof. Kälin then explained the relevance of the Guiding Principles both for States, in particular as a source of reference and inspiration for domestic legislation on internally displaced persons, as well as for non-governmental organizations, for whom the Principles provide a tool to support their advocacy efforts on behalf of the internally displaced.

Mr. Giorgi Chkheidze extended greetings on behalf of GYLA and explained its coordination role in the project. He reported that the Tbilisi meeting had been preceded by a similar round table in Armenia in October 2001 and would be followed by a round table in Azerbaijan later in the week.

Findings of the Lawyers

Mr. Chkheidze and Mr. Konstantin Korkelia, the two Georgian lawyers who authored the research paper, then presented their findings. They first outlined the methodology of the research, emphasizing that they had analyzed not only the relevant legislation but also how it was implemented. Furthermore, they noted that the report before the round table was based on research concluded in October 2001 and, therefore, did not reflect recent legislative developments, which nonetheless would be highlighted in the course of the presentation and reflected in the version of the report to be published.

Because the study had been circulated in advance, the lawyers concentrated on its main conclusions and recommendations. Moreover, given the time constraints, they focused on areas of concern while emphasizing that Georgian legislation is largely in conformity with the Guiding Principles and in some cases even provides enhanced protection.

Mr. Korkelia began by noting that the definition of “internally displaced persons” provided in the legislation of Georgia does not include persons displaced as a result of an ecological disaster. In the opinion of the legal experts, this was a shortcoming, which should be rectified. Turning to the principles of equality and non-discrimination, Mr. Korkelia drew attention to the absence in Georgian legislation of a general norm recognizing the equality of IDPs with the rest of the population. Accordingly, the report recommended the addition to relevant legislation of a provision stating that IDPs enjoy all the rights enjoyed by other citizens of Georgia while also providing guarantees to address the special needs that derive from their particular factual situation of being displaced. Furthermore, it was pointed out that the legislation of Georgia discriminates among “persecuted persons” (IDPs displaced as a result of conflict) by extending this status to women but not to men as a result of marriage. Despite amendments to the Law on Forcibly Displaced Persons–Persecuted Persons, with regard to the marriage of “persecuted persons”, this problem remained unresolved and in need of legislative attention.

Regarding protection against arbitrary internal displacement, Mr. Chkheidze noted that while Georgian legislation contains a number of provisions regulating the process of displacement, it nonetheless contains certain shortcomings: the rights and obligations of executive bodies during the process of displacement are not defined in detail; there exist different guarantees for persons displaced as a result of conflict and those displaced as a result of ecological disaster (suggesting discrimination among different groups of IDPs); the lack of legislative regulation of displacement as a result of large-scale development projects; and limitation of the right to refer to the court (in terms of appeal to the higher court and time limits) in the case of expropriation of property during displacement on account of unavoidable public necessity.

Mr. Korkelia further observed that existing Georgian legislation does not expressly guarantee the principle of family unity and reunification for IDPs, lacks provisions in the area of health care for psychosocial services and for special attention to be paid to the health needs of women, and allows for possible restrictions on the exercise of the right to education by IDPs as well as persons seeking the status of “persecuted person”.

The right of IDPs to vote received special attention. Mr. Chkheidze provided an overview of the problems faced by IDPs in the exercise of this right, in particular

regarding their right to vote in local elections as well as for local representatives to parliament. Although the new Election Code adopted in August 2001 provided that IDPs could vote in local elections, until the local elections (scheduled to occur later in 2002) actually were held it was premature to pronounce that the problems faced by IDPs in voting in such elections had been fully resolved. And while IDPs had been able to vote in the recent by-election for the local parliamentary representative for the Vake District of Tbilisi, aside from this particular and rather unique case, the problem of IDPs voting in parliamentary elections remained. It was emphasized that the right to vote includes not only the right to elect, but also the right to re-elect according to time limits provided by law. In this connection, the extended prolongation of the term of the deputies from Abkhazia in the parliament of Georgia can be considered a further limitation on the voting rights of IDPs.

