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ENHANCING THE NATIONAL LEGAL FRAMEWORK IN UKRAINE FOR PROTECTING THE HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS



Council of Europe Project “Strengthening the Human Rights Protection of Internally Displaced Persons in Ukraine” under the Framework of the Council of Europe Action Plan for Ukraine 2015–2017

COUNCIL OF EUROPE



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ENHANCING THE NATIONAL LEGAL FRAMEWORK IN UKRAINE FOR PROTECTING THE HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS

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About this study

This study was prepared as part of the Council of Europe Project “Strengthening the Human Rights Protection of Internally Displaced Persons in Ukraine”. Erin Mooney, an international expert on internal displacement, led and coordinated the research team, drafted the introductory and international framework sections and edited the study. Ukrainian legal experts Yevgen Gerasymenko, Olga Morkova, and Sergiy Zayets drafted the analysis of national legislation while the analysis of Council of Europe standards was drafted by Barbara McCallin as well as researchers and experts from the Advocacy Centre on Council of Europe Standards (ACCESS): Filip Chráska, Evgenia Giakoumopoulou and Costas Paraskevas. Antonina Vykhrest, Ghanna Khrystova and Theodora Kristofori of the Council of Europe finalized the report for publication.

Note on the period of analysis covered by this study (December 2015 – May 2016)

This study was prepared from December 2015 through May 2016. During this time, the Ukrainian legal and regulatory framework underwent some significant changes, both through the adoption of new legislation as well as amendments to existing laws and by-laws. This included changes directly affecting the human rights of internally displaced persons.

On 8 June 2016, after the study had been sent for consultation, finalized and translated, the Cabinet of Ministers of Ukraine (CMU) adopted two resolutions that raised extensive concerns from IDPs, civil society and the international community. These are CMU Resolution No. 352 “On Amendments to the Cabinet of Ministers of Ukraine on 1 October 2014 Number 509” and CMU Resolution No. 365 “On some issues of social benefits for internally displaced persons,” amending CMU Resolution No. 637.

These resolutions are not addressed in this study as they fall outside its timeframe. While the new resolutions introduce certain constructive provisions – for example no longer requiring the stamp of the State Migration Service on IDP certificates – other provisions and verification measures raise serious questions as to their conformity with Council of Europe standards, including the European Convention on Human Rights.

While the specific details of the new resolutions are not included, this publication should help in scrutinizing these problematic resolutions against the backdrop of international standards. This, indeed, is the purpose of the study as such: to give a comprehensive overview of international standards on IDP-related issues and provide a clear methodology for evaluating ongoing changes in domestic law.

In the near future, it remains the task of the Council of Europe and other international actors to support the Ukrainian authorities in upholding their human rights obligations. This includes making the necessary and relevant changes to the above mentioned resolutions so that they are fully in compliance with international standards.

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ACRONYMS

ABL	Administrative border line
CEDAW	Convention on the Elimination of Discrimination against Women
CLL	Code of Laws on Labour of Ukraine
CMU	Cabinet of Ministers of Ukraine
CoE	Council of Europe
CoM	Committee of Ministers of the Council of Europe
CRC	Convention on the Rights of the Child
CSO	Civil Society Organization
CVU	Committee of Voters of Ukraine
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
ECRML	European Charter for Regional or Minority Languages
ECRI	European Commission against Racism and Intolerance
ESC	European Social Charter
ECSR	European Committee of Social Rights
FAO	Food and Agricultural Organization
FCNM	Framework Convention for the Protection of National Minorities
GC	Geneva Conventions of 1949
GCA	Government controlled areas
GRETA	Group of Experts on Action against Trafficking in Human Beings (CoE Convention on Action against Trafficking in Human Beings)

GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence (CoE Convention on Preventing and Combating Violence against Women and Domestic Violence)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICRC	International Committee of the Red Cross
IDMC	Internal Displacement Monitoring Centre
IDP	Internally displaced person
MSP	Ministry of Social Policy
NGCA	Non-government controlled areas
NGO	Non-government organization
NHRI	National human rights institution
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Cooperation in Europe
PACE	Parliamentary Assembly of the Council of Europe
SMM	Special Monitoring Mission of the OSCE
UAH	Ukrainian <i>hryvnia</i> (national currency)
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children’s Fund
VC	Venice Commission – European Commission for Democracy through Law
WFP	World Food Programme

EXECUTIVE SUMMARY

The annexation of Crimea in March 2014 and the armed conflict that began in eastern Ukraine in April 2014 have resulted in mass displacement both within Ukraine and across borders. As of June 2016, there are close to 1.8 million internally displaced persons (IDPs) registered in Ukraine. IDPs face specific and significant challenges as a result of their displacement, for instance regarding IDP registration, loss of civil documentation, freedom of movement, access to adequate shelter, protection of property rights, livelihoods, voting rights, durable solutions, and access to information.

Protecting, assisting, and finding solutions for IDPs are, according to international law, primarily the responsibility of the Government. As the Council of Europe Commissioner for Human Rights has emphasized, “the Ukrainian authorities must take the lead in this process and demonstrate their resolve in ensuring that IDPs receive all the protection they are entitled to under international law.” The Government of Ukraine recognizes its responsibility towards IDPs and increasingly has discharged this responsibility, in a number of ways.

One critically important benchmark of national responsibility for addressing internal displacement is ensuring a national normative framework that protects the rights of IDPs. In Ukraine, certain important legislative initiatives have been undertaken, most notably with the adoption and subsequent amendment of a *Law on ensuring the rights and freedoms of internally displaced persons*. These legislative initiatives are important steps, which are to be commended. At the same time, there is recognition, including by the Government, of the need to further enhance the normative framework to better protect IDPs’ rights and address the specific concerns they experience.

This study reviews the national legislative and regulatory framework in Ukraine relevant to the human rights of IDPs and assesses its compatibility with international and regional, i.e. Council of Europe, standards. Based on this analysis, the study identifies a number of gaps and grey areas in national legislation in Ukraine

8 which require corrective legislative, administrative, or other regulatory measures in order to enhance and ensure the protection of IDPs' rights. An overarching challenge is inconsistency among national pieces of legislation, which frustrates the implementation of otherwise adequate norms. In other cases, even when relevant national legislative norms are in line with international and regional standards, a lack of adequate resources (financial and human), and in some cases even of political will, undermines their implementation.

Each of the 21 thematic chapters in this study sets forth recommendations for enhancing the national legal framework for ensuring the protection of the rights of IDPs. The complete set of recommendations contained in this study should be given due consideration, in particular by the Government and Parliamentarians. More immediately, the Government is encouraged to take into account and urgently implement the key recommendations highlighted below, which can be grouped into three main sets of recommendations:

A. *Develop and enact necessary legislation to enable implementation of existing legislation:*

- Implement the *Law on ensuring the rights and freedoms of internally displaced persons* and all other legislation relevant for the protection of the rights of IDPs, including by drafting and enacting all necessary by-laws, regulations, and other required companion legislation to allow implementation of the IDP Law and other relevant legislation for the protection of IDPs' rights;
- Harmonize legislation by revising relevant national laws and by-laws to reflect and be in alignment with the revised *Law on ensuring the rights and freedoms of internally displaced persons*;
- Draft and enact the legal mandate of the newly established Ministry of Temporarily Occupied Territories and Internally Displaced Persons not only to assist but also protect and support durable solutions to displacement as well as coordinate with civil society and international actors, and ensure that this entity is equipped with adequate financial and human resources;

B. *Urgent legislative reform to ensure IDPs can enjoy their human rights:*

- Delink, in legislation and in practice, access to rights and regular entitlements provided for by law, including pensions, unemployment insurance and disability allowances, from the requirement of registering as an IDP;

- Amend the regulations and procedures regarding IDP registration to ensure that these do not impede IDPs' right to freedom of movement or choice of residence and do not subject IDPs to targeted and discriminatory surveillance procedures that violate their Constitutional rights and can lead to their IDP registration being revoked without a transparent appeal process;
- Revise the definition of IDPs in national legislation to be in line with the *Guiding Principles on Internal Displacement*, including by specifying that internal displacement concerns displacement *inside* the country and may affect non-citizens who are habitual residents of Ukraine;
- Revoke legislative provisions that are discriminatory, in principle or in practice, towards IDPs and violate their rights under the Constitution or under international or European human rights standards;
- Amend legislation to ensure timely replacement of IDPs' lost or damaged civil documentation;
- Ensure an efficient procedure for civil registration, specifically the documentation of newborn children, in non-government controlled areas (NGCAs);
- Take all feasible measures to prevent further arbitrary displacement, including ratifying the Rome Statute and prosecuting any individuals committing acts of arbitrary displacement;
- Facilitate freedom of movement, in particular across the contact line in Donetsk and Luhansk and the administrative border line (ABL) with Crimea, ensuring that any restrictions on freedom of movement are prescribed by law and in compliance with international and European human rights standards;
- Enact legislation to ensure IDPs have access to adequate housing, including by enabling integration of vulnerable IDPs into State social housing programmes, and implementing the provisions of the IDP Law for facilitating loans to IDPs for purchasing or constructing housing;
- Safeguard the rights of IDPs to vote, in particular by amending the legislation on elections to enable IDPs to vote in local elections;
- Take all necessary legislative and administrative measures to ensure the housing, land, and property rights of IDPs;
- Add IDPs to the list of categories of persons with access to free secondary legal assistance under the Law of Ukraine on Free Legal Aid, and amend the Law on Court Fees to allow for exemptions from court fees with re-

gard to cases brought forth by IDPs to establish births and deaths, and a certain category of other IDP-related cases;

- Introduce further amendments to the *Law on ensuring the rights and freedoms of internally displaced persons* and to other relevant national legislation based on due consideration of the recommendations of this study (see full study);

C. *Institutional, coordination, and resource issues:*

- Establish a comprehensive database for collating data regarding internal displacement, including sex and age disaggregated data and needs assessments, and ensure data protection safeguards, ensuring that the purpose of data collection is strictly for humanitarian purposes;
- Intensify consultation with IDPs regarding the decisions affecting their lives, including in the development of legislation and State policies relevant to displacement;
- Allocate adequate resources from the State Budget, including to the newly-designated Ministry mandated with lead responsibility on IDP issues as well as to regional and local authorities, to address internal displacement in all phases, including supporting safe, voluntary, and durable solutions to displacement;
- Allocate specific funds from the State budget to finance the Ombudsman's activities on IDPs' rights protection, particularly to develop capacities of the regional offices of the Ombudsman in places where IDPs are living;
- Facilitate humanitarian access by UN and international NGOs as well as local NGOs to the Non-government controlled areas (NGCAs), including through amendment of the Tax Code;
- Develop, adopt and implement a rights-based national strategy for addressing internal displacement, including for creating conditions enabling safe, voluntary and durable solutions to displacement;
- Provide IDPs with clear, timely, and objective information about their rights and regarding all laws and programs intended to support them or otherwise specifically affecting them.

INTRODUCTION

The humanitarian consequences of the annexation of Crimea in March 2014 and the armed conflict that began in April 2014 in eastern Ukraine have included extensive suffering to civilians, including mass displacement, both within the country and across borders. In 2016, fighting continues in Ukraine's eastern regions and the number of displaced persons continues to rise. As of June 2016, there are close to 1.8 million (1,785,740) officially registered internally displaced persons (IDPs) in Ukraine.¹ According to UNHCR the UN Protection Cluster, of these registered IDPs, an unknown although significant number – possibly in the realm of hundreds of thousands – have not been displaced by the conflict itself, but as a result of having to cross to government-controlled areas (GCAs) and register as IDPs, as national legislation currently conditions payment of pensions to persons from GCAs on IDP registration.² Moreover, the above-cited IDP figure refers to IDPs officially registered in government-controlled areas (GCAs); the number of IDPs in non-government controlled areas (NGCAs) is unknown. In addition, the United Nations High Commissioner for Refugees (UNHCR) reports that according to Government sources in receiving countries there are over a million Ukrainians seeking asylum or other forms of legal stay in neighbouring countries, the majority of whom are in the Russian Federation (1,092,212) and Belarus (130,056).³

“The Ukrainian authorities must take the lead and demonstrate their resolve in ensuring that IDPs receive all the protection they are entitled to under international law.”

