

State Policy on Internally Displaced Persons

Deficiency Analysis



**STATE POLICY ON INTERNALLY
DISPLACED PERSONS**

Deficiency Analysis

**Tbilisi
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CONTENTS

Introduction	4
1. National Strategy and Action Plan (General Overview)	4
2. The Problem of Granting the IDP status	5
2.1. The problem of granting the IDP status to recipients of the financial compensation	6
2.2. The problem of granting the IDP status to persons displaced from areas neighboring the conflict zone	7
2.3. The problem of granting/restoring the IDP status to citizens of Georgia that have dual citizenship	8
2.4. Enforcement of court decisions on granting the IDP status	10
3. Provision of compensation, the problem of uniting families artificially	11
3.1. Role of the “Commission” in the process of provision of the financial compensations	12
4. Eviction and Resettlement	13
4.1. Eviction from Compact Settlements	13
4.2. Eviction from the so-called temporary shelters	18
4.3. Eviction Procedure	20
4.4. The Form of a Notice on Eviction	21
4.5. Amendments to the May 24, 2007 Order N747 of the Ministry of Interior Affairs of Georgia	22
4.6. The Second Wave of Evictions	24
4.7. Statistical Data about Evictions and Resettlement	26
5. The Process of Privatization	28
Conclusion	30
Annexes	31

INTRODUCTION

Legal condition of IDPs and steps undertaken by the government for displaced persons has always been a subject of public interest. Despite a number of normative acts adopted throughout the years for resolving issues related to the displacement, shortcomings still persist that hinder the process of solution to the problems that IDPs are facing. In some cases it is caused by wrongful interpretation of applicable law or gaps in the legal base. We believe that in order to avoid such deficiencies in the future, it is important to analyze them as it will promote making right decisions. This research attempts to serve that purpose.

The research was prepared under the auspices of the project, Durable solutions – a way forward for IDPs in Georgia funded by the *Swedish International Development Agency* and implemented in cooperation with the *Danish Refugee Council*. The research reflects all significant problems that were identified during project implementation, including recent evictions of IDPs and their settlement. The research also reflects analysis of shortcomings identified in the process of granting the IDP status, delayed privatization and provision of pecuniary compensation. The research also provides recommendations that in GYLA's opinion will promote solution to the problems.

We believe that local and international organizations focusing on IDP issues and generally people that are interested in legal condition of IDPs will find the research interesting.

1. National Strategy and Action Plan (General Overview)

As a result of the developments in the 90s, there are around 247 000 internally displaced persons in Georgia, whereas according to the estimates of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia (hereinafter, the MRA), the August 2008 War left 130 000 people displaced from their places of habitual residence, most of which were able to return to their homes, while around 26 000 people still remain displaced¹.

Legal status of IDPs, recognition as an IDP, grounds and procedures for granting, terminating and depriving of the IDP status, their rights and obligations are defined by the *Law of Georgia on Internally Displaced Persons*, enacted in 1996. Later, the unified policy of the state on IDPs

¹ Annex N2, (letter of the MRA N06-06/1354, dated February 4, 2010).

was reflected in the state strategy adopted by the Government of Georgia on February 2, 2007, with its decree N41.

After adoption of the strategy, new wave of IDPs following the August 2008 developments necessitated adoption of an Annex to the state Strategy, which provided for the state's approach to the new wave of IDPs.

Ultimately, the state strategy was based on two principal purposes:

- Creation of conditions for dignified and safe return of IDPs;
- Support of dignified living conditions of IDPs and their integration in public life.

This was the first time the new policy of the state was reflected in the 2007 strategy, which now became oriented to integration and durable solution of IDP problems in addition to return of IDPs to places of their habitual residence.

Later the government of Georgia with its decree N403, dated May 28, 2009, adopted the *Action Plan for the Implementation of the State Strategy for Internally Displaced Persons 2009-2012*. The Action Plan envisages different measures for adequate long-term settlement and integration in order to ensure social-economic integration of IDPs and improvement of their living conditions, which should ultimately lead to the long-term settlement of problems that affect IDPs.

Although a long-term settlement itself is a lengthy and complicated process, failure to eliminate deficiencies identified throughout the process make it even more difficult to reach the state strategy goals.

2. The Problem of Granting the IDP status

One of the most important issues identified during the process of implementation of the state policy toward IDPs is related to granting the IDP status. The noted problem can be divided into the following several categories according to different groups of subjects:

- Persons displaced following the August 2008 War, who chose the financial compensation (USD 10 000) instead of a housing offered by the government;
- Persons displaced following the August 2008 War from villages neighboring the conflict zone;
- Citizens of Georgia that have dual citizenship.

2.1. The problem of granting the IDP status to recipients of the financial compensation

The government offered different forms of housing solutions to persons displaced following the August 2008 War:

- Living space newly rehabilitated, built or procured by the government;
- Financial compensation offered by the government instead of the living spaces (USD 10 000).

According to the information provided by the MRA in July 2009, total of 3 963 cottages were built, 453 houses were procured and 1 500 apartments were rehabilitated for the population displaced following the August 2008 War, where total of 5 753 families (18 866 persons) were settled². According to the April 2011 estimates, total of 19 229 IDPs are registered in these housings³.

Persons that were settled in the noted housings were granted with the IDP status by the MRA, whereas the group of IDPs that chose to receive alternative financial compensation in the amount of USD 10 000, faced problems in receiving the status. Before receiving the financial compensation they were temporarily settled in various state-owned collective centers. They clarify that the MRA verbally rejected their claim for the IDP status before they received the financial compensation.

Under the *law of Georgia on Internally Displaced Persons*, during mass and extreme displacement of population, all individuals that were “forced to leave his place of permanent residency and seek asylum within the territory of Georgia due to the threat to his life, health and freedom or life, health and freedom of his family members, as a result of aggression of a foreign state, internal conflict of mass violation of human rights”⁴ should have been immediately granted with the IDP status.