As regards conformity of national legislation with the principles relating to humanitarian assistance, two major problems had been identified. The first concerned the lack in Georgian legislation of a specific responsibility by the relevant authorities to coordinate and monitor the distribution of humanitarian assistance within Georgia, including an obligation to provide internally displaced persons with full and timely information of the humanitarian assistance to be delivered to them. Second, existing legislation excludes the possibility of the State providing grants to non-governmental organizations to carry out humanitarian assistance activities.

The legal experts noted that, in accordance with the agenda, they would present the remainder of their findings and recommendations in the context of the discussions on three themes: social and economic rights; registration and housing; and property restitution and the right to return.

Discussion

General discussion of the report began with comments by Ms. Eteri Astemirova, a representative of the Supreme Council of Abkhazia (in Exile), who expressed gratitude to the organizers for convening this forum, noting the importance of discussing the issue of internally displaced persons and welcoming the Guiding Principles. While concurring that the right of IDPs to participate in elections should not be limited, she suggested the need to bear in mind that in certain regions where the IDP population outnumbers the local population and therefore could determine the outcome of elections, the participation of IDPs in local elections could be unfair to local residents. The issue is complex and requires a carefully considered approach. Ms. Astemirova also emphasized that special schools for IDPs are not created by law, but rather their existence is determined by the factual circumstances requiring such schools.

Ms. Valentina Tsoneva of the UN High Commissioner for Refugees (UNHCR) referred to a meeting organized by the Ministry of Foreign Affairs the previous year to discuss research undertaken on the compliance of Georgian legislation with the European Convention on Human Rights, and her belief at the time that similar research with regard to IDPs and refugees was required. She expressed appreciation for the work of the legal experts in filling a gap in analysis of Georgian legislation as regards IDPs and welcomed the findings and recommendations of their research. Referring to the Law on Forcibly Displaced Persons – Persecuted Persons, Ms. Tsoneva suggested the need to revise the terminology employed in order to avoid misunderstandings that the law applied to

refugees as well as IDPs, which was not the case. On the issue of political participation, she stressed the need to protect IDPs from being manipulated as a political tool.

Mr. Zurab Burduli, International Committee of the Red Cross, asked: does the definition of IDP used in the Guiding Principles allow for the possibility of IDP status and refugee status to overlap? For instance, if a refugee from France resided in Abkhazia and then, due to conflict, was displaced to Tbilisi, would s/he remain a refugee or become an IDP? Prof. Kālin replied that the individual would remain a refugee, as this is a status that applies regardless of where the individual is in the country of refuge. At the same time, the Guiding Principles do not expressly address this scenario. Many of the guarantees provided for in the Principles, especially those derived from international humanitarian law, would apply to the individual as a “protected person” in armed conflict. Ms. Tsoneva concurred with Prof. Kālin and mentioned, in addition, that, if the person bearing refugee status is displaced within the country granting the status as a result of persecution, s/he should be considered as eligible for resettlement in a third country.

Mr. Burduli also asked the Georgian legal experts to elaborate on the issue of loss by an IDP of the status of “persecuted person” and its consequences. Mr. Chkheidze noted that in the discussion on the social and economic rights of IDPs, the answer would become clearer, and then proceeded to present this aspect of the legal research.

Additional Findings

With regard to the rights related to an adequate standard of living, Mr. Chkheidze noted that eighty percent of national legislation is devoted to this issue and, yet, the research found a number of areas of concern. In contrast to persons displaced as a result of conflict, for persons displaced as a result of ecological disaster, social and economic guarantees are not fixed in legislation. There is also a need to define at the legislative level standards for adequate living conditions. Furthermore, it is necessary for the law to provide for free utilities services for those IDPs resettled in the private sector (as it does for those in collective accommodation) and to define the bearer of such responsibility in the event of privatization (or denationalization) of the places of collective accommodation.

