

ROUND TABLE ON
“COMPLIANCE OF LEGISLATION OF THE REPUBLIC OF ARMENIA WITH THE GUIDING
PRINCIPLES ON INTERNAL DISPLACEMENT“
YEREVAN, OCTOBER 15, 2001

Report

On October 15, 2001 in Yerevan a round table was held entitled "Compliance of Legislation of the Republic of Armenia with the Guiding Principles on Internal Displacement." It was organized by the OSCE Office of Democratic Institutions and Human Rights (ODIHR), the Brookings Institution – 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 Institution, OSCE's ODIHR, and GYLA, which acted as project coordinator. Two legal experts from each of the South Caucasus countries were assigned to produce research papers on the compatibility of their respective national laws with the United Nations 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 papers and to discuss internal displacement problems in each country and the region. The first round table was organized in Yerevan, Armenia.

The round table agenda 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 Kaelin of the University of Bern, who had chaired the South Caucasus legal process, and Mr. Vladimir Shkolnikov of ODIHR/OSCE. Ms. Elaine Conkievich, Deputy Head of the OSCE mission in Yerevan, opened the round table. She welcomed the participants, explained the purpose of the meeting and introduced the speakers.

Introductory remarks were made by Mr. Ashot Kocharian and Ms. Lialia Aslanyan, representatives of the Government of Armenia. Both recalled the visit to Armenia of the Representative of the UN Secretary-General on Internally Displaced Persons, Dr. Francis M. Deng, and thanked him for raising consciousness in the country to the problem of internal displacement, particularly to those displaced by conflict. They also expressed their gratitude on behalf of the Government to the organizers of the round table and expressed the hope for a productive discussion at the meeting. Furthermore, Ms. Aslanyan gave a general overview of the situation in the Republic of Armenia in the field of internal displacement. She emphasized that there is no special law in Armenia that would govern specific questions relating to internal displacement. However, she noted, there is a special governmental commission now working on the issue, which has elaborated a State Program aimed at alleviating the conditions of internally displaced persons, especially displaced by conflict in the border areas.

Ms. Roberta Cohen, Co-Director of the Brookings-CUNY Project, greeted the participants and discussed the activities of the mandate of the Representative of the UN Secretary-General, and the framework in which the round table was organized. She then summarized the recommendations made by Dr. Deng on the occasion of his visit to Armenia (see attached statement).

After Ms. Cohen's presentation, Dr. Kaelin, one of the principal drafters of the Guiding Principles, gave a brief introduction to the legal content of the Principles and their legal status and outlined common problems arising with regard to their implementation in domestic legislation.

Giorgi Chkheidze, a legal expert and representative of GYLA, also gave introductory remarks. He explained the coordination role played by his organization and informed the participants about the future activities of the project, namely the convening of similar round tables in Georgia and Azerbaijan in February 2002.

Ms. Lusine Hovannesian and Mr. Tatshat Stepanian, the two Armenian lawyers who authored the research paper, then presented their findings. They divided the presentation into two parts. The first expert presented the main body of the report. The second expert discussed the conclusions and recommendations, in particular the provisions that both believe should be incorporated into national legislation in order to ensure actual improvement of the conditions of IDPs. Mr. Tatshat emphasized the absence of specific legislation on internally displaced persons. He stated that the purpose of specific legislation should not only be the establishment of a definition of IDPs, but also the setting forth of specific social and economic rights, as set forth in the Guiding Principles. The experts also mentioned that it is of great importance to take account, when drafting the relevant legislation, of the actual situation in the country, namely the forced displacement that already took place and the aspirations of the displaced to return to their homes or be integrated in their current residences.

Ms. Aslanyan, a representative of the Government, expressed her appreciation for the work done by the Armenian lawyers. She stated that despite the fact that the Armenian Republic does not have adequate legislation on internally displaced persons and that definitions of different categories of IDPs are not established, the Government always endeavors in its programs to create normal social and economic conditions for IDPs. A reflection of the efforts made by the Government for IDPs is the special State Program on return and rehabilitation, which involves the rehabilitation of the towns and villages in the border regions. The main problem, however, was the lack of adequate financial resources. The implementation and enforcement of Governmental programs required financial backing, which could not be solved by the Armenian Government alone without the support of the international community.