Council of Europe
Commissioner on Human Rights,
Nils Muižnieks

IDPs in Ukraine face significant and specific protection concerns and assistance challenges. Those newly displaced urgently need safety, emergency shelter, cloth-

¹ Government of Ukraine, Ministry of Social Policy, figures as of 6 June 2016.

² United Nations (UN) Protection Cluster, *Update on Suspension of Social Benefits and Pensions to IDPs*, June 2016, p. 1.

³ UNHCR, *Ukraine: UNHCR Operational Update, 23 April– 13 May 2016*, p. 2, available at unhcr.org.ua/attachments/article/1299/UNHCR%20UKRAINE%20Operational%20Update%2013MAY16%20FINAL.pdf

12 ing, blankets, food, water, and often also access to medical care including psychosocial services as well as support for family reunification and replacing lost identification documentation. Access to education, to income-generating opportunities, and to social services is essential. In Ukraine, many of the displaced are persons with disabilities and persons over 65 years old, with both groups facing additional challenges. IDPs and other civilians in NGCAs and other areas experiencing active conflict are particularly at risk. Meanwhile, humanitarian access to territories outside of the effective control of the Government of Ukraine remains very limited in particular for the UN and other international agencies. Moreover, as the conflict and consequent displacement crisis enters its third year, displacement is becoming a long-term prospect for many IDPs, leading to a situation that is increasingly difficult for IDPs as well as for the families and communities hosting them. In this regard, the Council of Europe Committee of Ministers (CoM) and the Parliamentary Assembly of the Council of Europe (PACE) repeatedly adopted resolutions and recommendations urging action and expressing “deep concern regarding the situation of all persons affected by the conflict, including internally displaced persons and refugees.”⁴

Protecting, assisting, and finding solutions for IDPs is, according to international law, primarily the responsibility of the Government. As emphasized to the Prime Minister by the Council of Europe Commissioner for Human Rights, “the Ukrainian authorities must take the lead in this process and demonstrate their resolve in ensuring that IDPs receive all the protection they are entitled to under international law.”⁵ The Government of Ukraine recognizes its responsibility towards IDPs and has discharged this responsibility to an increasing degree and in a number of ways. At the same time, it must be acknowledged that local non-governmental organisations (NGOs) and community-based volunteer initiatives have been the primary first responders and at the forefront of the humanitarian response. Many regional and local authorities in communities receiving IDPs have also demonstrated solidarity with IDPs and actively responded to their concerns, often doing so in the absence of adequate resources. Complementing Governmental and NGO efforts is the role of UN agencies, internation-

⁴ See, for example, Council of Europe, Committee of Ministers, Situation in Ukraine, Decision at 1207th meeting – 17 September 2014, Item 1.5; and Council of Europe, Committee of Ministers, Situation in Ukraine, Decision at 1210th meeting – 22 and 24 October 2014, Item 1.6, CM/De/Dec(2014)1130, DD(2014)1193 and DD(2014)1278.

⁵ Council of Europe, Commissioner for Human Rights, Letter from Nils Muižnieks to Mr. Arseniy Yatsenyuk, Prime Minister of Ukraine, 27 June 2014, Ref: Comm/HR/IG/sf 017–2014, CommR(2014)15 (available at [wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH\(2014\)15&direct=true&Ref=CommDH\(2014\)15&Language=lanEnglish&direct=true](http://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH(2014)15&direct=true&Ref=CommDH(2014)15&Language=lanEnglish&direct=true)).

al NGOs, and in the case of Europe, its only organisation with a mandate of human rights, rule of law and democracy, the Council of Europe.

Ensuring a national legal framework that protects the rights of IDPs and addresses their specific needs resulting from displacement counts among the key benchmarks of national responsibility for addressing internal displacement.⁶ IDPs, like other citizens or habitual residents of a country, have rights under international human rights law; in a situation of armed conflict, international humanitarian law also applies and provides additional important guarantees for civilians. The United Nations Secretary-General, in his February 2016 report setting out plans for a more effective response to humanitarian challenges the world over, has emphasized the importance of national policies and legal frameworks on internal displacement “to ensure a normative system that addresses the needs of displaced persons” and has encouraged such instruments and policies to be developed and applied in countries experiencing displacement.⁷ Indeed, for many years, both the Council of Europe and UN resolutions and recommendations have encouraged countries experiencing internal displacement to adopt and implement domestic legislation and policies addressing all phases of internal displacement and welcomed the initiatives of a number of Governments which have done so.⁸

In Ukraine, a range of voices including IDPs, local NGOs, the Parliamentary Commissioner for Human Rights, a number of Parliamentarians, and international actors have emphasized the need to strengthen the national normative framework in order to enhance protection, assistance, and support for durable solutions for IDPs. Already in June 2014, in the initial months of the displacement crisis, the Council of Europe Commissioner for Human Rights highlighted

“I encourage the Government of Ukraine to bring the legislative norms regulating the situation of IDPs and ensuring their protection in line with European and international standards.”

Council of Europe
Commissioner on Human Rights,
Nils Muižnieks

⁶ Erin Mooney, *Addressing Internal Displacement: A Framework for National Responsibility* (Brookings Institution–University of Bern Project on Internal Displacement, 2005) (hereinafter *Framework for National Responsibility*; available at www.brookings.edu/research/reports/2005/04/national-responsibility-framework). The *Framework for National Responsibility* was also published as an official UN document, presented by the UN Secretary-General’s Representative on Internally Displaced Persons, Walter Kälin, in 2005, as UN Doc. E/CN.4/2006/71/Add.1 (23 December 2005). The *Framework* has been translated into at least 11 languages: Arabic, Azerbaijani, Chinese, French, Portuguese, Russian, Serbian, Sinhala, Spanish, Tamil and Thai.

⁷ UN, *One Humanity: Shared Responsibility, Report of the Secretary-General for the World Humanitarian Summit*, UN Doc. A/70/XX, Advance Draft, February 2016, para. 84.

⁸ See, for example, UN General Assembly, *Resolution 64/162 on Protection of and Assistance to Internally Displaced Persons*, adopted on 18 December 2009, UN Doc. A/64/162 (17 March 2010), paras. 12–13.

14 the urgency “to bring the legislative norms regulating the situation of IDPs and ensuring their protection in line with European and international standards,” encouraging the Government of Ukraine to work in close co-operation in this regard with international institutions.⁹ The UN Special Rapporteur on the Human Rights of Internally Displaced Persons similarly has called on the Government to “ensure that it complies fully with its obligations under international standards, including the *Guiding Principles on Internal Displacement*, for all those IDPs within its territories, and guarantee all their human rights without discrimination.”¹⁰

The adoption by the Government in October 2014 of the *Law on ensuring the rights and freedoms of internally displaced persons* was therefore widely welcomed, including by the Secretary General of the Council of Europe. However, shortly after adoption of the Law, advocates on IDP issues pointed out that “some revisions may be required to bring it fully into line with international standards.”¹¹ Indeed, the Council of Europe, in its comments on the draft law in October 2014, foresaw that “[m] any of its provisions will require additional normative efforts to be fully effective and guarantee in practice the rights of IDPs; the smooth implementation of the law will also require additional institutional adjustments.”¹² In an important development, a number of amendments to this Law in fact were adopted on 24 December 2015 and came into force on 13 January 2016.¹³ Nonetheless, further amendments are needed to bring the IDP Law into line with international standards, as well as further harmonization and development of additional regulations and instructions to bring existing practice in line with the amendments. Moreover, experience around the world has shown that while adoption of IDP-specific legislation may be appropriate in a number of contexts, still essential will be to review the general legislative framework, not specific to IDPs, and assess the extent to which it addresses IDPs’ specific needs and enables them to enjoy their rights in full equality.¹⁴ In this regard, in 2016, the Council of Europe has emphasized:

⁹ Council of Europe, Commissioner for Human Rights, Letter from Nils Muižnieks to Mr. Arseniy Yatsenyuk, Prime Minister of Ukraine, 27 June 2014, Ref: Comm/HR/IG/sf 017–2014, CommR(2014)15 (available at [wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH\(2014\)15&direct=true&Ref=CommDH\(2014\)15&Language=lanEnglish&direct=true](http://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH(2014)15&direct=true&Ref=CommDH(2014)15&Language=lanEnglish&direct=true)).

¹⁰ UN, *Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons, Chaloka Beyani. Mission to Ukraine*, UN Doc. A/HRC/29/34/Add.3 (2 April 2015), para. 79.

¹¹ *Ibid.*

¹² Council of Europe, Directorate General, Human Rights and Rule of Law, *Opinion of DGI, Directorate of Human Rights on the Draft Law of Ukraine “on Ensuring rights and freedoms of internally displaced persons,”* DGI(2014)24, 10 October 2014, p. 9.

¹³ *Law on Ensuring of rights and freedoms of internally displaced persons*, adopted 20 October 2014, amended as of 28 December 2014, 5 March 2015, 24 December 2015, and 26 January 2016, Art. 20.

¹⁴ *Framework for National Responsibility*, p. 16; Elizabeth Ferris, Erin Mooney and Chareen Stark, *From Responsibility to Response: Assessing National Approaches to Internal Displacement* (Brookings Institution–London School

As part of the primary responsibility of the State for the protection and assistance of IDPs, the Ukrainian authorities have the responsibility to take comprehensive action including introducing legislation, adapting and streamlining necessary administrative procedures, and developing coordination and response mechanisms.¹⁵

The Government of Ukraine has recognized its responsibility to take such action. The IDP Law indicates that the Cabinet of Ministers of Ukraine will, within three months from the entry into force of the Law, undertake necessary legislative and regulatory measures including bringing all legal acts of the CMU in line with this Law, and “ensure review and harmonization of the appropriate regulations into conformity with this Law by relevant ministries and central executive bodies.”¹⁶ Additionally, the Government, in its *Action Plan on Implementation of the National Strategy in the Area of Human Rights*, which was adopted by the Cabinet of Ministers in November 2015, commits “to develop and approve methodological recommendations on expert examination of draft regulatory acts associated with the rights of IDPs,” and “to check their compliance with the United Nations Guiding Principles on Internal Displacement” in order to ensure, as a stated expected result of the National Strategy, that “international legal mechanisms are used to protect rights and freedoms of internally displaced persons.”¹⁷ Follow-up on the implementation of these commitments remains essential.

To inform and support such initiatives by the Government of Ukraine, this study was commissioned by the Council of Europe. In part, this study will provide the baseline analysis to inform and guide the larger Council of Europe Project “Strengthening the Human Rights Protection of Internally Displaced Persons in Ukraine” implemented under the CoE Action Plan for Ukraine 2015–2017, in partnership with the Government of Ukraine and other key national stakeholders. Based on a request from the Government of Ukraine for assistance in addressing the challenges that the country is experiencing in addressing the sudden and significant internal displacement crisis, the CoE Project encompasses four interlocking components: strengthening the national legislative and regulatory framework for protecting the human rights of IDPs; implementing this framework; raising awareness about the rights of IDPs; and supporting IDPs’ social,

of Economics Project on Internal Displacement, 2011), pp. 63–73.

¹⁵ Council of Europe, “Launch of the Council of Europe Project in support of Internally Displaced Persons in Ukraine,” Press Release, 28 January 2016.

¹⁶ *Law on Ensuring of rights and freedoms of internally displaced persons*, Art. 20.

¹⁷ Government of Ukraine, *Action Plan on Implementation of the National Strategy in the Area of Human Rights for the Period under 2020*, Appendix to Resolution of the Cabinet of Ministers of Ukraine No. 1393-p dated 23 November 2015, para. 122.

16 economic, and political integration. All four of the project’s pillars of activity will be informed by the findings and recommendations of this study.