Addressing the issue of privatization separately, Mr. Chkheidze mentioned that in the event of privatization of the residences of IDPs, it is necessary to spell out an obligation of the new owners not to evict IDPs. While progress had been made with the introduction last year of amendments to the Law, which provide for guarantees against arbitrary resettlement of IDPs, there remains a need to specify this limitation in privatization contracts as well, in order to provide additional protection for IDPs.

Regarding medical care, it was recommended that national legislation should provide for essential medical services in particular for newly displaced persons (e.g. those who left the conflict zone). Mr. Chkheidze also mentioned the problem of the inadequacy of the State allowance and the recurring delay in its provision. Special attention was paid to the issue of land and the need for legislation specifying standards of quality of land, including that its location must be easily accessible to IDPs.

The conclusion of the experts’ analysis on the rights of IDPs to essential assistance and services was that Georgian legislation provides for significantly more social and

economic guarantees than specified in the Guiding Principles, but that there is a need to assess the expediency of the delivery of and access by IDPs in practice to the social-economic benefits provided for by legislation.

Discussion

In the discussion of these findings, Ms. Nino Todua, Minister for Refugees and Accommodation of the Autonomous Republic of Abkhazia (in Exile), agreed that the amendments recently introduced to the Law are on the whole positive. However, there are still a number of outstanding issues to be regulated. The fact that IDPs accommodated in private houses do not receive the same benefits as the 38 percent of IDPs residing in collective centres, such as free utilities, is a discrepancy among IDPs that needs to be addressed. She further noted that the international community was shifting from humanitarian assistance to development assistance but without adequately taking the current needs of IDPs into account. For instance, as the State is unable to provide all IDPs with decent living accommodations, international organizations could assist the Government in establishing a special housing fund, at least for newly displaced persons, as well as a special fund for emergency medical care for IDPs. Ms. Todua agreed with the Georgian experts regarding the need for national legislation to provide for special psychological assistance for IDPs. Finally, the Minister proposed that IDPs should be eligible to participate in the privatization process and property ownership, as she reported many were eager to do. She pointed out that in order to obtain credit, IDPs must prove that they own property (land, cars etc.) which in most cases they do not.

Mr. Burduli expressed the view that the main problem appears to be not whether or not international norms for the internally displaced are reflected in national legislation but rather that the implementing State agencies and their duties to the displaced are not clearly defined. In addition, Mr. Burduli sought greater clarity as to whether IDPs have the right to participate in the privatization process. If not, what are the reasons for their non-participation? If so, does it mean that s/he relinquishes the right to property left behind in their area of origin? Mr. Burduli concurred with the recommendation of the need for enhanced legal protection for IDPs against eviction in the case of privatization. However, he wondered about the possibility of an owner removing IDPs from property using the argument that the property does not meet the standards for “adequate” housing for IDPs, which it had been recommended be spelled out.

The Head of the Legal Department of the Ministry for Refugees and Accommodation, Ms. Irma Merebashvili, introduced herself as a member of the Commission responsible for drafting the recent amendments to the Law and responded to a number of points that had come up in the course of the discussion. Referring to the suggestion by Ms. Tsoneva regarding the title of the Law on Forced Displaced Persons – Persecuted Persons, she agreed that the terminology used in the Law should be clarified. She shared the concerns expressed by Mr. Korkelia regard possible limitations on the right of IDPs to education. Ms. Merebashvili endorsed the recommendation to define standards specifying the meaning of “adequate” living conditions and land, but expressed some doubt about the practical implementation of such standards. She clearly stated that the State continues to pay the utilities services taxes for IDPs even after the privatization of places of collective accommodation and, because this is not expressly specified in the law, agreed that it would be appropriate to introduce such a provision. Furthermore, Ms. Merebashvili asserted that IDPs do indeed have the right to participate in the process of privatization.