Although the law fails to lucidly regulate the issue, the MRA linked granting of the status with provision of financial compensation and thus it artificially hindered the process of granting the status. Ultimately, it worsened social conditions of persons that have been waiting for

² Annex N3, letter of the MRA #06-06/3333, dated July 10, 2010

³ Annex N4, letter of the MRA #06-06/2176, dated April 29, 2011

⁴ Law of Georgia on Internally Displaced Persons, Article 1

the IDP status and financial compensation for months and years. During the period, they did not have access to monthly support of IDPs, as it was provided only to the persons that had received the IDP status.

Currently the issue of granting the IDP status is still pressing, which is clearly revealed in the information provided by the MRA to GYLA. According to the information, out of the 26 000 persons forcefully displaced following the August 2008 war,

- as of October 16, 2009, total of 12 112 persons have been granted with the IDP status;
- as of February 24, 2010, number of such persons was 15 497;
- as of April 29, 2011, number of such persons was 17 714;
- number of the so-called old wave of IDPs was 3 591 (correspondingly, they have received the IDP status)⁵.

Based on the aforementioned data, more than 4 500 persons displaced following the August 2008 war still have not received the IDP status.

2.2. The problem of granting the IDP status to persons displaced from areas neighboring the conflict zone

As a result of the August 2008 War, not only the persons that were living on the currently occupied territories but also population of neighboring villages had to leave their places of habitual residence (e.g. population of the following villages: Zardiaantkari, Gugutiantkari, Zemo Nikozi, Kveshi, Khurvaleti and others). Population that has fled from the noted territories is still unable to return to places of their habitual residence; most of them are living in different kindergartens in Shida Kartli. It should be noted that currently the state has not yet developed a concrete position with regard to granting the IDP status to them.

When discussing the issue, it should be considered that the *law of Georgia on Internally Displaced Persons* does not associate granting the IDP status directly with displacement from the occupied territories. The law defines the term internally displaced person as follows: "IDP is a citizen of Georgia or stateless person permanently residing in Georgia, who was forced to leave his place of permanent residency and seek asylum within the territory of Georgia due to the threat to his life, health and freedom or life, health and freedom of his family members,

⁵ Annex N4, letter of the MRA #06-06/2176, dated April 29, 2011

as a result of aggression of a foreign state, internal conflict of mass violation of human rights". Furthermore, under *the UN Guiding Principles on Internal Displacement*, internally displaced persons have the right to be "protected against forcible return to or settlement in any place where their life, safety, liberty and/or health would be at risk" (Principle 15). Currently the state is unable to provide a solid guarantee that in an event of returning to places of their habitual residence, life, safety, liberty and/or health of persons displaced from the conflict zone neighboring villages would be protected; therefore, receiving the IDP status may be the only mean of protection against the forcible return.

E.g., P.V., displaced from village of Akhali Khurvaleti during the August 2008 War is unable to return to the place of his habitual residence. The letter from Shida Kartli chief regional bureau of the Ministry of Interior Affairs notes the following – "your house is located in village of Akhali Khirvaleti in Gori region, which falls under the so-called territory controlled by the South Ossetia and does not fall under the jurisdiction of the Georgian side". The noted letter proves that the Georgian side is basically unable to control the village where the permanent home of P.V. is located. Therefore, the state can not take responsibility of ensuring safety of life and health of P.V. if he returns to the place of his habitual residence. Nevertheless, the MRA does not grant the IDP status to him.

Recommendation:

- All individuals that have been forcefully displaced from the conflict zone neighboring villages and are unable to return to the place of their permanent residence due to the conditions that contain threats to life, health or liberty of an individual should be granted with the IDP status.

2.3. The problem of granting/restoring the IDP status to citizens of Georgia that have dual citizenship

Under the 2004 amendments to *the Constitution of Georgia* and *the organic law of Georgia on Citizenship of Georgia*, a foreign citizen that has a special merit before Georgia or granting the citizenship of Georgia to him/her is due to State interests, may hold citizenship of Georgia together with a citizenship of another state. According to the noted amendment, internally displaced persons that lived abroad and managed to obtain citizenship of Georgia together with the citizenship of

another country and thus restored their political and legal ties with Georgia; nevertheless, restoration/receiving of IDP status to them is associated with certain problems.

In this regard, there are two categories of IDPs holding the dual citizenship:

- IDPs that never received the status after the forcible displacement;
- IDPs that used to have the status but their status was terminated after they received citizenship of a foreign country.

According to the definition of the IDP status laid out in Article 1 of the *Law of Georgia on Internally Displaced Persons*, a citizen or non-citizen of Georgia who is permanently residing on the territory of Georgia is entitled to the IDP status. The law does not specify explicitly the opportunity of a citizen of Georgia holding a dual citizenship to receive the IDP status; therefore, the MRA does not grant the status to persons that fall under the noted category. If we rightly interpret the law, there are no obstacles for them to receive the IDP status, as certainly the term “citizen of Georgia” also implies individuals that have citizenship of a foreign country together with the citizenship of Georgia.

Nevertheless, in order to avoid inconsistent interpretation of the law, it is necessary for the law to specify subjects that are entitled to the IDP status, which would clearly ensure the opportunity of such individuals to receive the status.

On the other hand, the law provides for the grounds for termination of the IDP status, such as acquiring citizenship of another country, without providing an opportunity to restore the status terminated for the aforementioned reason; i.e. IDPs whose status has been terminated due to the fact that they received a foreign citizenship, do not have an opportunity to restore the status after they receive the Georgian citizenship, which creates unequal conditions for persons with dual citizenship in comparison with individuals that have the Georgian citizenship only. Therefore, it is important for persons that have restored political and legal ties with Georgia by acquiring the Georgian citizenship to have an opportunity to restore the IDP status as well.