Mr. Manolov Kounio, Representative of the UNDP Office in Armenia, posed the following question to the international experts: Is it possible to adopt a legally binding international instrument that would regulate the legal status of internally displaced persons? In response to this question, Ms. Cohen noted that international law already includes sufficient guarantees for the protection of the rights of IDPs, which were restated in the Guiding Principles. It was now necessary to work for better implementation of already existing guarantees rather than to create a new international instrument. She also gave some examples of possible ways to implement the Guiding Principles, such as adoption of the Principles as domestic legislation or recognizing the Principles as part of domestic legislation by means of judicial decisions.

Following the break, the session continued to discuss whether it is necessary to have specific legislation for internally displaced persons. In Ms. Hovannesian's view, a specific law on IDPs was needed because there was no legal definition of IDPs. Without a definition, registration of IDPs and programs for them would prove problematic. A law would create the needed general framework. While it was true that existing legislation could be amended, none of the existing laws, whether on emergencies or refugees, was sufficiently comprehensive to prove adequate for the protection of IDPs, necessitating a separate law. Other experts and NGOs agreed with this assessment and pointed out that in order to protect people, separate categories were needed. Several, however, expressed concerns that a specific law would introduce a new social stratum and privileges for one group, which could encourage increased internal migration.

The Co-Chair of the round table, Mr Vladimir Shkolnikov of OSCE, called upon the experts from Georgia and Azerbaijan to describe the positive and negative features of adopting a special law on IDPs. Mr. Chkheidze described the Law of Georgia on Internally Displaced Persons (IDPs). Although it includes certain unjustified restrictions (regarding registration and so on), its main advantage is that it establishes the legal obligations of the Government in respect of social and economic protection of IDPs. In addition, he noted that, as in the Republic of Armenia, the current legislation did not exist in Georgia at the time the displacement took place and that is the reason why the present law is primarily aimed at protection of social and economic rights of IDPs and promotion of their return/repatriation. Furthermore, he emphasized that the adoption of the Law in Georgia did not lead to any increase in displacement of the population.

Mr. Imran Valiev, a legal expert from Azerbaijan, mentioned that in his country adoption of a separate law on internally displaced persons led, *inter alia*, to a clear understanding of the distinction between refugees and IDPs, which was important. A second legal expert from Azerbaijan, Mr. Elkhana Asadov, also supported a “stand alone” law on IDPs, emphasizing the special vulnerability of this population. In addition, representatives of non-governmental organizations from Georgia expressed the view that it was important to have a special law on IDPs to inform the IDPs of their rights and help them obtain needed documentation.

The representative of the Armenian Government agreed that for successful resolution of the IDP problems in Armenia, it would be useful to have a special law. However, a specific law alone would not be sufficient. Other measures would be needed as well, especially the continued activity of executive bodies to create favorable conditions for the implementation of the new law. Another member of the Armenian Government delegation suggested that rather than have a special law, amendments and modifications should be made to existing laws. An Armenian NGO added to the aforesaid that before elaborating a new law, it first would be necessary to prepare the conceptual groundwork to define the persons falling within the scope of the law, the social and economic advantages offered to beneficiaries, etc.

Ms. Cohen said that one of the assumptions made during the discussion was that adoption of a specific law on IDPs would entail separation of IDPs from the rest of the population, thereby creating a precondition for discrimination. She emphasized that such an assumption is not well founded because the very fact that these people are IDPs means that they have already been separated from the society. Just look at IDP children who receive little or no education as a result of their displacement or people who have to live in containers. The adoption of new legislation would serve to establish equality between IDPs and other members of the population.