With regard to medical care, Ms. Merebashvili agreed that it was necessary to include in the law provisions for IDPs to have access to psychosocial assistance, although she also noted that the Government would require assistance from the international community to provide this. Ms. Merebashvili also agreed that it would be appropriate for the law to specify the standards for the quality and accessibility of land to be given to IDPs.

Finally, Ms. Merebashvili discussed the problem of employment. While IDPs have the right to employment and the State has an obligation to facilitate realization of this right, clearly the Government cannot guarantee a job for everyone. The international community could help. However, she expressed concern that the “New Approach” developed by the UN to promote employment opportunities and self-reliance for IDPs has yet to achieve any results.

Mr. Alexander Rusetski of the Helsinki Citizens’ Assembly Georgian National Committee, while not discounting the need for international assistance, stressed that assistance to IDPs is first and foremost the responsibility of the State. To assist IDPs in regaining their private property lost as a result of displacement, he recommended the creation of a specific mechanism for addressing issues of property restitution. Moreover, there was a need to address the problem of IDPs being deprived of the possibility to participate in the privatization process which was underway in the conflict zone as well.

Ms. Tsoneva of UNHCR echoed the views of other participants in stressing the importance of ensuring that IDPs have the possibility to participate in the privatization process but also expressed concerns as to how this would affect IDPs’ status and their right to property restitution in their area of habitual residence.

According to Ms. Astemirova, the purchase of property by IDPs in their current place of residence should in no way limit their right to return or their right to restitution of property in their former place of residence as a result of the conflict. Nor should it lead to a loss of their status and entitlements as IDPs.

The Georgian expert, Mr. Chkheidze, made some clarifications on the questions raised by the various speakers. He noted that the right of the displaced to purchase and use property is not limited by Georgian law. Also, pursuant to the law on privatization, the displaced have absolute freedom to participate in the process of denationalization of State property. Moreover, in the exercise of these rights, the internally displaced are not to be deprived of their right to return and to regain property left in the conflict zone. These guarantees are provided for in the law. However, in reality, the displaced are not aware of these rights, leading to concerns such as those expressed at the round table. Referring to the problem of terminology, the legal experts fully agreed with the speakers that the title and terminology of the law needs certain correction.

The Deputy Representative of the UNHCR Mission to Georgia, Mr. Patrick Tezier, drew attention to that fact that, while talking about the differences between IDPs and refugees, the main distinction is the fact that refugees have crossed a state border, while IDPs have not.

Following the break, the representative of the IDP Women’s Association, Ms. Julia Kharashvili, refocused attention on the issue of the participation of IDPs in elections, noting that among IDPs there exists a strong fear that they will lose the right to return if

they take part in the elections, whether with regard to voting or standing as candidates for election. She asked for greater clarity on what, if any, are the consequences for IDPs if they participate in elections.

Mr. Chkheidze replied that according to the law, it is clear that internally displaced persons, as citizens of Georgia, continue to enjoy the right to stand for election. As regards the right to vote, the Election Code in force provides that an “IDP may take part in elections according to his/her factual place of residence”. Consequently, IDPs should enjoy the right to take part in the local elections. However, since there is a different system of registration for IDPs, it is difficult to conclude with certainty that the right of IDPs to vote in local elections is no longer restricted.

Regarding the issue of registration, Mr. Chkheidze noted that an IDP may purchase property in a locality without being registered there. Having said that, he focused on the fact that the system of registration of IDPs is in conflict with the general procedure of registration of citizens of the country. This issue is even more problematic as the general procedure is regulated by law, while the different special procedure for IDPs is regulated by by-law. Moreover, this special registration procedure is not applicable to those displaced by ecological disasters, and as such creates a situation of discrimination between IDPs.

As to the consequences for an IDP of the loss of his/her special status as such, Mr. Chkheidze noted that the only consequence would be the loss of entitlement to social and economic benefits, but not the abolition of the right to return. The right to return, he emphasized, is recognized and enshrined in international norms, including UN Security Council resolutions on Abkhazia.