Recommendation:

- In order to tackle the problem it is necessary to introduce corresponding amendments to the *law of Georgian on Internally*

Displaced Persons (see the legislative proposal of GYLA, Annex N1), which would enable citizens of Georgia to receive/restore their IDP status together with receiving foreign citizenship.

2.4. Enforcement of court decisions on granting the IDP status

Under *the law of Georgia on Internally Displaced Persons*, granting the IDP status falls under the competence of the MRA, whereas the administrative legal act on the Ministry's refusal to grant the status can be appealed in court. Enforcement of the courts' decision in its turn is obligatory for all state agencies and individuals throughout the country⁶. Nevertheless, there are certain cases when the MRA fails to enforce court's decisions.

For example, GYLA was providing legal assistance to T.M. who was displaced from village of Tamarasheni during the August 2008 war (the village remains occupied). Initially, an application for the IDP status was filed with the MRA that failed to respond to the application within the statutory term of one month, which was deemed as a refusal to grant the status. The refusal was appealed in court. The court reviewed the matter and ordered the Ministry to study the matter of granting the IDP status to T.M. and issue corresponding act. The Ministry responded by issuing an individual administrative legal act, refusing to register T.M. as a seeker of the status, alleging that T.M. was not a permanent resident of village of Tamarasheni, which constituted a necessary condition for granting the status. The Ministry's decision was appealed in court.

The court examined evidence in the case file and made the decision to fully grant the claim of T.M. specifically, the court noted in its decision: "the case materials authentically establish that T.M. was permanently residing in village of Tamarasheni prior to the August 2008 developments, which constitutes a necessary condition for granting the IDP status. Therefore, the MRA should be ordered to issue an act on recognizing Tea Mikelashvili as an IDP and granting her the IDP status". Although the decision of the court came into its legal force on April 23, 2010, the Ministry has not yet enforced it.

⁶ Article 82 of the Constitution of Georgia

3. **Provision of compensation, the problem of uniting families artificially**

The issue of provision of financial compensation is regulated by the decrees adopted by the Government of Georgia⁷. According to the decrees, families that were left homeless following the August 2008 war and refused to receive living spaces procured, rehabilitated or newly built by the state are entitled to the financial compensation.

According to the information received by GYLA from the MRA, the financial compensation was awarded to 2 000 families (5 105 persons)⁸. Furthermore, on February 28, 2011, the Ministry released a statement that said that “provision of the so-called compensations is finished.”⁹ It is noteworthy that a number of the families that are statutorily entitled to the financial compensation have not yet received the money. Therefore, notwithstanding the Ministry’s announcement, the process of provision of the financial compensation may not be deemed as finished.

Problems identified in the process of provision of the financial compensation:

- Vague formulation of the decree that regulates the issue (it fails to define the notion of a family, which frequently serves as a ground for uniting families artificially; it fails to provide explicit procedures for provision of the compensation);
- Absence of the so-called household logs (as the local municipality clarifies, household logs were destroyed during the war), which makes it even more difficult to establish facts about a family¹⁰;
- Lack of credibility of certificates issued by the local municipal-

⁷ Order N915, dated December 25, 2008, Order N127, dated February 19, 2009, Order N534, dated July 24, 2009 and Order N856, dated July 3, 2010 of the Government of Georgia

⁸ Annex N4, letter of the MRA #06-06/2176, dated April 29, 2011

⁹ http://mra.gov.ge/#index/71&info_id=584/GEO

¹⁰ Household farming (integrity of the agricultural land plots, the dwelling and utility rooms located thereon, as well as of processing industrial facilities and equipments that is the property of one physical persons or the common property of spouses or other family members) shall be registered in household (estate) log (Law of Georgia on Ownership of Agricultural Lad)

ity (frequently the certificates fail to correspond with reality and contradict other certificates issued by the same municipality).

On the ground of the noted reasons, in a number of cases the Ministry offered brothers and sisters, parents and children registered as separate households (families) to unite and receive a single piece of financial compensation. Some IDPs agreed to the offer, whereas families that refused to artificially unite have not yet received the compensation.

For example, families of a father and a son that were displaced from Achibeti, submitted documents to the MRA, certifying registration as separate households (families) but their claim for the compensation was rejected.

There are certain cases, when the Ministry transferred the financial compensation but later took the money back without providing any explanation.

3.1. Role of the “Commission” in the process of provision of the financial compensations

When discussing provision of the financial compensations, work and the role of the so-called Commission in the process of providing the compensations should be highlighted. The so-called Commission had been functioning at the MRA since spring 2010. Persons that were registered as the compensation seekers had their interviews at the commission. Following the interview, the compensation was provided or the claim was rejected on the basis of the Commission’s decision. For example, *V.A. was informed with a letter from Kutaisi municipality Gavgoba about the following: “there is a Commission at the Ministry that examines families affected by the Russian-Georgian war of August 2010. After you have your interview with the commission”, the issue of “provision of the financial compensation will be resolved for you”.*

As the so-called Commission had been tasked with an important role, GYLA took interest in what the status of the Commission was, whether there was an act that defined its functions and work procedures. Furthermore, it was also interesting to learn about composition of the Commission. Therefore, on August 30, 2010, GYLA filed an application with the MRA but the application was left without response¹¹. It may

¹¹ Annex N5, application of GYLA #c-04/259-10, dated August 30, 2010

be caused by the fact that the so-called Commission was established without any legal grounds. Correspondingly, the decisions made by it have no legitimate force and the refusal of the MRA to provide the financial compensation may not depend on decisions of the so-called commission.

Recommendations:

- **All families that were registered before the August 2008 War as a separate family (household) and refused to accept living spaces procured, rehabilitated or newly built by the government should be provided with the financial compensation.**

4. Eviction and Settlement

The process of IDP eviction was particularly active in 2010-2011. IDPs were evicted from the so-called temporary shelters, as well as compact settlements.