Scope and Purpose of this Study

The purpose of this study is to review the national legislative and regulatory framework of Ukraine relevant to the human rights of IDPs and to assess its compatibility with international and Council of Europe standards. More specifically, this study seeks to identify any gaps and grey areas in terms of the compliance of national legislation in Ukraine with international and European standards, and thus to identify areas which require corrective legislative, administrative, or other regulatory measures. In so doing, this study seeks to support and reinforce ongoing efforts of the Government of Ukraine to address internal displacement in a rights-based manner. Additionally, this study seeks to enhance awareness of the rights of IDPs among all relevant stakeholders, including IDPs themselves. Ultimately, and most fundamentally, the study aims to contribute to the enhanced promotion and protection of the rights of IDPs in Ukraine.

Methodology

In terms of sources of law to be evaluated, an essential first step was to identify and compile the various pieces of relevant national legislation, administrative instructions and other regulatory documents. Prior to the initiation of this research project, a compilation of relevant national legislation and summary analysis of the key legal challenges that IDPs in Ukraine face in enjoying their rights was prepared (see Annex 2).¹⁸

International standards on internal displacement, namely the *Guiding Principles on Internal Displacement* (hereinafter “*Guiding Principles*”)¹⁹ provided the primary focus for the analysis of national legislation in terms of its compliance with international law. Developed by the United Nations Secretary-General’s Representative on Internally Displaced Persons in response to the request of UN member States “to develop an appropriate normative framework on internal displacement,” the *Guiding Principles* consolidate, are consistent with, and clarify the international legal norms, in particular from international human rights law and international humanitarian law, most relevant to situations of internal displace-

¹⁸ An updated version of this compilation of key national legislation is provided in the Annex 2.

¹⁹ UN, *Guiding Principles on Internal Displacement*, UN doc. E/CN.4/1998/53/Add.2 (1998).

ment.²⁰ Formally presented to the UN in 1998, the *Guiding Principles* have since gained broad international standing. In 2005, all 196 Heads of State and Government assembled in New York for the September 2005 World Summit unanimously recognized the Principles as an “important international framework for the protection of internally displaced persons.”²¹ The UN General Assembly has not only welcomed “the fact that an increasing number of States, United Nations agencies and regional and non-governmental organizations are applying them as a standard” and but also has encouraged “all relevant actors to make use of the Guiding Principles when dealing with situations of internal displacement,” including to make use of the Guiding Principles in the development of domestic legislation and policies.”²²

The Council of Europe Committee of Ministers, “[s]tressing its commitment to the spirit and provisions of the United Nations Guiding Principles and its willingness to implement them in the member States’ national legislation and policy,” “[r]ecommends that member States be guided, when formulating national legislation and practice when faced with internal displacement by [...] the United Nations Guiding Principles on Internal Displacement and other relevant international instruments of human rights or humanitarian law.”²³ The Government of Ukraine, in addition to having endorsed the Guiding Principles at the 2005 World Summit and by way of the Recommendation adopted by the Council of Europe Committee of Ministers, also has endorsed the Guiding Principles in consensus decisions adopted by the Organization for Security and Cooperation in Europe (OSCE),²⁴ and has confirmed the relevance of the Guiding Principles to the current displacement crisis in Ukraine. More specifically, it has committed itself to an “examination of draft regulatory acts associated with the rights of IDPs, to check their compliance with the United Nations Guiding Principles on Internal Displacement.”²⁵

²⁰ See Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, rev. ed., Studies in Transnational Legal Policy, No. 38 (American Society of International Law and Brookings-Bern Project on Internal Displacement, 2008) (hereinafter *Annotations to the Guiding Principles*).

²¹ UN, General Assembly Resolution A/60/L.1 (2005), para. 132.

²² UN, General Assembly Resolution 64/162 “Protection of and assistance to internally displaced persons,” UN Doc. A/RES/62/153, paras. 10 and 11.

²³ Council of Europe, Committee of Ministers, Recommendation Rec2006(6) of the Committee of Ministers to member states on internally displaced persons, adopted on 5 April 2006 (hereinafter “Council of Europe, Committee of Ministers’ Recommendation 2006(6) on IDPs”). Prior to this, the Council of Europe Parliamentary Assembly (PACE) recognized that the Guiding Principles “constitute a standard for governments and other responsible authorities and intergovernmental organisations, and are an important tool in their work for displaced persons.” PACE, Recommendation 1631(2003), *Internal displacement in Europe*, 25 November 2003.

²⁴ For key OSCE commitments on IDPs, see www.legislationline.org/topics/organisation/3/topic/10/subtopic/45.

²⁵ Government of Ukraine, *Action Plan on Implementation of the National Strategy in the Area of Human Rights for*

The Council of Europe, in addition and years prior to its recognition of the Guiding Principles, has developed a rich regional framework of human rights standards, in particular with the European Convention on Human Rights (ECHR) and its Protocols.²⁶ The ECHR, the Council of Europe has emphasized, “constitutes a highly effective tool for the protection of IDPs in Europe” and “the obligations undertaken by the Council of Europe member States [...] go beyond the level of commitments reflected in the UN Guiding Principles.”²⁷ Indeed, this study underscores, the ECHR and its Protocols have much to offer with regard to the protection of IDPs. Jurisprudence of the European Court on Human Rights underscores this; selected cases concerning internal displacement were reviewed and are reflected in this study. The (revised) European Social Charter (ESC)²⁸ and other selected CoE conventions, for instance regarding the Framework Convention for the Protection of National Minorities, are also particularly relevant and are reflected in the thematic analysis. In addition to IDPs being range of international and these European human rights standards of general applicability, the Council of Europe has recognised for over a decade that “internally displaced have specific needs by virtue of their displacement” which call for specific attention,²⁹ including through the Committee of Ministers’ Recommendation on Internally Displaced Persons and the companion Explanatory Memorandum on Internally Displaced Persons.³⁰

In summary, in terms of sources of law, this study encompasses relevant national, regional, and international standards regarding internal displacement and analyses the intersections among these three levels of norms. As the UN Secretary-General has recently emphasized, all three levels of analysis are essential: “Regional frameworks [...], national policies and legal frameworks on internal displacement, and the *Guiding Principles on Internal Displacement* are important to ensure a normative system that addresses the needs of displaced persons.”³¹

The research and its methodology was further informed by other key global documents on internal displacement, namely *Addressing Internal Displacement: A*

the Period under 2020, Appendix to Resolution of the Cabinet of Ministers of Ukraine No. 1393-p dated 23 November 2015, para. 122.

²⁶ See www.echr.coe.int/Documents/Convention_ENG.pdf.

²⁷ Council of Europe, Explanatory Memorandum, 5 April 2006, General Considerations.

²⁸ European Social Charter (revised), 2006.

²⁹ Council of Europe, Committee of Ministers’ Recommendation 2006(6) on IDPs, Preamble.

³⁰ Council of Europe, Committee of Ministers’ Recommendation 2006(6) on IDPs; and Explanatory Memorandum.

³¹ UN, *One Humanity: Shared Responsibility, Report of the Secretary-General for the World Humanitarian Summit* (2016), para. 84.

*Framework for National Responsibility*³² and *Protecting Internally Displaced Persons: A Manual for Legislators and Policymakers* (hereinafter *Manual for Legislators and Policymakers*),³³ in particular its list of “Minimum Essential Elements of State Regulation” to address internal displacement. For the purposes of this study, the *Manual for Legislators and Policymakers*’ universal list of “minimum essential elements of State regulation” to address internal displacement has been grouped into twenty-one themes covering a range of issues, including protection from arbitrary displacement; freedom of movement; IDP definition; data collection and IDP registration; family separation; access to food, water and sanitation, health, and basic shelter; housing, land and property rights; education; electoral rights; institutional mechanisms; allocation of adequate resources, etc. The study assesses the extent to which the “minimum essential elements of State regulation” to address internal displacement are in place in the existing national legislative and regulatory framework in Ukraine. On the issue of “minimum” standards, of course, as the Council of Europe has emphasized, neither the Committee of Ministers’ “recommendation [on IDPs] nor the United Nations Guiding Principles should prevent Council of Europe member States from introducing or maintaining more favourable standards for internally displaced persons.”³⁴

Two themes covered by the “minimum essential elements of State regulation” are not covered in this study, namely those concerning natural disasters and development-induced displacement. Considering the current operational context in Ukraine and time as well as space constraints for this study, it was decided not to cover these two thematic areas in any depth in this study, i.e. through a specific chapter. The absence of two such chapters must not be interpreted as de-prioritizing the importance of these issues; they remain minimum and essential elements for State regulation. Indeed, as the Council of Europe has emphasized, “the needs of IDPs resulting from natural or man-made disasters are no less important than those stemming from armed conflicts.”³⁵ There also exists important case law of the European Court for Human Rights on State responsibility for internal displacement due to natural disasters.³⁶ And of course the issue of dis-

³² *Op. cit.*

³³ *Protecting Internally Displaced Persons: A Manual for Legislators and Policymakers* (2010). See also the companion volume, on which the *Manual for Legislators and Policymakers* is based: Walter Kälin et al. (eds.), *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges*, Studies in Transnational Law Legal Policy, No. 41 (Brookings-Bern Project on Internal Displacement and American Society of International Law), 2010.

³⁴ Council of Europe, Committee of Ministers’ Recommendation 2006(6) on IDPs, Preamble.

³⁵ Council of Europe, Committee of Ministers, Explanatory Memorandum on IDPs, commentary on para. 1.

³⁶ For example, European Court of Human Rights (ECtHR), *Budayeva and others v. Russia*, judgment of 20 March 2008.

20 placement due to a human-made disaster is painfully familiar to Ukraine, following the explosion of the nuclear facility at Chernobyl in 1986.³⁷ Although this study does not include full chapters on internal displacement due to natural disasters and to development, these issues are addressed to some degree in the chapter on the definition of IDPs. It is hoped that more in-depth analysis of these issues as they relate to Ukraine can be undertaken by researchers in due course.

This study also does not include a chapter specifically on the critically important issue of durable solutions to displacement. This stems from the methodological framework utilized in that the “minimum essential elements of State regulation” do not include a dedicated section on durable solutions but rather integrate attention to some relevant issues in other elements. For example, standards for protection against forcible return are addressed in the section on freedom of movement, and issues of livelihoods and access to social services are addressed in the chapter on employment and social protection. The issue of durable solutions merits more focused attention and analysis, not least as the displacement crisis in Ukraine becomes increasingly protracted in nature. Already in June 2014, the Council of Europe Commissioner for Human Rights emphasized to the Prime Minister of Ukraine: “There is an acute need to develop a governmental strategy to provide durable solutions” for displaced persons. The CoE Commissioner further noted: “Addressing gaps in the legislative norms regulating the situation of IDPs and ensuring their protection in line with European and international standards must be an essential part of this strategy.”³⁸ In such a way, this study, even without a chapter dedicated to durable solutions to displacement, can and should inform any durable solutions strategy.

Structure of this study

Each of the twenty-one thematic chapters of this study:

- Begins with a recapitulation of the **minimum essential elements of State regulation** in a situation of internal displacement that are relevant to the thematic issue being considered;
- Summarizes the relevant **international legal standards** for IDPs, as encapsulated in the *Guiding Principles on Internal Displacement*;

³⁷ See Silva Meybatyan, “Nuclear disasters and displacement,” *Forced Migration Review*, Issue 46 (February 2014), pp. 63–65.

³⁸ Council of Europe, Commissioner for Human Rights, “Ukraine: Urgent Action needed to Protect Internally Displaced Persons,” 17 July 2014.

- Summarizes relevant Council of Europe legal standards, recommendations, and selected case law; 21
- Reviews and analyses relevant Ukrainian national legislation in the light of the above frameworks;
- **Recommends**, based on this legal analysis, any suggested measures for enhancing legal protection of IDPs in Ukraine.

MINIMUM ESSENTIAL ELEMENTS OF STATE REGULATION: OVERVIEW OF INTERNATIONAL AND EUROPEAN STANDARDS AND ANALYSIS AND RECOMMENDATIONS FOR UKRAINE

1. DEFINITION OF INTERNALLY DISPLACED PERSONS

Particularly once internal displacement occurs in a country, a definition of internally displaced persons (IDPs) is important to have in order to identify the number and location of IDPs and to facilitate planning and implementing a response addressing their specific needs resulting from displacement. Essential to understand is that an IDP definition is to be descriptive in purpose; it should have no impact on a person's legal entitlements to their rights under international law.