The representative of the State Chancellery, Mr. Irakli Machavariani, noted that he agreed with the opinion of the legal experts that the procedure of registration for IDPs is in conflict with the legislation in force and creates significant problems for IDPs in the exercise of their rights.

Ms. Merebashvili noted that for the Ministry for Refugees and Accommodation, the procedure of IDP registration is necessary in order to have information about the number of internally displaced persons in Georgia and to administer the system of providing them with State benefits. She affirmed that the purchase of property by IDPs does not require that they re-register in the locality concerned, nor does it entail a loss of status. However, she noted that many IDPs are not aware of this. She also stressed that *all* citizens of Georgia, including IDPs, should be entitled to vote in all elections.

Mr. Chkheidze mentioned that the discrimination related to registration finds expression in the fact that, pursuant to the legislation in force, in the case of a change of residence, every citizen of the country is obliged to re-register at the new place of residence within three months but that compliance with this obligation by IDPs results in their loss of status as “persecuted”. In his view, it is necessary that registration of IDPs be conducted according to the general procedure of registration, while still permitting the compilation of lists of IDPs, for administrative purposes, to be undertaken by the Ministry for Refugees and Accommodation.

Discussion of the issue of registration concluded with Ms. Merebashvili noting that if the procedure of IDP registration causes such problems, the Ministry is ready to discuss and eliminate relevant shortcomings in the legislation.

Additional Findings

Mr. Chkheidze then presented the conclusions and recommendations of the legal experts on the issues of return, integration at one's current place of residence, and property restitution. As the Guiding Principles recognize freedom of choice, it is necessary that national legislation expressly provide for the right not only to return to one's area of origin but also to settle in another part of the country. In addition, the guarantees provided by the law to returnees should equally be extended to those IDPs who choose to settle and integrate in their current place of residence. Furthermore, they recommended that the procedure for property restitution should be determined by law, not by by-law.

Discussion

Regarding the issue of property restitution, the representative of the State Chancellery, Mr. Machavariani, mentioned that the Government currently is preparing a draft law, which will largely be based upon earlier research prepared by GYLA, and invited the active involvement of GYLA and other NGOs in the drafting of this law. He also explained that the Government holds a different position with regard to the composition of the Commission that would deal with issues of restitution of property: the authorities cannot accept the opinion that the Commission should be trilateral (including parties to the conflict and international organizations as well as Government representatives).

Ms. Merebashvili affirmed that it was the position of the Ministry for Refugees and Accommodation that the issue of property restitution should be regulated by law.

Raising another issue, Ms. Kharashvili asked the panel of international experts whether the Guiding Principles were being used in the conflict zone, i.e. Abkhazia. Ms. Mooney replied that during his mission to Georgia in 2000, the Representative of the Secretary-General on Internally Displaced Persons had met with the *de facto* authorities in Abkhazia (as well as in South Ossetia) and based his dialogue with them on the Guiding Principles, which he had encouraged them to apply. To facilitate this, and as noted in the Representative's report to the Commission on Human Rights in 2001, the Guiding Principles were being translated into Abkhazian.

At the end of the round table, Dr. Kälin was called upon to give closing remarks. He began by recalling his first visit to Georgia two years ago for the regional seminar in May 2000, noting that at the time, the discussion had been directed solely towards the idea of return, while there was an unwillingness to discuss enabling IDPs to integrate into their current places of residence. Nowadays, the discussion clearly was of a markedly different character, as evidenced and explained by the various recent legislative changes, such as the new Election Code, amendments to the Law on Forcibly Displaced Persons, and the protection against eviction granted in the Presidential Decree of January 2002. These developments signal a more constructive approach incorporating the option of integration and the exercise by IDPs of their rights in their current place of residence.