4.1. Eviction from Compact Settlements

Under *the law of Georgia on Internally Displaced Persons*, before the restoration of Georgia's jurisdiction on the respective part of the territory of Georgia, IDPs shall not be expelled from their places of temporary residence unless:

- a) a written agreement has been reached with IDP;
- b) respective space of residence is allocated where IDPs living conditions may be worsening;
- c) force major or other catastrophes take place, which entails specific compensation and is regulated according to the general rules;
- d) space is occupied illegally in violation of the law.¹²

In June 2010, IDPs were evicted from the building located at *2 Tvalchrelidze Str., Tbilisi (office of the Pharmacy Unit of the Trans-Caucasian Troops)*. According to the information provided to GYLA by the

¹² Law of Georgia on Internally Displaced Persons, Article 5, paragraph 4

MRA, the office of the **Pharmacy Unit of the Trans-Caucasian Troops** located at *2 Tvalchrelidze Str., Tbilisi* was a compact settlement of IDPs and as of June 10, 2010, there were total of 24 families registered there.

Following the eviction, IDPs were moved in the building *at 2 Sakviri Str., Tbilisi*.

In the given case, in order to evaluate lawfulness of the eviction, it is necessary to determine whether the IDPs evicted from the compact settlement were provided with corresponding places of residence that did not deteriorate their living conditions. As the law fails to define deterioration of living conditions, every specific case should be individually examined and evaluated. At the same time, one of the important documents for evaluating adequacy of living conditions and that should be highlighted is „*The Standards for Rehabilitation, Reconstruction and Construction of Collective Centers for the Purpose of Ensuring Long-Term Shelter for IDPs*“. The document was elaborated by the board of overseers of the action plan for the implementation of the state strategy in 2009-2012¹³, and it was later approved and adopted at the session N35 of the Government of Georgia on October 30, 2009.

The document lays out minimum standards of a living space for families with e.g. 1 or 2 members, which is as follows:

The space should be at least 25-35 sq.m. and meet the following requirements:

a) A bathroom should be equipped with the following utilities:

1. A shower with hot water;
2. A sink with hot water;
3. AC system;
4. Tile-faced floors and walls;
5. Washable paint everywhere;

¹³ The statute of the board of overseers was adopted by the Order N3 of the MRA, dated January 13, 2011. Purpose of the board is general coordination of the Action Plan for the Implementation of the State Strategy for Internally Displaced Persons 2009-2012 (hereinafter, the Action Plan), adopted by the Decree of the Government of Georgia N403 of May 28, 2009 about Adoption of the Action Plan for the Implementation of the State Strategy on IDPs in 2009-2012”; specifically, promotion of social and economic integration of IDPs, improvement of their living conditions, long-term solution of their housing problems, reduction of their dependence on the state, integration of socially vulnerable IDPs in social welfare programs of the state

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6. Ceiling made of hydro-engineering material;
 7. Underground drain channel in the shower cabin.
- b) A kitchen should be equipped with the following utilities:
1. A sink;
 2. An oven;
 3. Two rows of tile behind the sink for protection from water sprinkles;
- c) An individual gas stove for heating
- d) Walls should meet the following requirements:
1. Existing bulkheads should be maintained where possible. Soundproof and light materials (like knauf) should be used for construction of new bulkheads;
 2. The room should not be “deaf”;
 3. Walls should be painted;
 4. Washable paint should be used for painting kitchen walls.
- e) Floors should meet the following requirements:
1. Laminated floor should be used where floors need to be replaced;
 2. Undergrounds cover should be created where needed.
- f) Electric wiring should comply with safety requirements.

Although the standards are not formulated as a normative act, they express the state’s view of minimum standards that should be complied with when creating adequate living conditions. Therefore, under the amendments to the Action Plan for the Implementation of the State Strategy for Internally Displaced Persons 2009-2012, the noted standards are a key document for providing long-term housing for IDPs.

Before IDPs were evicted from the compact settlement located at *Tvalchrelidze Str.*, GYLA’s representative visited the housing where IDPs had to live. Following the eviction we examined and evaluated housing spaces located at *Sakviri Str.* offered to the evicted IDPs. It turned out that alternative living spaces provided to IDPs following the eviction failed to fulfill the standards enumerated above and worsened their living condition. The building located at *2 Sakviri Str.* still fails to correspond to the standards.

IDP housings at *Tvalchrelidze Str.:*



Living spaces offered to IDPs following the eviction, located *at Sakviri Str.:*



As the MRA notes in its letter to GYLA, “relocation of IDPs to alternative housing is part of the long-term settlement of IDPs envisaged by the State Strategy Action Plan for IDPs.” Nevertheless, it should be noted that during eviction and settlement of IDPs, authorities failed to comply with the provision of the law of Georgia on Internally Displaced Persons stipulating that allocated living spaces should not worsen living

conditions of IDPs. Therefore, this case may not be viewed as part of the long-term settlement of IDPs envisaged by the State Strategy Action Plan for IDPs.

4.2. Eviction from the so-called temporary shelters

For securing the new wave of IDPs following the August 2008 War with shelters, they were settled in state-owned buildings in Tbilisi and in the regions. Later, some of the IDPs that accepted the state's offer of settlement in a newly rehabilitated, built or procured housings left their temporary living spaces and moved in housings offered by the state (cottages, block of flats), whereas some of the IDPs that chose to receive financial compensation instead of housings offered by the state continue to live in the noted buildings before they receive the compensation.

In addition to the noted category of IDPs, free spaces in the noted buildings were mostly occupied by persons displaced following the 90s developments that had no living spaces. They clarify that various officials gave them a verbal consent for moving into the buildings.

Ultimately, displaced persons living in temporary shelters can be divided into the following several groups:

- Persons displaced as a result of the August 2008 War (the so-called "new IDPs") that refused the state's offer to move in newly built, rehabilitated or procured spaces and were waiting to receive the financial compensation (USD 10 000);
- Persons displaced in 1989-1993, who were registered in the so-called private sector (in different cities and regions) and used to live at their relative's or in a rented homes for over the years;
- Persons displaced in 1989-1993, who were registered at different collective centers;
- Persons displaced in 1989-1993, who received their compensation (from investor) before the Action Plan came into force but due to the small amount of compensation or any other reasons were unable to buy housing spaces.