Minimum essential elements of State regulation:

Adopt a concept of who is an IDP that is consistent with, and not narrower than, that used in the U.N. Guiding Principles. The definition of IDP must not create a specific legal status that is granted, refused, or ceased in individual cases; it should serve as a factual description of the circumstances of a person that is used to determine the applicability of IDP laws and policies.

A. International normative framework

The *Guiding Principles on Internal Displacement* established a definition of IDPs that enjoys wide-ranging international acceptance. According to the *Guiding Principles*:

“[...] internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised state border.”³⁹

The definition of IDP highlights two fundamental elements: (1) the coercive or otherwise involuntary character of movement; and (2) the fact that such movement takes place within national borders.⁴⁰ As for the first element regarding the character of movement, the definition indicates a number of possible causes for the displacement, although the preface “in particular” indicates that this list is not exhaustive. Also, as the definition indicates, people may become internally displaced either after suffering the effects of these factors or in anticipation of such effects. The second requirement of movement taking place within national borders refers to the place where the displaced persons find refuge and is to be understood, the *Annotations* explain, “in a broad sense” such that this requirement also would be met if, for instance, displaced persons are compelled to transit through territory of a neighbouring state in order to gain access to a safe part of their own country; first go abroad and then return (voluntarily or involuntarily) to their own country but cannot go back to their place of habitual residence due to the reasons indicated in the definition; or left voluntarily to another part of their country but cannot to return to their homes because of events occurring during their absence that make return impossible or unreasonable.⁴¹ This latter scenario of an individual who is temporarily away from her/his place of usual residence (e.g. for studies, for temporary work, for travel) but who is unable to return home due to the circumstances outlined in the IDP definition is analogous to the concept in international refugee law of a refugee *sur place*.

It is important to note that neither the international definition of IDPs provided by the Guiding Principles nor the Principles themselves refer anywhere to the notion of citizenship. Non-citizens and foreigners also may qualify as IDPs provided that their presence in the country is not simply of a passing nature but has reached some level of permanency such that they are being uprooted, as the definition provides, from their “homes or places of habitual residence.”⁴² Thus, the following categories of persons who are displaced qualify as IDPs: internally dis-

³⁹ *Guiding Principles on Internal Displacement*, Introduction, para. 2.

⁴⁰ *Annotations to the Guiding Principles*, p. 3.

⁴¹ *Annotations to the Guiding Principles*, pp. 3–4.

⁴² *Manual for Legislators and Policymakers*, p. 12.

24 placed citizens of the country concerned; displaced stateless persons who maintain their habitual residence in the country concerned; displaced nationals of another country who have lived there a long time, perhaps even generations, and have largely lost their link with the country of their nationality; displaced nationals of another country who have their habitual residence in the country concerned because they have been admitted permanently or for a prolonged period; and refugees who have returned to their country of origin but are unable to return to their former homes or find another durable solution through social and economic integration in another part of the country.⁴³

Finally, essential to understand is that the notion of who is an IDP is not a legal definition. As the *Annotations* to the Guiding Principles explain: “[b]ecoming displaced within one’s own country of origin or country of habitual residence does not confer special legal status in the same sense as does, say, becoming a refugee.” This fact “does not rule out the possibility of administrative measures such as registration on the domestic level to identify those who are displaced and need special assistance.” However, important to emphasize is that “lack of such registration would not deprive internally displaced persons of their entitlements under human rights and humanitarian law.”⁴⁴ (See also chapter on *Data Collection*, which addresses issues of IDP registration.)

B. Council of Europe standards

The Council of Europe adopted the above-mentioned definition of IDPs provided for in the UN Guiding Principles. This is explicitly indicated in the CoE Committee of Ministers’ Recommendation on IDPs⁴⁵ and in the corresponding Explanatory Memorandum.⁴⁶ The Recommendation reproduces the definition of the Guiding Principles verbatim. Yet, while adopting the UN definition, the CoE institutions and bodies have addressed in their own terms the particular vulnerability and need for protection of this heterogeneous group.

In an earlier Recommendation from 2003 on internal displacement in Europe, the PACE referred to the UN Guiding Principles and urged CoE Member States to observe them and incorporate them into their domestic law. In this docu-

⁴³ *Manual for Legislators and Policymakers*, pp. 12–13.

⁴⁴ *Annotations to the Guiding Principles*, pp. 4–5.

⁴⁵ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006.

⁴⁶ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM (2006)35 Addendum, 5 April 2006.

ment, the PACE underlines the distinction between the protection of refugees and IDPs, thus highlighting the particular vulnerability of IDPs, noting:

by stating that “IDPs as such, contrary to refugees, who are protected by the 1951 Geneva Convention relating to the Status of Refugees, are not protected by any international legally-binding instrument and their fundamental rights are not safeguarded at international level by any specific instrument. The issue of IDPs is often regarded as an internal matter of the country concerned and attracts much less attention from the international community than the issue of refugees.”⁴⁷

The particular vulnerability of IDPs was further stressed in Recommendation 1877(2009), in which the PACE deplors the lack of durable solutions for the vast majority of IDPs in Europe, who “continue to live in destitution, struggle to enjoy their rights and are marginalised by disregard or failure to protect their human rights, in particular economic, social and cultural rights.” While noting that displacement is “a result of conflicts arising from many and varied causes [...] such as protracted conflicts and ethnic divisions,” the Assembly observed that a common feature is that “[m]any categories of IDPs are particularly vulnerable, dependent on state aid and in need of targeted assistance.”⁴⁸

The international IDP definition refers specifically to displaced persons “who have not crossed internationally recognized borders.” In some cases, as with the dissolution of the former Yugoslavia, it is the status of borders that change, giving rise to cases where the diversity of situations and inherent complexity of internal displacement may sometimes challenge the definition itself. This is made obvious by the case of the former Yugoslav republics: although displaced persons may at the time not have crossed internationally recognised state borders, there are now “internally displaced persons from Kosovo residing in Montenegro.”⁴⁹ In other cases, where the status of borders remains in dispute, whether to classify displaced persons as refugees – who, by definition, have crossed an international border – or as IDPs can be a highly politicized issue and a strong point of contention. In such cases, a pragmatic, yet principled approach is required. For instance, as the Venice Commission points out, in Georgia, persons displaced as a result of conflicts in the self-declared autonomous region of South Ossetia (and similarly for Abkhazia) who remained within Georgia have been referred to, in

⁴⁷ PACE Recommendation 1631(2003), *Internal displacement in Europe*, 25 November 2003.

⁴⁸ PACE Recommendation 1877(2009), *Europe’s forgotten people: protecting the human rights of long-term displaced persons*, 24 June 2009.

⁴⁹ European Committee of Social Rights(ECSR), Conclusions 2013 – Montenegro – Article 13–1 -2013/def/MNE/13/1/EN.

26 political negotiations, not as “refugees” and “IDPs” but by the more generic term of “displaced” or “forced migrants.”⁵⁰ While the existence in law and the recognition of the status of IDPs are of paramount importance, these examples illustrate the need for a flexible and inclusive interpretation, but also the fact that the particular circumstances of a conflict may require the use of a different term.

C. Analysis of national legislation

In Ukraine, it was only following the conflict-induced displacement caused by the conflict that began in 2014, and particularly during the process of elaborating a national law regarding internal displacement, that a definition of IDPs was formulated in national legislation. Ukraine’s first law specifically addressing internal displacement, entitled “*the Law on ensuring rights and freedoms of internally displaced persons*,” was adopted by the *Verkhovna Rada* of Ukraine (Ukraine’s Parliament) on 20 October 2014. The adoption of a national law on IDPs was welcomed by many national and international actors. At the same time, civil society, some Members of Parliament, and international organizations pointed to a number of concerns with the IDP law, including regarding the IDP definition. This advocacy led to the formulation of draft law No. 2166 “*on amending some laws regarding strengthening guarantees of ensuring rights and freedoms of internally displaced persons*.” On 3 November 2015 the *Verkhovna Rada* of Ukraine voted in favour of draft law No. 2166. However, on 25 November 2015 the President of Ukraine vetoed the law and returned it for further redrafting. Finally, on 24 December 2015 the Parliament adopted current version of this draft law and on 6 January 2016 the law was signed by the President, introducing amendments to the national IDP law, including revisions to the IDP definition.⁵¹

Article 1 of the *Law of Ukraine on ensuring of rights and freedoms of internally displaced persons* provides the following IDP definition:

Internally displaced person is a citizen of Ukraine, foreigner or stateless person who legally stays on the territory of Ukraine and has a right to permanent residence in Ukraine and who was forced to leave a place of residence as the result of, or in order to avoid, the effects of armed conflict, temporary occupation, situations of generalised violence, mass violations of human rights or natural or human-made disasters.

⁵⁰ Venice Commission, *Opinion on the Draft Law of Georgia On Property Restitution And Compensation On The Territory Of Georgia For The Victims Of Conflict In The Former South Ossetia District*, Opinion no. 364/2005, 22 June 2007.

⁵¹ In this chapter and entire study, unless otherwise specified, reference to the “IDP law” in Ukraine refers to the law, as amended, of 24 December 2015.

Even with the recent amendments (reflected in the definition cited above), the IDP definition provided for in national legislation remains contrary to international standards in two significant ways. First, it narrows the definition described in the *Guiding Principles on Internal Displacement* by establishing citizenship and legal residency requirements for IDPs. Second, regarding the character of the movement, the definition in use in national legislation limits the causes of displacement to those explicitly specified and, most problematically, it does not specify that internal displacement concerns involuntary movement *within* national borders. Additionally, the IDP definition in national legislation raises a third concern, of establishing a legal status of IDP.

Citizenship and residency requirements

Initially, Ukraine's *Law on ensuring rights and freedoms of internally displaced persons* provided that only "citizens of Ukraine who permanently reside in Ukraine" fall under the IDP definition. In this way, Ukraine's law excluded from the IDP definition stateless persons and other habitual residents who are not citizens. Civil society advocated including these categories of persons in the IDP definition on the grounds that many people in these situations also factually had become internally displaced as a result of the conflict and thereby met the international IDP definition. Their advocacy campaign on definitional (as well as several other) concerns with the initial IDP law led to the formulation, in cooperation with a number of Ukrainian Members of Parliament, of draft law No. 2166 *on amending some laws regarding strengthening guarantees of ensuring rights and freedoms of internally displaced persons*. As noted above, on 3 November 2015 the *Verkhovna Rada* of Ukraine voted in favour of the draft law No. 2166, which, with some revision, was adopted by the Parliament on 24 December 2015 and signed by the President of Ukraine on 6 January 2016. The adopted amendments succeeded in expanding the IDP definition to include foreigners who are habitual residents of Ukraine as well as some stateless persons, if either of these groups have been internally displaced.

However, the Law still excludes stateless persons who cannot prove that they have legal grounds to be in the country and have a right to permanent residence in Ukraine. In other words, the IDP definition includes only documented stateless persons, i.e. mostly persons who received their documentation on statelessness abroad. Stateless persons who have no valid documentation because they hold Soviet passports and who were internally displaced by the conflict remain excluded from the IDP definition. In this connection, it should be noted that

28 Ukraine has signed the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness but has not yet enacted them in national law. As a result, there is no statelessness determination procedure in Ukraine that would allow undocumented stateless persons to obtain documents proving their legal grounds to be in Ukraine and their right to permanent residence in Ukraine, both of which are requirements in order for them to fall under the IDP definition currently in use in Ukraine.

Furthermore, as explained above, according to the international IDP definition, people who were temporarily away from their homes at the time that the displacement crisis started (e.g. students or persons who work away from their place of residence) and who because of the changed circumstances in Crimea and Eastern Ukraine causing displacement now are not able to return to the place of their habitual residence should be considered as IDPs. While the IDP definition formulated in Article 1(1) of the IDP Law of Ukraine does not explicitly exclude such persons, other provisions of the IDP Law have this effect except in the case of students, for whom specific provisions have been introduced in Article 4(5) of the Law on IDPs. In particular, according to Article 4(7) of the IDP Law, in order to register as IDPs, individuals must provide evidence (in official documents or photographic evidence) that they were resident in the conflict-affected areas on the day that the crisis began. This requirement means that IDPs who temporarily were away from their homes when the displacement crisis began (so-called IDPs *sur place*) are not eligible under national legislation to be registered as IDPs. Amendments therefore are needed in order bring national law in line with international standards. (See also chapter on Data collection.)