Conclusion

Dr. Kālin then summarized the various points of consensus that had emerged over the course of the round table:

- There is need to clarify the terminology used in the legislation, in particular in the Law on Forcibly Displaced Persons – Persecuted Persons.
- Shortcomings in the legislation regarding the exercise by IDPs of the right to education should be eliminated.
- Standards as to what constitutes “adequate” housing and land need to be elaborated.
- National legislation should provide for the possibility of free psychosocial services for IDPs, although resources would be required to enable implementation of such a provision.
- Clearer legislative definition of institutional responsibilities, ie. state bodies bearing specific obligations with regard to the IDPs, is required.
- Participants recognized the right of IDPs to fully take part in elections. The principles of democracy entail that citizens should have the right to influence the decisions that affect their lives, including by electing their governmental representatives. At the same time, it is imperative to safeguard IDPs against being used as a political tool.
- The system of registration of IDPs gives rise to a number of problems and concerns which are quite complex and require further discussion.
- Although the political situation does not yet allow for implementation of property restitution, it is important to begin deliberations and discussion on this critical issue.

With respect to follow-up, Dr. Kālin pointed to the need to draft and enact amendments to the law that had been discussed at the round table and regarding which there was general consensus. Doing so would largely complete the efforts recently undertaken by the Government to reform legislation to better address and protect the rights of IDPs.

Information about the law also is key. There exist numerous legislative acts of relevance to IDPs. However, these are disparate and quite often hard to understand and analyze, even for lawyers, and all the more so given that amendments to the law recently had been introduced and more could be expected in the near future. It is critical to ensure that IDPs have access to information about their rights as well as the State bodies with responsibilities for enforcing these rights. This knowledge is essential to the empowerment of the internally displaced.

Looking ahead, Dr. Kālin suggested that the main challenge in the future would primarily be one of implementation of the law, rather than the content of the law itself. Once the required additional amendments to the law are in place, the focus of discussions and efforts, including by the authorities, can increasingly shift towards effective execution of

the legislation in force. The emphasis on implementation, he noted, also is of relevance to the program of the “New Approach to IDPs in Georgia,” about which several speakers had raised concerns.

Dr. Kälin stressed that the relationship between measures supporting integration and the issue of IDP status must be addressed, as part of a broader discussion of balancing, on the one hand, the need for IDPs to enjoy their full rights in their current place of residence and, on the other, the interest of IDPs in returning to their areas of origin. Although international law and the Guiding Principles do not offer a ready answer on how to reconcile these two goals, the Guiding Principles are clear in offering internally displaced persons the choice to either return to their area of habitual residence or to resettle in another part of the country. The right to return, Dr. Kälin stressed, cannot be affected by the degree of integration. Refugee law is instructive on this point: according to the 1951 Convention on the Status of Refugees, a refugee who integrates into his/her country of refuge nonetheless retains the right to repatriate to his/her country of origin until such time that s/he acquires the citizenship of the country of refuge. Similarly, the fact that an IDP integrates, for instance in terms of exercising his/her right to vote or buying property in the current place of residence, cannot mean that s/he forfeits the right to return.

As regards property issues, Dr. Kälin clarified that IDPs have lost access to their property only *de facto*, but not *de jure*. Thus, once the *de facto* obstacles to accessing their property are removed, they must be able to exercise their property rights.

Finally, Dr. Kälin explained that the conceptual basis for providing IDPs with special social and economic benefits is not one of moral compensation, but rather is justified on the grounds of vulnerability. Accordingly, the notion of vulnerability, rather than any other factor, should be the guiding principle determining when IDPs lose their entitlement to special benefits. Only then will the loss of status make sense in that the IDP will no longer be vulnerable and require special assistance. When this occurs will vary from one IDP to another. Moreover, Dr. Kälin stressed that IDPs who lose their status in this way will still retain the right to return. In this way, the tension between integration and the loss of status could indeed be resolved.

In closing the meeting, Mr. Shkolnikov expressed appreciation to the participants for their active interest and engagement in the round table and to the on-site organizers of the event, in particular the OSCE Mission and GYLA. He expressed the hope that similar forums in the future would be as productive as this meeting in working to enhance the protection of the rights of internally displaced persons.