The process of eviction of all of the aforementioned categories of IDPs started in July 2010 in Tbilisi (the first wave) and continued to January

2010 (the second wave). Although forms of the first wave (July-August 2010) and the second wave (November 2011-January 2011) of evictions differed, violations of displaced persons' rights were evident in both cases.

Before reviewing the process of eviction itself, it is important to evaluate status of buildings where the IDPs were evicted from.

As the *law of Georgia on Internally Displaced Persons* clarifies, compact settlement is a **“temporary place of IDPs residence where IDPs were accommodated in an organized manner”**¹⁴. Under the same law, State shall secure IDPs space of temporary residence. The MRA shall accommodate IDPs through State bodies and bodies of local self-government (administration) within the limits of space allocated for IDPs temporarily.

According to the information provided by the MRA, noted buildings were temporary shelters for persons displaced as a result of the August 2008 war. Furthermore, the Government of Georgia periodically issued decrees on Improvement of Social Condition of the Population Affected by the Military Aggression of the Russian Federation (e.g. decree N1038 of the Government of Georgia, dated December 29, 2009, which ordered the MRA *“to pay 2009 electricity bills of the population affected by the military aggression of the Russian Federation, temporarily residing and orderly settled in Tbilisi, according to the factual expanses presented by Telasi JSC”*). With similar decrees the Government of Georgia recognized the fact of orderly settlement of IDPs in the buildings. Therefore, there was an agreement with state and local self-government agencies on settlement of IDPs in these buildings. Nevertheless, persons displaced following the August 2008 War that were living in such buildings had not received the IDP status. Therefore, the MRA did not count them as places of organized settlement of IDPs.

It is safe to conclude that the state delayed the process of granting the IDP status to persons displaced as a result of the August 2008 War and residing in the “temporary shelters” in order to avoid their registration in the noted buildings. In the event of registration, “temporary shelters” would have had all characteristics established by applicable law for compact settlements, which would make it impossible to evict IDPs in the manner of recent evictions.

¹⁴ Law of Georgia on Internally Displaced Persons, Article 1¹, paragraph “i”

4.3. Eviction Procedure

Order N747 of the Minister of Interior Affairs, dated May 24, 2007 provides for the rule, procedures, conditions and rights and obligations of the parties involved in the process of inhibition of seizure or other obstruction to someone else's real property. Eviction of IDPs in 2010-2011 was carried out by means of police that was obligated to comply with procedures laid out in the order N747.

According to the order, in order for the police to have an authority for eviction, the property owner should submit an application with a request for eviction. The application in its turn should be enclosed with the following documents:

- An extract from the public register;
- An extract from the public register and a cadastre map or a cadastre plan – if it is impossible to identify accurate address or other parameters of the real property;
- Informative certificate issued by the MRA about refugees or IDPs if the real property is a compact settlement of IDPs¹⁵.

The police are obligated to take measures for inhibition of seizure or other obstruction to someone else's real property only after a complete application has been submitted.

The order establishes special conditions for eviction of IDPs. Specifically, the police are obligated to apply to the MRA and inhibit seizure or other obstruction to someone else's real property until it receives a written consent on eviction of IDPs from the Ministry.

Furthermore, under the order N747 of the Minister of Interior Affairs, a certificate of an IDP that lists address of a collective center as a temporary residence is considered as a document attesting lawful ownership and/or use and the police is obligated to stop measures for inhibiting alleged acts of seizure or other obstruction to a real property if an individual presents the noted document¹⁶.

¹⁵ §3, Article 3 of the Order of the Ministry of Interior of Georgia N 747 on Approving the Rule for Inhibition of Seizure or Other Obstruction to someone else's real property, dated May 24, 2007;

¹⁶ Article 3 of the Order of the Ministry of Interior of Georgia N 747 on Approving the Rule for Inhibition of Seizure or Other Obstruction to someone else's real property, dated May 24, 2007;

In order to determine whether the evictions (from the publishing house Samshoblo, 9 *Tamarashvili Str.* (the building of the former military district of Trans-Caucasus), Isani Military Hospital, 8 *Machabeli Str.*) were based on complete applications of property owners and written consents of the MRA, GYLA addressed both the Ministry of Interior Affairs and the MRA with applications (application #c-04/257-10, dated August 27, 2010; application #c-01/218-10, dated August 17, 2010; application #c-04/254-10, dated August 24, 2010; application #c-01/221-10, dated August 26, 2010; application #c-04/258-10, dated August 27, 2010). The MRA provided incomplete response to our applications (letter #-6-06/8736, dated September 3, 2010), saying that the Ministry “*did not have any grounds for a refusal*” to provide the written consent. As for the Ministry of Interior Affairs, at first it did not provide the noted information within the statutory term, which served as the basis for filing an administrative complaint. After the complaint was filed and reviewed, we were able to obtain the information. The obtained information confirmed that the MRA had provided written consents for eviction of IDPs from the aforementioned buildings.

4.4. The Form of a Notice on Eviction

Order N747 of the Ministry of Interior Affairs obligates corresponding authorized individual to issue a written warning to an alleged offender and offer to willingly stop seizure or other obstruction to someone else’s real property

During the first wave of eviction, IDPs were complaining about violation of procedures for submitting a written warning. Specifically, in certain cases the “warning” was posted on the façade of the building and failed to correspond with the form of a warning against seizure or other obstruction to someone else’s real property, adopted by the Annex N1 of the Order N747 of the Ministry of Interior Affairs, dated May 24, 2007.