Character of movement

In the first version (2014) of Ukraine's *Law on ensuring rights and freedoms of internally displaced persons*, the IDP definition specified the following requirements regarding the character of the movement: (1) movement can be forced or voluntary; and (2) displacement happened as a result of or in order to avoid the effects of armed conflict, temporary occupation, situations of generalised violence, mass violations of human rights or natural or human-made disasters. The first requirement, of voluntary or involuntary movement, was not consistent with the IDP definition in the *Guiding Principles on Internal Displacement*, which stipulates that a defining characteristic of an IDP is the coercive or otherwise involuntary character of movement.

Adoption in December 2015 of the *Law on amending some laws regarding strengthening guarantees of ensuring rights and freedoms of internally displaced persons* has introduced amendments to this part of the IDP definition, narrowing it to forced movement, thereby bringing this part of the IDP definition in Ukraine in line with the international definition of IDPs contained in the Guiding Principles.

Regarding the causes of displacement, the list of causes provided in Ukraine's IDP Law appears at first glance to be wider than the causes explicitly indicated in the *Guiding Principles on Internal Displacement*. Among other reasons for displacement, the definition in Ukraine's IDP Law explicitly takes into account the particular situation of "temporary occupation," which specifically concerns the situation in Crimea. In addition to conflict-related IDPs, Ukraine's IDP definition includes persons who were displaced because of natural or human-made disasters. While disaster-induced displacement is not the main cause of internal displacement in Ukraine today, it has been in the past, most notably after the 1986 nuclear accident at Chernobyl.⁵² Moreover, it is important that national legislation corresponds with international standards, i.e. the Guiding Principles, and addresses all possible types of displacement, including disaster-induced displacement, in case it occurs. Further, it should be borne in mind that the causes of displacement explicitly indicated in the Guiding Principles do not constitute an exhaustive list, as indicated by the preface "in particular." This important nuance is missing from the definition in Ukraine, with the result that in terms of causes of displacement the IDP definition in Ukraine's national legislation is narrower and more restrictive than that provided in the Guiding Principles.

Finally, and of particular concern, the IDP definition in Ukraine's IDP Law, even with the 2016 amendments, still does not contain a requirement that the movement take place within national borders. As such, the IDP definition provided in Ukraine's law would conceivably also encompass refugees and asylum-seekers who, by definition, are outside of their country of origin and have specific legal protection under international refugee law. Amendments proposed to the 2014 IDP Law unfortunately did not seek to correct this problem in the IDP definition. Correcting the IDP definition to specify that the movement of IDPs occurs within "internationally recognized State borders" remains essential in order for national legislation to be in line with the international concept and definition of IDPs contained in the Guiding Principles.

⁵² At the time of the Chernobyl nuclear accident in April 1986, Ukraine was part of the Union of Soviet Socialist Republics (USSR). By the end of 1986, some 116,000 inhabitants from 188 settlements had been evacuated from the areas deemed most at risk from the radioactive fallout. See Silva Meybatyan, "Nuclear disasters and displacement," *Forced Migration Review*, Issue 46 (February 2014), pp. 63–65.

Finally, although not evident in the IDP definition, Ukraine's regulations on registration of IDPs⁵³ have the effect of creating a legal IDP status. The regulations make it necessary for all IDPs to register as IDPs and obtain an IDP certificate, even those who do not require humanitarian assistance but simply want to enjoy their basic rights and access social services. Eligibility for IDP registration is based on the above-mentioned definition provided for in national legislation. This issue is covered in more detail in the chapter on Data Collection, which also addresses IDP registration.

D. Recommendations

A number of amendments to national legislation still are required in order to bring the IDP definition that it contains in line with international standards. In addition, amendments are needed to related regulations regarding IDP registration plus measures to implement international conventions on statelessness. Specifically, it is essential to:

- Amend the IDP definition contained in Article 1(1) of the *Law on ensuring rights and freedoms of internally displaced persons* to explicitly add the requirement of movement within “internationally recognized borders.”
- Amend Article 1(1) of the *Law on ensuring rights and freedoms of internally displaced persons* to add the words “in particular,” in order to make the list of causes of displacement non-exhaustive.
- Amend the *Law on ensuring rights and freedoms of internally displaced persons* and respective by-laws so that persons who temporarily were away from their habitual place of residence at the time that the circumstances causing displacement began and cannot return there because of these circumstances, i.e. IDPs *sur place*, may register as IDPs.
- Enact into national legislation the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, which Ukraine has ratified.

⁵³ Cabinet of Ministers Resolution No. 509 on registration of internally displaced persons, adopted on October 2014, para. 8.

2. PROTECTION FROM ARBITRARY DISPLACEMENT

Civilians should be protected from having to flee their homes, that is, from becoming displaced. Displacement constitutes a restriction of the freedom of movement and the right to choose one's own residence (*see Chapter on Movement-Related rights*).⁵⁴ In some cases, the very act of displacement can constitute an international crime.

Minimum essential elements of State regulation:

Recognize the right to be free from arbitrary displacement.

Penalize arbitrary displacement in domestic law under circumstances in which it amounts to a crime against humanity or war crime in accordance with the Rome Statute.

Take penal and administrative measures to ensure compliance with relevant rules of international humanitarian law, including rules on the conduct of hostilities and the duty to distinguish between civilians and combatants and between civilian objects and military objectives.

A. International normative framework

An entire section of the *Guiding Principles on Internal Displacement* is devoted to protection from displacement. As overall guidance, based on international human rights law and international humanitarian law, Principle 5 affirms: “All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.” More specifically, Principle 6 provides that every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.⁵⁵ The prohibition of arbitrary displacement includes, but is not limited to, displacement under the following circumstances:

- (a) When it is based on policies of apartheid, “ethnic cleansing” or similar practices aimed at/or resulting in altering the ethnic, religious, or racial composition of the affected population;

⁵⁴ International Covenant on Civil and Political Rights (ICCPR), Art. 12.

⁵⁵ *Guiding Principles on Internal Displacement*, Principle 6(1).

- (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (c) In cases of large-scale development projects which are not justified by compelling and overriding public interests;
- (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
- (e) When it is used as a collective punishment.⁵⁶

Principle 7 provides that prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that “all feasible alternatives are explored in order to avoid displacement altogether” and that if “no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.” More specifically, in such cases, the authorities implementing such a decision “shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.”⁵⁷ In addition, in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees must be met:

- (a) A specific decision by a State authority empowered by law to order such measures;
- (b) Adequate measures to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
- (c) The free and informed consent of those to be displaced shall be sought;
- (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;
- (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
- (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities.

In all circumstances, displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.⁵⁸ Further, States have a “particular obligation to protect against the displacement of indig-

⁵⁶ *Guiding Principles on Internal Displacement*, Principle 6(2).

⁵⁷ *Guiding Principles on Internal Displacement*, Principle 7(2).

⁵⁸ *Guiding Principles on Internal Displacement*, Principle 8.

enous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.”⁵⁹ Any displacement “shall not last longer than required by the circumstances.”⁶⁰

Pinheiro Principles

The *United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons* (the “Pinheiro Principles”) echo the articulation found in the Guiding Principles on Internal Displacement of a right to be protected from displacement.⁶¹ In this connection, the Pinheiro Principles specify that States “should incorporate protections against displacement into domestic legislation, consistent with international human rights and humanitarian law and related standards, and should extend these protections to everyone within their legal jurisdiction or effective control.”⁶² States “shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war.”⁶³ States are to take steps to ensure that no one is displaced by either State or non-State actors and also to “ensure that individuals, corporations, and other entities within their legal jurisdiction or effective control refrain from carrying out or otherwise participating in displacement.”⁶⁴

Further, everyone has the right to be protected against arbitrary or unlawful interference with his or her privacy and his or her home.⁶⁵ The Pinheiro Principles require States to ensure that everyone is provided with safeguards of due process against arbitrary or unlawful interference with his or her privacy and his or her home.⁶⁶ States should also ensure that secondary occupants are protected against arbitrary or unlawful forced eviction and that any justifiable and unavoidable evictions are carried out in a manner that is compatible with international human rights laws and standards.⁶⁷

⁵⁹ *Guiding Principles on Internal Displacement*, Principle 9.

⁶⁰ *Guiding Principles on Internal Displacement*, Principle 6(3).

⁶¹ *Pinheiro Principles*, Principle 5(1).

⁶² *Pinheiro Principles*, Principle 5(2).

⁶³ *Pinheiro Principles*, Principle 5(3).

⁶⁴ *Pinheiro Principles*, Principle 5(4).

⁶⁵ *Pinheiro Principles*, Principle 6.1.

⁶⁶ *Pinheiro Principles*, Principle 6.2.

⁶⁷ *Pinheiro Principles*, Principle 17.1.

The right to freedom of movement is guaranteed by ECHR Protocol No. 4, Article 2 which states: “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”⁶⁸ This includes the right to leave the country.⁶⁹ Individual or collective expulsion of nationals is prohibited and no person should be denied the right to enter the territory of the state of which s/he is a national.⁷⁰

As in international law, the European framework allows some restrictions to the right to freedom of movement provided that these are “in accordance with the law and justified by the public interest in a democratic society” to preserve national security or public safety, maintain public order, prevent crime or protect health, morals and the rights and freedoms of others.⁷¹

In the context of internal displacement, freedom of movement is closely linked to the prohibition of arbitrary displacement. The Committee of Ministers’ Explanatory Memorandum⁷² considers that the prohibition of arbitrary displacement can be inferred from the ECHR, as it would violate the right to freedom of movement⁷³ and the right to family life⁷⁴ and constitute an inhuman or degrading treatment.⁷⁵ Indeed, the European Court actually considered that the forced displacement of people from their place of habitual residence represented a violation of the right to family life.⁷⁶ In the case *Deznici and others v. Cyprus*, the Court found a violation of Protocol No. 4 article 2, on freedom of movement, on the grounds of the expulsion of the applicants from Southern to Northern Cyprus and on the grounds that they were subject to strict police surveillance when on the territory under Cyprus’s control (having to ask permission whenever they left their town of residence, or when going to the Northern part of Cyprus). The

⁶⁸ Council of Europe, Protocol 4 to the ECHR, 16 September 1963, CETS No. 046, Art. 2.1.

⁶⁹ Council of Europe, Protocol 4 to the ECHR, 16 September 1963, CETS No. 046, Art. 2.2.

⁷⁰ Council of Europe, Protocol 4 to the ECHR, 16 September 1963, CETS No. 046, Art. 3.

⁷¹ Council of Europe, Protocol 4 to the ECHR, 16 September 1963, CETS No. 046, Arts. 2.3 and 2.4.

⁷² Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, Preamble. See also CoE, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, Preamble.

⁷³ Council of Europe, Protocol 4 to the ECHR, 16 September 1963, CETS No. 046, Art. 2.

⁷⁴ Council of Europe, ECHR, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, Art. 8.

⁷⁵ Council of Europe, ECHR, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, Art. 3.

⁷⁶ ECtHR, *Dogan and others v. Turkey*, Application nos. 8803–8811/02, 8813/02 and 8815–8819/02, judgment of 29 June 2004, paras. 134–160, cited by Committee of Ministers, CM(2006)36 addendum, 8 March 2006, Explanatory Memorandum, note 10.

Court found that the above-mentioned restrictions to freedom of movement were neither justified by law, nor necessary in a democratic society.⁷⁷

In the case of *Timishev v. Russia*,⁷⁸ the decision of the traffic police to refuse to allow the applicant Chechen to cross from Ingushetia into Kabardino-Balkaria was found not to be “in accordance with the law” as its basis was merely an oral order by a Ministry of Interior official, which had not been properly formalised or recorded. As the order had been not to admit “Chechens,” the Court also found that the applicant had been the victim of racial discrimination under Article 14 taken together with Protocol No. 4, Article 2.