Mr. Shkolnikov posed the following question to the representatives of international organizations: how important would the adoption of a specific law on IDPs be for their work in the Armenian Republic?

Mr. Ayaki Ito, Representative of the UNHCR Office in Yerevan, responded that in accordance with UNHCR’s mandate, the primary target group of his organization in Armenia is refugees rather than IDPs. Nonetheless, the existence of a clear legislative definition of IDPs would be very useful and of substantial importance, *inter alia*, for the fulfillment of UNHCR’s purposes. A representative of IOM also expressed support for a specific law.

Mr. Tim Straight, Representative of the Norwegian Refugee Council, stated that his organization is committed to addressing the IDP problem in close cooperation with the Armenian Government. In particular, next year the Norwegian Refugee Council intended to finance a special Governmental

mapping program; for this purpose, it would be particularly important to have a sustainable legislative definition of persons who fall within the interests of the organization.

A representative of the Government of Armenia suggested the taking of “parallel steps.” The Government could begin to draft a new law while at the same time taking other measures to ease the plight of IDPs. The two in fact were related since the drafting of a specific law could help encourage donor support for Government programs while providing safeguards to IDPs.

At the end of the round table, Dr. Kaelin summarized the main points expressed during the session:

- The law in Armenia, unlike in many other parts of the world, was not discriminatory toward IDPs, for which Armenia should be commended. However, at the same time, IDPs faced numerous unsolved problems, in particular in the areas of shelter, education, return and overall security.
- Because the term IDP had different meanings in Armenia, misunderstandings were becoming more and more frequent. A clear definition of who is an IDP was therefore needed. Government resolutions were not adequate in this regard; in particular, they could easily be changed.
- Different views existed as to whether new legislation should be introduced in the form of amendments to existing law or in the form of a separate “stand alone” law. Both sets of arguments were valid and would have to be taken into account. Those in favor of a separate “stand alone” law pointed out that: IDPs need more legal protection when compared to the rest of the population because of their specific needs; a clear definition of IDPs was essential, especially since all existing laws pertaining to IDPs cover only a part of the problem; furthermore, clear legal provisions are needed to address solutions for IDPs, that is, return, resettlement and reintegration. Those against a separate law argued that: it would be the “wrong political message” for the Government to send because it would imply that it expected new conflicts and new displacement; a separate law would isolate IDPs by creating a separate social class, which could then be marginalized and used for political purposes; a separate law would also create the risk of illegal use of social benefits by non-IDPs; finally, the drafting and adoption process might be lengthy in time.
- A new law, if adopted, should not just copy what occurred in Georgia and Azerbaijan because the situation in Armenia is different. The law would have to be tailored to the concrete circumstance in the country. In Georgia and Azerbaijan, for example, legal measures were undertaken more rapidly whereas in Armenia, instituting a system for registration ten years after the fact presents serious problems.
- Since the arguments for a “stand alone” law were particularly strong, attention should be paid to the contents and length of the law. A specific law if adopted should be a short law, inclusive of a definition, an equal rights provision, and solutions for IDPs - that is, a choice to return voluntarily or resettle in another part of the country, and a provision for restitution of lost property. Once the concept was agreed upon, the law could be drafted. It was not necessary for benefits to await the drafting; education should be provided to each and every IDP child with or without a separate law; there was no excuse for this not being done after 10 years.
- The drafting of new legislation could be linked to other steps being taken by the Government in a parallel process. Indeed, a law would be helpful to gain the support of donor organizations for Government programs since legal security and trust are essential to donor support.
- The Guiding Principles on Internal Displacement have been recognized as a benchmark for assessing good practice in a country. It was therefore important that legislation in Armenia be brought into line with the Principles.

Dr. Kaelin concluded by noting that a valuable result had been achieved at the round table. The discussion of various problems connected with internal displacement had taken place and participants achieved consensus on many issues.

Mr. Shkolnikov closed the session and expressed the hope that the round table discussions scheduled in Tbilisi and Baku would be as productive as this one.