For example, the “warning” posted on the exterior of the building Samshoblo stated that starting from July 19, 2010, within 5 business days IDPs could stop seizure or other obstruction to the real property located at 14 *Kostava Str.* and vacate it from their personal property. After the noted term expired, compulsory measures would be undertaken against them. The notice did not have a signature of an authorized individual.

In some cases notices were submitted personally to IDPs but like the warning posted on the wall, these notices failed to fulfill the statutory requirements (they did not indicate the time and the day the warning was issued, lacked signature of an authorized individual, etc.).

4.5. Amendments to the May 24, 2007 Order N747 of the Ministry of Interior Affairs of Georgia

The process of IDP eviction that started in June 2010 entered an active phase in August 2010. It should be noted that active process of evictions coincided with amendments to the May 24, 2007 Order N747 of the Ministry of Interior Affairs of Georgia; specifically, the Order of the Ministry of Interior of Georgia on Approving the Rule for Inhibition of Seizure or Other Obstruction to Someone Else's Real Property was amended by the Order N698, dated August 2, 2010. The amendment abolished the five day term for willful termination of the property encroachment. According to current formulation, *"an alleged encroacher shall terminate seizure or other obstruction to someone else's real property and vacate it from his/her personal property."* I.e. the Order no longer specifies the term for willful termination of encroachment. The noted amendments came into force upon publication, from August 3, 2010.

It should be noted that IDPs were never introduced with amendments envisaged by the August 2, 2010 Order N698 of the Interior Minister. Therefore, they had a legitimate expectation that they could willfully vacate the building space within five days upon submission of warning but in fact IDPs were evicted the following day after the warning was submitted, without giving any reasonable term for willful termination of alleged encroachment.

The legislative amendments (published only in the August 3, 2010 issue of the Legislative Herald) were not adequately available for IDPs that were evicted in early August. Therefore, they were unable to familiarize themselves with the decree in a reasonable period of time in order to define their essence and frames of limitation of their rights.

GYLA considers that such amendments were made to make sure that evictions were expedited as much as possible. The assumption is substantiated by practice of the noted amendments.

For example,

On August 12, 2010, the Ministry of Economy and Sustainable Development of Georgia applied to the Interior Ministry with a request for eviction of IDPs from the former office of a military hospital in Tbilisi (Isani district)¹⁷. The chief bureau of the Ministry of Interior Affairs that needed a written consent from the MRA for the eviction, submitted an application for determining expediency of the eviction the same day¹⁸, and the MRA provided its consent for the eviction the same day¹⁹. The eviction notices to be submitted to IDPs by the police are also dated the same day²⁰ and the eviction took place the following day, on August 13.²¹

Although the process of eviction was mostly peaceful and went without any major incidents, full monitoring of the eviction was rather problematic. It was impossible to enter the building and evaluate the condition. IDPs also stated that some of their personal items were lost during the eviction, while excessive number of police officers mobilized in the area had psychological impact on them.

Main problems identified during the eviction in the summer 2010 are as follows: most of the evicted IDPs remained without a shelter, financial compensations were not provided, and housings in the regions offered to some of the evicted IDPs had inadequate living conditions. For example, one of the areas where the MRA offered housing spaces to evicted IDPs was Tsalenjikha region, village of Potskho-Etseri. The offer turned out to be unacceptable for many IDPs. Vast majority of IDPs did not agree to the offer on moving to Potskho-Etseri. In March 2011, GYLA's representatives visited IDPs settled in Potsko-Etseri who stated that a number of families basically left Potskho-Etseri and moved back to Tbilisi due to harsh social and economic conditions. There are no employment opportunities there or land plots available for IDPs settled in Potskho-Etseri. Access to medical service or education is also problematic. As IDPs note, the school in Potskho-Etseri has not been fully rehabilitated, therefore children there are forced to go to public school in other villages that are located 5 km away from their village. As for access to medical service, due to lack of medical equipment and

¹⁷ Annex #5;

¹⁸ Annex #6;

¹⁹ Annex #7;

²⁰ Annex #8;

²¹ Annex #9.

means for first aid service, local ambulatory is unable to provide full medical service for the local population.

As for the housing building itself, a number of flaws were identified in time, which has most probably been caused by inadequate rehabilitation.

4.6. The Second Wave of Evictions

In consideration of the bad experience of the summer 2010 evictions and for the purpose of elimination of existing deficiencies, *Standard Operating Procedures (SOP) for vacating buildings for the purpose of providing IDPs with long-term accommodation/relocating displaced persons* was adopted. The SOP was adopted by the board of overseers of the action plan for the implementation of the state strategy in 2009-2012.

The main purpose of SOP was to vacate existing housings and regulate the process of relocation of IDPs to other housings in order to ensure IDPs with housing. Under the noted document, the MRA was ordered to take following measures with regard to every building where IDPs were to be evicted from:

- Identify the status of the building to be vacated;
- Identify whether any of the residents have the IDP status or are registered as seekers of the status, in order to settle IDPs in a special protection regime;
- Assess on the basis of individual data and profiling whether alternative housings were offered or may be offered to IDPs, as well as whether provisions of the IDP law on vacation of buildings in exception cases have been protected and whether the police should be authorized to carry out corresponding measures for vacating the building;
- Inform IDPs about alternative housings, their relocation to other housings and whether permit has been issued to the owner or the police for vacating the building/relocating IDPs to other housing, or whether the document issued prohibits undertaking of these measures;
- Effective supervision of relocation of IDPs to other housings, in order to avoid leaving IDPs homeless and to coordinate

physical relocation of IDPs, including moving their personal items.

Although the noted document is not a normative act, the SOP was deemed a guiding document of the authorities that are involved in the process of vacating buildings/relocating IDPs to other housings.

After the SOP was adopted, eviction of IDPs in compliance with the adopted procedures was planned from 22 housing areas. Out of the 22 areas, evictions were carried out from 20. It should be noted that during the evictions, the authorities failed to fulfill the main purpose of the SOP - ensuring long-term settlement of IDPs. The provision on prohibition of eviction 10 days before IDPs received the financial compensation was violated in individual cases; furthermore, problems that were evident during the summer 2010 evictions recurred.