In the case of *Tatishvili v. Russia*,⁷⁹ the Court rejected the Government’s arguments that the applicant had not been “lawfully present” in Russia. The applicant was born in Georgia and had been a citizen of the former USSR until 31 December 2000, when she became stateless. The Court found that under domestic law, as a “citizen of the former USSR,” she was lawfully present in Russia. She complained about the system of residence registration – that her application for registration of her flat in Moscow had not been accepted. The Court found a violation of Protocol No. 4, Article 2 because there had been no reason not to grant her application.

The discriminatory treatment by the Turkish authorities of the Karpas Greek Cypriot community in northern Cyprus led to a finding of degrading treatment in the inter-state case of *Cyprus v. Turkey*.⁸⁰ On the basis, the Court found, of their ethnic origin, race and religion, the community was isolated and their movements restricted and controlled, leaving them no prospect of renewing or developing their community: “the conditions under which that population is condemned to live are debasing and violate the very notion of respect for the human dignity of its members.”⁸¹

C. Analysis of national legislation

Article 2 of the *Law on ensuring rights and freedoms of internally displaced persons* provides that Ukraine shall undertake all possible measures envisaged by

⁷⁷ ECtHR, *Deznici and others v. Cyprus*, Application nos. 25316–25321/94 and 27207/95, judgment of 23 May 2001, paras. 400–406.

⁷⁸ ECtHR, *Timishev v. Russia*, Application nos. 55762/00 and 55974/00, judgment of 13 December 2005.

⁷⁹ ECtHR, *Tatishvili v. Russia*, Application no. 1509/02, judgment of 22 February 2007.

⁸⁰ ECtHR, *Cyprus v. Turkey*, Application no. 25781/94, judgment of 10 May 2001.

⁸¹ ECtHR, *Cyprus v. Turkey*, Application no. 25781/94, judgment of 10 May 2001, para. 309.

36 the Constitution of Ukraine, Ukrainian laws and international treaties ratified by Ukraine, to prevent internal displacement. Article 3 (1) of the IDP law stipulates that citizens of Ukraine, foreigners and stateless persons who legally stay in Ukraine and are legal permanent residents in Ukraine are entitled to the Government's protection against arbitrary displacement. Yet, there is no explanation of what protection against arbitrary displacement means, i.e. what measures exactly the government shall undertake to protect persons against arbitrary displacement.

Arbitrary displacement is not penalized in the *Criminal Code of Ukraine*. While the *Criminal Code of Ukraine* contains a chapter on crimes against humanity, specifically Chapter 20 ("Crimes against peace, security of humanity and international order"), it does not include a prohibition of arbitrary displacement. Moreover, as Ukraine did not ratify the Rome Statute, it did not integrate penalization of war crimes into the text of the *Criminal Code of Ukraine*. According to Article 8 of the Ukraine–European Union Association Agreement as of 16 September 2014, Ukraine accepted its responsibility to ratify the Rome Statute. On 16 January 2015, the draft law No. 1788 "On amending Article 124 of the Constitution of Ukraine (regarding acceptance of provisions of the Rome Statute)" was registered with the Parliament. The draft law proposes to add a part 6 to Article 124 of the Constitution of Ukraine that would contain the wording: "Ukraine can accept jurisdiction of the International Criminal Court according to provisions of the Rome Statute of the International Criminal Court." At the time of writing the draft law has not been adopted by the Parliament.

Article 438 of the *Criminal Code of Ukraine* penalizes non-compliance with international humanitarian law. Among other criminal acts, it penalizes conducting hostilities in a time of war, including arbitrary displacement with the purpose of engaging civilians in forced labour. However, only arbitrary displacement conducted with this purpose is penalised, while any other type of displacement is not covered by these provisions. Moreover, Article 438 of the *Criminal Code of Ukraine* does not establish a rule for distinguishing between civilians and combatants and between civilian objects and military objects.

D. Recommendations

- Amend Article 2 of the IDP Law to specify the measures by which the Government is responsible for protecting persons against arbitrary displacement.
- Amend the *Criminal Code of Ukraine* to:

- penalize arbitrary displacement under the circumstances in which it amounts to a crime against humanity or war crime in accordance with the Rome Statute;
- amend Article 438 to penalize any kind of arbitrary displacement committed in the time of war; and
- affirm the rule of distinguishing between civilians and combatants and between civilian objects and military objects.
- Ratify the Rome Statute.
- Adopt *draft law No. 1788 on amending Article 124 of the Constitution of Ukraine (regarding acceptance of provisions of the Rome Statute)*.

3. NON-DISCRIMINATION

Discrimination often features in situations of internal displacement and can arise in all phases of displacement: as a cause of displacement, while IDPs are displaced, and as an obstacle to durable solutions to displacement. It is essential to ensure that IDPs can enjoy their rights in full equality with all other citizens and habitual residents of the country.

Minimum essential elements of State regulation:

Recognize IDPs' right to be protected against discrimination on the ground that s/he is internally displaced as well as against discrimination in relation to other IDPs or non-displaced individuals and communities on any ground such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, or birth or any similar criteria.

A. International normative framework

The principle of non-discrimination is well established in international law; a panoply of international and regional instruments of law affirms the prohibition of discrimination. In a situation of internal displacement, two particular aspects of non-discrimination must be considered: (1) protection of IDPs against discrimination based on the fact that they are displaced; (2) protection of IDPs against discrimination on any other basis (e.g. race, religion, etc.).

38 (1) *Protection of IDPs against discrimination based on being displaced*

Principle 1(1) of the Guiding Principles affirms:

Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.

This provision “embodies the principle of equality and non-discrimination and makes explicit what is only implicit in international law: internally displaced persons are entitled to enjoy the same rights and freedoms as other persons in their country. Any discrimination against internally displaced persons is prohibited.”⁸² This prohibition of discrimination would be violated in the event IDPs are disadvantaged solely because they are displaced.

Essential to understand is that the principle of non-discrimination does not preclude special measures addressing the specific needs of IDPs or of particular groups of IDPs such as displaced children.⁸³ Indeed, as recognised by the Council of Europe (see below), the principle of non-discrimination may “entail the obligation to consider specific treatment tailored to meet internally displaced persons’ needs.”⁸⁴ The *Manual for Legislators and Policymakers* further explains:

The principle of equal treatment is fundamental to the approach to displacement taken in the Guiding Principles. That approach is based on the observation that displacement consistently results in specific, severe vulnerabilities and harms for those affected [...] As a result, in order to place IDPs back on an even footing with the non-displaced population, the state should provide specific and targeted measures of assistance and protection of a nature and scope corresponding to the needs and vulnerabilities resulting from displacement. This approach is supported by numerous rules of international human rights law that prescribe positive or special measures in favour of vulnerable groups. Although such measures result in differential treatment, they are not prohibited as being discriminatory; rather they are required by the basic principle that what is different must be treated differently, as long as they respond to genuine vulnerabilities and do not last longer than necessary to address them.⁸⁵

⁸² *Guiding Principles on Internal Displacement: Annotations*, pp. 11–12.

⁸³ *Annotations to the Guiding Principles*, p. 13.

⁸⁴ *Annotations to the Guiding Principles*, p. 13, note 13, citing Council of Europe, Committee of Ministers’ Recommendation 2006(6) on IDPs, para. 2; and Government of Georgia, *State Strategy for Internally Displaced Persons* (2007), para. 2.2.2.

⁸⁵ *Manual for Legislators and Policymakers*, pp. 16–17.

The principle of non-discrimination is a fundamental right of IDPs throughout all phases of displacement. Principle 29(1) gives additional emphasis to this right in the specific context of durable solutions to displacement:

Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.⁸⁶

(2) Protection against discrimination on any other basis and protection of vulnerable groups

Principle 4(1) of the Guiding Principles reaffirms the general principle of non-discrimination by providing that the Principles are to be applied “without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or any other similar criteria.” A possible “other similar criteria” that may be relevant in the case of Ukraine is non-discrimination on the basis of the status of the territory where a person officially has registered, as all persons in Ukraine are required to do in their place of residence (see section C below). Article 2 of the Universal Declaration of Human Rights guarantees to everyone all the rights and freedoms set forth in the Declaration, without distinction of any kind, including that “no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”⁸⁷

Principle 24 of the Guiding Principles emphasizes: “All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.” As the *Manual for Legislators and Policymakers* explains: “Internally displaced populations are typically diverse, and it is important to ensure that some segments do not arbitrarily receive worse treatment than others.”⁸⁸ At the same time, Principle 4(2) of the Guiding Principles provides:

Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be

⁸⁶ *Guiding Principles on Internal Displacement*, Principle 29(1).

⁸⁷ Universal Declaration of Human Rights (UDHR), Art. 2.

⁸⁸ *Manual for Legislators and Policymakers*, pp. 17–18.

entitled to protection and assistance required by their condition and to treatment that takes into account their special needs.⁸⁹

The *Annotations to the Guiding Principles* explain that in line with international human rights law and international humanitarian law, “[a]ccording special treatment to some groups of internally displaced persons does not violate the principle of equality as objectively disparate situations should not be treated equally and specific vulnerabilities should be taken into account.”⁹⁰ The *Manual for Legislators and Policymakers* further emphasizes that “[a]ttention to the protection needs of inherently vulnerable groups should be an absolute priority in any internal displacement situation” and highlights that among the groups that typically raise the greatest concern are single parents, particularly households headed by women; minors, especially when unaccompanied; older persons, especially when unaccompanied or otherwise without family support; persons with disabilities, chronic illnesses, or HIV/AIDS; traumatised persons; pregnant or lactating women; members of ethnic or religious minorities; and indigenous peoples.⁹¹

B. Council of Europe standards

Several standards of the Council of Europe reaffirm the prohibition of discrimination provided for in international law. The European Convention on Human Rights, Article 14 affirms the principle of non-discrimination in a way similar to the language used in Guiding Principle 4.1.⁹² The ECHR and the Revised European Social Charter⁹³ also include provisions on the prohibition of discrimination, although these are limited to the rights set forth in the Convention or Charter. Article 4 of the Framework Convention for the Protection of National Minorities prohibits discrimination in relation to its specific scope.⁹⁴ Protocol 12 of

⁸⁹ *Guiding Principles on Internal Displacement*, Principle 4.

⁹⁰ *Annotations to the Guiding Principles*, pp. 22–23.

⁹¹ *Manual for Legislators and Policymakers*, pp. 17–18.

⁹² Council of Europe, European Charter for Regional or Minority Languages (ECRML), 4 November 1992, ETS 148, Article 14: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” The main difference from the Guiding Principles is the absence of a reference in the ECHR article to non-discrimination against people with disabilities. However, this element is covered by the Revised European Social Charter.

⁹³ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part V, E.

⁹⁴ Council of Europe, Framework Convention for the Protection of National Minorities (FCNM), 1 February 1995, ETS 157, Article 4.1.

the ECHR, in Article 1, affirms a general prohibition of discrimination in relation to “any rights set forth by law.”⁹⁵

The rule contained in Article 14 of the ECHR conceals negative obligations. The definition given by the Court in the case of *Abdulaziz, Cabales and Balkandali v. the United Kingdom*,⁹⁶ that there is discrimination “where a person or group is treated, without proper justification, less favourably than another,” seems to place the emphasis rather on the active nature of the conduct incompatible with Article 14. In other words, the state must not, in its interventions, commit discrimination, *de jure* or *de facto*, in the enjoyment of the rights set forth in the European Convention. Thus any violation should be seen, from this point of view, as an active (and unlawful) impediment to the applicant’s right to non-discrimination.