For example,

GYLA was monitoring eviction of IDPs from *4 Abzianidze Str.* (building of the customs department), in Tbilisi on January 20, 2011. During the eviction a number of procedural violations were registered, including transportation of IDPs by a truck. During the interviews with IDPs it was stated that families that had received individual notice on provision of the financial compensation had not received the money by the time of the eviction.

The noted example confirms MRA's violation of the *Standard Operating Procedures for vacating buildings for the purpose of providing IDPs with long-term accommodation/relocating displaced persons*. Specifically, the Ministry violated paragraph 6.9.1 of the SOP that envisages exceptional cases of vacating buildings and stipulates that the MRA should delay issuance of the written consent for eviction to the police, if all individuals that are entitled to the financial assistance have not actually received it minimum of ten days before the eviction. Some of the families evicted from *4 Abzianidze Str.* still have not received the financial compensation, whereas several families got the compensation on the very day of the eviction.

GYLA was monitoring eviction of IDPs from the kindergarten N165 located in the second micro-region of Vazisubani, where procedures envisaged by the SOP were still violated by the MRA. These violations related not only to the day of the eviction but also to the procedures to be carried out before the eviction. Specifically, the SOP obligates the MRA to provide individual notices to IDPs before they receive eviction

warnings.²²

Based on the profiling, there were around 30 families living in the kindergarten N165. It should be noted that on the day individual notices were submitted, the residents refused to vacate the building, although even if they had agreed, it would have been impossible to submit notice notices to all of the families, as the MRA had processed information about 13 families only, whereas there were total of 10 notices brought. Despite the noted violations, it was recorded in the official document that all 13 families refused to vacate the building; furthermore, the visit was deemed as realized and the ten-day term as expired. Hence, fate of most of the families identified on the basis of profiling was ignored. It should also be considered that IDPs living in the building (who were the so-called persons displaced for the second time and had to flee Kodori Gorge during the August 2008 war), were not offered with the financial compensation (USD 10 000) during the eviction, although under the applicable law they were entitled to the compensation.

4.7. Statistical Data about Evictions and Resettlement

According to the information received from MRA, out of the 1 666 families evicted from June 2010 to January 2011,

- 450 were provided with other living space;
- 440 received the financial compensation;
- 418 were non-IDP families;
- 79 were registered in private sector.

The MRA's offer

- was accepted by 76 families
- was turned down by 203 families.

²² Under the SOP, an individual notice should note that the Ministry intends to provide the police with a consent on vacating the building where IDP families reside/resettle IDPs (after the ten day term following submission of the notice expires), which will be followed with submission of a warning letter and enforcement measures by the police, in compliance with the Order N474. The letter specifies anticipated date of vacating the building by the police and suggests IDPs to use the alternative housing program. It also states that in an event of provision of the alternative housing, IDPs may take benefit of the consultation meeting and assistance for moving out, facilitated by the Ministry.

Hereby, it should be considered that according to the MRA, families provided with other living spaces include individuals that are registered at different compact settlements but frequently have no actual living space. Based on the analysis of the information provided by the MRA, it is safe to conclude that a considerable part of the evicted IDPs have not been provided with a living space by the state, which is mostly due to their refusal of living spaces offered by the state for the purpose of their long-term settlement, as the offered living spaces are often inadequate.

It should be noted that the *law of Georgia on Internally Displaced Persons* does not define the specific conditions that should be complied with then providing IDPs with housing. For example, it does not establish whether an IDP registered in Tbilisi should be provided with housing in or outside Tbilisi. The law provides a general explanation that offered living space should not deteriorate living conditions of an IDP. It fails to further define worsening of living conditions, which leaves room for the MRA's interpretation of the provision. It may promote unequal approach toward IDPs. In this regard, the condition of IDPs registered in the private sector is even more complicated.

Under the circumstances, the MRA should be guided by the Decree of the Government of Georgia N403 of May 28, 2009 about Adoption of the Action Plan for the Implementation of the State Strategy on IDPs in 2009-2012". One of the main objectives of the document is promotion of social and economic integration of IDPs and improvement of their living conditions. It should be considered that during the period of displacement IDPs managed to more or less integrate in places of their registration; therefore, their relocation to other city (IDPs registered both in compact settlements and "private sector) may not be deemed as the best way to promote integration, as it will worsen the condition of IDPs and destroy existing integration.

The Action Plan lays particular emphasis on the importance of IDPs' willful and informed decisions, as well as free choice, dialogue with IDPs and their involvement in the decision-making process, gender equality, protection of children's' rights and other universally recognized human rights. It should be noted that during the process of eviction, IDPs had no adequate information about places where their settlement was planned; hence, they lacked an opportunity to make willful and informed decisions.

Recommendations:

- IDPs should not be evicted until they are provided with adequate housing;
- Housing should be offered according to the place of registration;
- Offered living spaces should comply with *the Standards for Rehabilitation, Reconstruction and Construction of Collective Centers for the Purpose of Ensuring Long-Term Shelter for IDPs*, adopted by the board of overseers.

5. The Process of Privatization

According to the Action Plan, one of the forms of a durable solutions is transfer of living spaces used by IDPs at compact settlements into their ownership by means of direct selling. The noted stage (first stage of the Action Plan) was launched in 2009.²³ A form of an agreement was elaborated for transfer of living spaces occupied in compact settlements into the ownership of IDPs. According to the agreement, a buyer is one of the family members (as an exception, spouses receive the property under the co-ownership), whereas rest of the family members are not considered as owners of the living space. In an event of transferring the property right, the buyer is obligated to ensure other members of the family with living conditions.