The discriminatory treatment by the Turkish authorities of the Karpas Greek Cypriot community in northern Cyprus led to a finding of degrading treatment in the inter-state case of *Cyprus v. Turkey*.⁹⁷ On the basis, the Court found, of their ethnic origin, race and religion, the community was isolated and their movements restricted and controlled such that they had no prospect of renewing or developing their community: “the conditions under which that population is condemned to live are debasing and violate the very notion of respect for the human dignity of its members.”⁹⁸

In the recent case of *Šekerović and Pašalić v. Bosnia and Herzegovina*, the Court observed that the applicant, who had returned from the Republika Srpska to the Federation of Bosnia and Herzegovina, had been discriminated against, compared to pensioners who had remained in the Federation during the war. The Court held that there had been a violation of Article 14, in light of the continued discrimination she had faced solely on account of her status as an internally displaced person.⁹⁹

⁹⁵ Council of Europe, Protocol 12 to the ECHR on the Prohibition of Discrimination, 4 November 2000, ETS 177, Art. 1.

⁹⁶ ECtHR, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, Application no. 9214/80; 9473/81; 9474/81, judgment of 28 May 1985, para. 82.

⁹⁷ ECtHR, *Cyprus v. Turkey*, Application no. 25781/94, judgment of 10 May 2001.

⁹⁸ ECtHR, *Cyprus v. Turkey*, Application no. 25781/94, judgment of 10 May 2001, para. 309.

⁹⁹ ECtHR, *Šekerović and Pašalić v. Bosnia and Herzegovina*, Application nos. 5920/04 and 67396/09, judgment of 8 March 2011.

42 The Court has established in its case law that only differences in treatment based on an identifiable characteristic, or status, are capable of amounting to discrimination within the meaning of Article 14.¹⁰⁰

According to the Court's settled case law, Article 14 is "complementary" to the other substantive provisions of the Convention and its Protocols, having no "independent existence."¹⁰¹ The "application of Article 14 does not necessarily presuppose a breach of those provisions" and it can be relied on as long as "the facts in issue fall within the ambit of one or more of the other Convention rights."¹⁰²

In the case of *Timishev v. Russia*,¹⁰³ the decision of the traffic police to refuse to allow the applicant Chechen to cross from Ingushetia into Kabardino-Balkaria was found not to be "in accordance with the law" as its basis was merely an oral order by a Ministry of Interior official, which had not been properly formalised or recorded. As the order had been not to admit "Chechens," the Court also found that the applicant had been the victim of racial discrimination under Article 14 taken together with Protocol No. 4, Article 2 on the right to freedom of movement.

Though Article 14 prohibits discrimination in treatment in the exercise of Convention rights, it does so only for persons who are "placed in analogous situations"¹⁰⁴ and a difference in treatment is discriminatory if it "has no objective and reasonable justification," that is, if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised."¹⁰⁵ In addition, member states "enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law."¹⁰⁶ However, the Court has ruled that "very weighty reasons would have to be put forward before [it] could regard a difference of treatment based exclusively on the ground of nationality as compatible with the Convention."¹⁰⁷

¹⁰⁰ ECtHR, *Eweida and others v. the United Kingdom*, Application nos. 48420/10, 59842/10, 51671/10 and 36516/10, judgment of 15 January 2013, para. 86.

¹⁰¹ ECtHR, *Inze v. Austria*, Application no. 8695/79, judgment of 28 October 1987, para. 36.

¹⁰² ECtHR, *Gaygusuz v. Austria*, Application No. 17371/90, judgment of 16 September 1996, para. 36.

¹⁰³ ECtHR, *Timishev v. Russia*, Application nos. 55762/00 and 55974/00, judgment of 13 December 2005.

¹⁰⁴ ECtHR, *Lithgow and others v. the United Kingdom*, Application no. 9006/80, 9262/81, 9263/81, 9265/81, 9266/81, 9313/81, 9405/81, judgment of 8 July 1986, para. 177.

¹⁰⁵ ECtHR, *Inze v. Austria*, Application no. 8695/79, judgment of 28 October 1987, para. 41.

¹⁰⁶ ECtHR, *Lithgow and others v. the United Kingdom*, Application no. 9006/80, 9262/81, 9263/81, 9265/81, 9266/81, 9313/81, 9405/81, judgment of 8 July 1986, para. 177.

¹⁰⁷ ECtHR, *Gaygusuz v. Austria*, Application No. 17371/90, judgment of 16 September 1996, para. 42; ECtHR, *Koua Poirrez v. France*, Application no. 40892/98, judgment of 30 September 2003, para. 46.

The European Court of Human Rights has established that the prohibition of discrimination supposes positive measures be taken by States in support of individuals or groups whose situation is different from the rest of the population. In *Thlimmenos v. Greece*, the Court concluded: “The right not to be discriminated against [...] is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.”¹⁰⁸

In the case of *Vrontou v. Cyprus*,¹⁰⁹ the applicant complained about the refusal of the authorities to grant her a refugee card, alleging that this had meant that she had been denied a range of benefits, including housing assistance. She also alleged that denying her a refugee card on the basis that she had been the child of a displaced woman rather than a displaced man had been discriminatory on the grounds of sex. The Court established the existence of a difference in treatment on the grounds of sex on account of the fact that, in being entitled to a refugee card (and thus to housing assistance) the children of displaced men enjoyed preferential treatment over the children of displaced women and that there was no objective and reasonable justification for the difference in treatment.

The responsibility of States to take targeted measures to address the specific needs of certain individuals or groups is reinforced in European legal instruments. The *Revised European Social Charter* highlights specific measures that States should take to support elderly people,¹¹⁰ children and young persons,¹¹¹ persons with disabilities,¹¹² and women.¹¹³ It elaborates the necessity to ensure “equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex”¹¹⁴ or on the basis of family

¹⁰⁸ ECtHR, *Thlimmenos v. Greece*, Application no. 34369/97, judgment of 6 April 2000, para. 44.

¹⁰⁹ ECtHR, *Utsayeva and others v. Russia*, Application no. 29133/03, judgment of 29 May 2008.

¹¹⁰ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part I, para. 23; and Part II, Art. 23.

¹¹¹ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part I, para. 17, on the right of children and young persons to have the right to appropriate social, legal and economic protection. See also Part II, Art. 7 (defining a maximum number of working hours, legal working age), Art. 10 (vocational training) and Art. 17 (providing for the right to social, legal and economic protection, and for measures supporting education, vocational training, protection from violence and exploitation, special support for children and young persons deprived from family support).

¹¹² Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Art. 15, affirming “[t]he right of persons with disabilities to independence, social integration and participation in the life of the community” and specifying the need for specific measures supporting their social integration, education, vocational training.

¹¹³ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part I, para. 8; and Part II, Art. 8.

¹¹⁴ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part I, para. 20 and Part II, Art. 20. See also Part II, Art. 4, para. 3.

44 responsibilities.¹¹⁵ The right to protection against poverty and social exclusion¹¹⁶ contributes to address discrimination on social or economic grounds.

The European Committee of Social Rights (ECSR) has on many occasions recalled the importance of tackling discrimination against IDPs, and ensuring equal treatment whether they are citizens, belong to a national or ethnic minority, or are foreign nationals lawfully resident or regularly working in the country.¹¹⁷ As such, combatting discrimination should address both any forms of discrimination faced by IDPs as a target group,¹¹⁸ and also particular minority groups amongst the IDPs who may be especially vulnerable and exposed to higher risks of discrimination. In the case of *Centre on Housing Rights and Evictions v. Croatia (COHRE)*, recognising “the heightened vulnerability of displaced families, who constitute a distinctive group who suffer particular disadvantage,” the Committee emphasised the “situation of ethnic Serb families in particular [...] who constitute a particularly vulnerable group on account of their ethnicity.” The Committee concluded that “the failure to take into account the heightened vulnerabilities of many displaced families, and of ethnic Serb families in particular, constitutes a violation of Article 16 read in the light of the non-discrimination clause of the Preamble.”¹¹⁹

The *Framework Convention for the Protection of National Minorities* aims to promote full and effective equality in the areas of economic, social, political and cultural life between persons belonging to national minorities and those belonging to the majority.¹²⁰ It specifies that measures taking into account the specific conditions of national minorities and aiming at ensuring their equality should not be considered as an act of discrimination.¹²¹ Specific measures are called for to preserve the identity, religion, language, traditions and cultural heritage of national minorities, notably in the area of education, and their freedom of association, expression, thought, conscience and religion.¹²² States also are to create conditions for the effective participation of national minorities.¹²³ Moreover, States have a

¹¹⁵ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part I, para. 27. See also Part II, Art. 27.

¹¹⁶ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Art. 30.

¹¹⁷ ECSR, Conclusions 2015 – Bosnia and Herzegovina, 2015/def/BIH/16/EN.

¹¹⁸ ECSR, Conclusions 2015 – Latvia, 2015/def/LVA/31/1/EN.

¹¹⁹ ECSR, Decision on the merits: *Centre on Housing Rights and Evictions v. Croatia (COHRE)*, Collective Complaint No. 52/2008, 22 June 2010, paras. 88–89.

¹²⁰ Council of Europe, FCNM, 1 February 1995, ETS 157, Art. 4.2.

¹²¹ Council of Europe, FCNM, 1 February 1995, ETS 157, Arts. 4.2 and 4.3.

¹²² Council of Europe, FCNM, 1 February 1995, ETS 157, Arts. 5, 7, 10, and 12–14.

¹²³ Council of Europe, FCNM, 1 February 1995, ETS 157, Art. 15.

responsibility to refrain from measures altering the proportion of the population in areas inhabited by national minorities.¹²⁴

The prohibition of discrimination and the obligation to address the specific needs of certain categories of persons are relevant to preventing and addressing discrimination against IDPs. The above-mentioned European standards are recalled by the Committee of Ministers in their Recommendation on Internal Displacement, which also reaffirms the principle of non-discrimination of IDPs on the ground of their displacement and of IDPs' equality with non-displaced populations.¹²⁵ The Recommendation calls upon States to take "adequate and effective measures" which "may entail the obligation to consider specific treatment tailored to meet internally displaced persons' needs."¹²⁶ Further, States are to pay particular attention to the protection of IDPs belonging to national minorities and vulnerable groups.¹²⁷ Similarly, the European Commission against Racism and Intolerance has stressed the need to address particularly vulnerable groups among IDPs. In its report on Serbia for instance, the Commission recommended that "the Serbian authorities pay special attention to the situation of internally displaced Roma, Ashkali and Egyptians by ensuring, inter alia, that they receive identity papers. It also recommended that they take steps to improve their situation regarding access to housing, education and employment and to combat the prejudice and discrimination they face."¹²⁸ It is therefore clear that while overall measures need to be taken by Member states to accommodate the needs and protect the rights of IDPs as an identified vulnerable group, notably by combatting the various forms of discrimination they may face, the Council of Europe bodies require Member states to distinguish where necessary certain minority populations amongst the IDPs themselves, in order to recognise their heightened vulnerability and provide adequate tailored measures for their protection.

C. Analysis of National Legislation

Article 24 of the *Constitution* affirms that citizens have equal constitutional rights and freedoms and are equal before the law. There shall be no privileges or restrictions based on race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other char-

¹²⁴ Council of Europe, FCNM, 1 February 1995, ETS 157, Art. 16.

¹²⁵ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 2.

¹²⁶ *Ibid.*

¹²⁷ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 3.

¹²⁸ European Commission against Racism and Intolerance (ECRI), Second report on Serbia, Cycle IV, 31 May 2011.

46 acteristics. Article 26 declares that foreigners and stateless persons who are in Ukraine on legal grounds enjoy the same rights and freedoms and also bear the same duties as citizens of Ukraine, with the exceptions established by the Constitution, laws or international treaties of Ukraine.

The *Law on Principles of Prevention and Combating Discrimination in Ukraine* elaborates upon the Constitutional provisions regarding non-discrimination. It prohibits direct and indirect discrimination and considers oppression (harassment), defined as a form of treatment that is degrading or creates a tense, hostile or offensive atmosphere, as a form of discrimination. Article 8 of the Law stipulates that all draft laws and by-laws should be examined in respect of compliance with non-discrimination standards. The Cabinet of Ministries Resolution No. 61, dated 30 January 2013, prescribes that such examination should be carried out by the legal department of the State body that is drafting the legislation.