Problems identified during the process of privatization:

- In certain cases the process of privatization at collective centers were started but never completed. IDPs are unaware of what hindered the process (the decision on privatization was made for 27 246 displaced families but as of now, the living spaces have been transferred into the ownership of 6 427 families)²⁴;
- IDPs living in collective centers where the process of privatization has not even started yet, have no information whether

²³ Action Plan for the Implementation of the State Strategy for Internally Displaced Persons 2009-2012, adopted by the government of Georgia with its decree N403, dated May 28, 2009, Annex N1, Article 2.1;

²⁴ Annex N11, letter of the MRA #06-06/1463, dated March 29, 2011;

there are plans about transferring the housings into their ownership in the future;

- Some privatization agreements that have been signed contain inaccurate information, e.g. data about the housing area, family members is inaccurate. Due to absence of clearly stipulated procedures, it is impossible to eliminate inaccuracies in the agreement;
- Some IDPs want to cancel agreements, as they consider that housings that they received following the privatization are inadequate due to their small area or other unsatisfactory conditions. Furthermore, they note that prior to signing the agreements they had not been sufficiently informed about their content and consequences of signing the agreements;
- Following privatization, registration of one of the family members as owner of the housing takes a toll on other members of the family as sometimes a person registered as the property owner alienates the property that he/she has received following the privatization. The agreement envisages for a property owner to ensure adequate housing for other members of the family but the noted stipulation does not always guarantee effective protection of rights of rest of the family members.

Recommendations

- It is necessary to develop a clear and unambiguous procedure that would define measures for eliminating inaccuracies in agreements and cancelling agreements;
- IDPs should be provided with information about consequences of privatization before they sign the agreements;
- IDPs should be provided with adequate time for familiarizing themselves with contents of the agreement;
- In order to ensure that IDPs make willing and informed decisions about privatization, they should also be informed about alternative proposals along with the opportunity of privatization.
- Updated information about housings for privatization should be available for all interested individuals.
- Privatization agreements should transfer housing into ownership of each member of the family.

Conclusion

Evaluation of state policy toward the displaced persons and legal condition of IDPs demonstrated a number of significant problems that hinder the process of integration of IDPs and curtails their rights. In order to reduce problems that affect IDPs, we tried to analyze the noted issues and offer our views for their solution.

One of the important issues that are reflected in the research is related to granting the IDP status. The noted problem is evident in several different ways, which is on the one hand caused by wrongful interpretation of the applicable law and a legislative gap on the other. We believe that realization of our recommendations laid out in this research will greatly contribute to elimination of the problems. In this regard, the legislative proposal developed by GYLA for amending *the Law of Georgia on Amendments and Supplements to the Law of Georgia on Internally Displaced Persons* is important.

The research focused on one of the most pressing issues for persons displaced as a result of the August 2008 War – financial compensation that they have not received due to different reasons.

The research lays particular emphasis on the issue of eviction and settlement of IDPs. We believe that the most important recommendation elaborated by us in this regard is offering housings to IDPs according to the place of their registration, which is fully in line with *the Action Plan for the Implementation of the State Strategy for Internally Displaced Persons 2009-2012*, adopted by the government of Georgia with its decree N403, dated May 28, 2009, for the purpose of promoting social and economic integration of IDPs and improving their living conditions.

We believe that individuals that are involved in tackling IDP-related issues will find the research interesting. It is important to continue working on the issues in cooperation with local and international organizations specializing in IDP-related issues, authorities, representatives of IDPs. We believe that the dialogue will promote timely identification of problems and finding best ways for their solution.

Annex #1*Draft***Law of Georgia****On Amendments to the Law of Georgia on Amendments and Supplements to the Law of Georgia on Internally Displaced Persons**

Article 1. The following amendments shall be made to the law of Georgia on Amendments and Supplements to the Law of Georgia on Internally Displaced Persons (Legislative Herald of Georgia, 18. 27.04.2005):

1. Paragraph 2 of Article 1 shall be amended and formulated as follows:

“Article 1. Term IDP

Internally displaced person – IDP is a citizen of Georgia, a holder of the Georgian citizenship together with a foreign citizenship or a stateless person permanently residing in Georgia, who was forced to leave his place of permanent residency and seek asylum within the territory of Georgia due to the threat to his life, health and freedom or life, health and freedom of his family members, as a result of aggression of a foreign state, internal conflict of mass violation of human rights or as a result of events determined by the paragraph 11 of article 2 of this Law

2. Paragraph 9 of Article 1 shall be amended and formulated as follows:

“Article 6. Grounds of suspension, termination, deprivation and reinstating of IDP status

1. IDP status may be suspended if a person:

a) failed to undergo registration according to this law within the time-frame announced by the Ministry;

b) accuracy of supporting documents for granting of IDP status shall be established:

c) has registered in several regions simultaneously.

IDP status shall be reinstated if the grounds for its suspension cease to exist.

3. IDP status shall be terminated if:

- a) a status is terminated at IDPs personal application;
- b) grounds under the article 1 of this law cease to exist at a place of IDPs permanent place of residence and the Georgian jurisdiction is restored on the respective part of the territory of Georgia;
- c) obtained citizenship of another country;
- d) left the territory of Georgia for permanent residence;
- e) court recognized him missing or dead;
- f) died.

4. A person shall be deprived of IDP status if he obtained it through presenting forged documents and information or in violation of the requirements of this law.

5. The decisions on suspension, termination, deprivation and reinstating of IDP status shall be reached by the Ministry.

6. Any disputes arising from the suspension, termination, deprivation and reinstating of IDP status shall be decided by the court.

7. IDP status of a person may be reinstated if a court annulled decision thereof as set forth in the paragraph 3, sub-paragraph “e” of this article. In an event of suspension of the IDP status under subparagraph “c” of paragraph 3 of this Article, the status shall be restored if a persons concerned received the Georgian citizenship or was granted the Georgian citizenship together with a foreign citizenship”.

Article 2. This law shall come into force upon publication.

President of Georgia
Mikheil Saakashvili