Regarding IDPs, the *Law on ensuring rights and freedoms of internally displaced persons* declares in Article 14 that IDPs shall enjoy the same rights and freedoms as other citizens of Ukraine, foreigners and stateless persons who have permanent residence in Ukraine; discrimination of IDPs on the basis of their displacement is prohibited. At the same time, however, the IDP Law itself contains provisions that are discriminatory towards IDPs and results in their stigmatization. For example, the enjoyment of some rights is guaranteed to registered IDPs only (Article 7), and IDPs have some specific obligations that are not typical for other citizens, e.g. the obligation to not be absent for more than 60 days from their registered new place of residence (Article 12).

Additional regulations that are discriminatory towards IDPs appear in by-laws. For example, CMU Resolution No. 79 of 4 March 2015 amended the registration procedure for IDPs to introduce significant control by the State Migration Service over the place of residence of IDPs. Specifically, officials of the State Migration Service were authorized to inspect the houses of IDPs for the purpose of verifying IDPs' addresses. Such inspections had to cover at least ten per cent of registered IDPs every month. According to CMU Resolution No. 79, an IDP's certificate could be revoked if the inspection by the State Migration Service, in cooperation with the Ministry of Interior, did not verify the IDP's address.¹²⁹ These regulations were discriminatory towards IDPs: no other persons in Ukraine who are not IDPs must prove that their registered place of residence

¹²⁹ Even if amendments to the IDP Law are introduced on this point, as the problem described arises rather from the Cabinet of Ministers Resolution, changes in the IDP Law will not automatically result in a cancellation of this rule; the by-law itself will need to be amended.

and factual address are the same and no other Ukrainian citizen can be deprived of registration of residence based on a motion of the State Migration Service, at least not without a court judgement. (*For more on IDP Registration, see the chapter on Data Collection.*) Another example of legislation that is discriminatory towards IDPs is CMU Resolution No. 509 dated 1 October 2014 (with amendments of 26 August 2015) which specifies in paragraph 3 that an application for an IDP certificate is contingent upon a declaration of not having committed, individually or jointly, any crime.¹³⁰ The *State Program on support, social adaptation and reintegration of IDPs* is another example of national policy and legislation that, however good its intended overall aim, contains discriminatory elements, namely that IDPs are considered in this State Program as persons who need specific training to be more “patriotic” (*see chapter on Awareness and Training*).

Regulations in the banking sphere contain a number of provisions that are discriminatory towards IDPs. The Resolution of the Board of the National Bank of Ukraine No. 699 *on application of certain norms of currency legislation during the temporary occupation of the territory of the free economic zone of Crimea*, dated 3 November 2014, stipulates that citizens whose place of residence is registered in Crimea should be treated in the banking sphere as non-residents.¹³¹ As a consequence, numerous restrictions and limitations in the banking sphere are applied to Crimeans, including all those who are IDPs. For example, they are not allowed to receive payments from residents, they must prove the origin of their money in order to be able to deposit into a bank account, they cannot purchase foreign currency, and so on. On 16 December 2014 Resolution No. 699 was amended, with a new rule providing that citizens with Crimean residence are not considered as non-residents provided that they provide a certificate of registration as IDPs. This amendment appears to be even more discriminatory when considered in combination with the rules of IDP registration summarized above. Limiting access by IDPs to their bank account (*see the chapter on Property and Possessions*) and limiting the choice of bank for the transfer of IDP social pay-

¹³⁰ In contrast, international standards on internal displacement are affected only by rules of international criminal responsibility, that is, in the case of serious international crimes. Specifically, Principle 1(2) of the *Guiding Principles on Internal Displacement* provides: “These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.”

¹³¹ This Resolution has been challenged in court by about a dozen lawsuits. Most were dismissed in the first instance and only a few reached the Supreme Administrative Court of Ukraine. Part of the Resolution was cancelled by the Kyiv Appellate Administrative Court on 1 September 2015, but this judgment was quashed by the Supreme Administrative Court of Ukraine on 24 December 2015, and the case has been remanded for fresh examination to the court of the first instance. The Resolution of the National Bank thus remains valid.

48 ments (*see the chapter on Employment and Social Protection*) are other cases of discrimination.

Voting rights is another area where IDPs are discriminated. Although the IDP Law reaffirms the right of IDPs to vote in elections, in practice, IDPs are unable to participate in local elections (*see chapter on Electoral Rights*).

There also are regulations that discriminate against particular groups of IDPs. For example, a moratorium on debt payments in mortgages is stipulated for IDPs from the Autonomous Republic of Crimea (Article 14 of the *Law on creation of free economic zone "Crimea" and on particularities of economic activities in the temporary occupied territory of Ukraine*) and from the Government-declared "counterterrorist zone" (Article 2 of the *Law on temporary measures for the period of the counterterrorist operation*). However, the *Law on creation of free economic zone "Crimea"* specifies that these provisions do not apply to IDPs from the city of Sevastopol. Meanwhile, IDPs from the counterterrorist zone also enjoy the right to temporarily miss payments on banking credits other than mortgages; however, there are no such provisions for IDPs from Crimea and the city of Sevastopol. These examples evidence a territorially based discrimination.

There is also differential treatment of IDPs due to the different reasons for their displacement. In addition to the IDPs due to the conflict that began in 2014, Ukraine historically has experienced internal displacement as result of other causes including disasters of human origin such as the nuclear explosion at Chernobyl in 1986, natural disasters such as floods, and development-induced displacement, for example as a result of dam construction. Although IDPs from Chernobyl, from natural disasters and from the conflict may require different treatment due to the cause of their displacement and its duration, in law, policy and practice they frequently are treated differently without reasonable grounds. Moreover, the IDP definition contained in the IDP Law excludes the possibility of internal displacement due to development, which is covered by international standards (*see chapter on Definition*).

In summary, IDPs in Ukraine face direct and indirect discrimination in several ways, a number of which are grounded in legislation that is discriminatory, if not in intent then in effect. This is the case notwithstanding the fact that non-discrimination is a principle that is well-established in national legislation.

D. Recommendations

- Reaffirm the principle of non-discrimination and include in all draft laws and bylaws regarding internal displacement special regulations for an anti-discrimination review involving not only the legal department of the Government office concerned but also the Ombudsman and civil society in such reviews (amending CMU Resolution No. 61 of 30 January 2013 accordingly);
- Revoke legal provisions that limit access to rights only to registered IDPs, including revoking such limitations from Article 7 of the *Law on ensuring rights and freedoms of internally displaced persons*;
- Revoke legal provisions, that stipulate spot-check inspections of IDPs' houses by governmental bodies, except in cases that concern examination of IDPs' eligibility to receive social benefits;
- Revoke legal provisions that refer to IDPs as "non-residents";
- Revoke the legal requirement to declare innocence of a crime or a joint crime in order to register as an IDP;
- Adopt amendments to legislation in order to grant to persons whose registered place of residence is on occupied territory or in the counterterrorist zone the right to receive any State service at any place within the territory of Ukraine, irrespective of their registered place of residence;
- Eliminate unreasonable territorially-based differentiation of legislative guarantees granted to IDPs from the Autonomous Republic of Crimea, City of Sevastopol, and zone of counterterrorist operation (e.g. regarding debt moratorium on banking credits, etc.);
- Amend electoral legislation to ensure that IDPs can fully exercise their right to participate in local elections;
- Remove legal barriers in access to banking services for IDPs from the Autonomous Republic of Crimea and the City of Sevastopol (i.e. amend the Resolution of the Board of the National Bank of Ukraine No. 699 *on application of certain norms of currency legislation during the temporary occupation of the territory of the free economic zone of Crimea*) and ensure repayment to all IDPs of their banking deposits, including fixed-term deposits;
- Appoint a national institution, such as the Ombudsman, as responsible for systematically monitoring and reporting to Parliament on State laws, policies and practices that are discriminatory towards IDPs and recommending anti-discrimination measures to prevent and address identified discrimination against and stigmatization of IDPs.

4. DATA COLLECTION RELATING TO IDPS

Accurate information on the number, location, and condition of IDPs is essential to effectively implementing legislation, policies and programs addressing the specific concerns of IDPs. It can also be instrumental in ensuring that adequate resources are targeted to the needs of IDPs. A Government's collection of such data is considered a core benchmark of national responsibility for addressing internal displacement. The collection of relevant data on IDPs (including numbers, location, specific needs and vulnerabilities of IDPs) should take place from the time of displacement and should be updated on a regular basis to ensure that the data collected remains accurate. Data should be disaggregated, at minimum by sex and age.

Minimum essential element of State regulation:

Establish systems for the relevant and private collection of data relating to internal displacement.

A. International normative framework

The *Guiding Principles* do not explicitly refer to the need to establish systems for the collection and protection of relevant data on IDPs. However, at least basic information on internally displaced populations is instrumental to operationalizing the *Guiding Principles*. In order to assist and protect IDPs as well as ensure that their specific needs are addressed, it is essential to have data, at a minimum, on the number and location of IDPs and their needs. Indeed, data collection is one of the twelve benchmarks of national responsibility for addressing internal displacement.¹³²

Data on IDPs should be disaggregated by age, gender and other key demographic indicators as well as other information including whether IDPs are staying in camps, with host families or on their own, so that assistance can be effectively targeted and the specific needs of particular groups of IDPs addressed. Data should encompass IDPs from the different causes mentioned in the IDP definition, including armed conflict as well as disasters. Moreover, information is needed not only on IDPs in emergency situations but also those in a protracted situation of displacement. Further, a Government is expected to make efforts to collect infor-

¹³² *Framework for National Responsibility*, pp. 14–15.

mation about all IDPs in the country, including those in territories not under the effective control of the Government.¹³³

Data protection safeguards are essential. The Framework emphasizes that data collection efforts should not in any way jeopardize IDPs' security, protection, and freedom of movement. Particular sensitivity is needed to the situation of IDPs "who may be fearful of making themselves known and may see little incentive to do so, or who do not have proper documentation." Moreover, "[w]hether or not IDPs participate in data collection surveys or other administrative initiatives (including registration processes) has no bearing on their legal entitlements to enjoy the protection and assistance of their Government."¹³⁴

IDP registration may be one of several methods by which such data can be collected and maintained. It is important to underline that "registration procedures should always be tied to specific and concrete goals, meaning that displaced persons should be registered not as IDPs per se but rather as IDPs entitled to receive specific benefits [...] such as food assistance, medical care, waiver of school fees, or entitlement to stay in a camp."¹³⁵ In certain limited circumstances, registration may be useful to improve response by "facilitating the issuing of temporary replacements for personal documentation lost during flight."¹³⁶ However, it is important to emphasise that "registration should not become the basis for creating a new legal category of persons with IDP status. Overly bureaucratic registration procedures or the creation of a legal IDP status are not only unnecessary but also raise significant protection concerns."¹³⁷ Moreover, lack of registration would not deprive IDPs of their entitlement under human rights and international humanitarian law.¹³⁸

Guidance on the issue emphasizes that any national authorities who decide to undertake IDP registration should ensure the following:

- "Procedures are transparent, non-discriminatory, known and accessible to all IDPs and swift so that access to particular benefits linked to registration is not delayed;
- Criteria for registration are clear, non-discriminatory and do not exclude individuals or groups of IDPs in line with the Guiding Principles:

¹³³ *Ibid.*

¹³⁴ *Ibid.*

¹³⁵ *Manual for Legislators and Policymakers*, p. 14.

¹³⁶ *National Instruments on Internal Displacement: A Guide to their Development* (IDMC, Norwegian Refugee Council, and Brookings Institution, 2013), p. 29.

¹³⁷ *Manual for Legislators and Policymakers*, p. 14.

¹³⁸ *Annotations to the Guiding Principles*, p. 5.

- Procedures include all IDPs, including those in remote or inaccessible areas and those who are less visible, for example because they are not living in camps;
- The process does not create protection risks for the displaced population;
- Those without documentation are not excluded from registration, but rather are provided with the documents needed to register;
- Any information collected is protected and its confidentiality ensure in order not to expose IDPs to further risks.”¹³⁹

It also should be emphasised that IDP data needs to be maintained in a confidential and secure manner in order to ensure the privacy of IDPs.

B. Council of Europe standards

The Committee of Ministers’ Recommendation (2006)⁶ and Explanatory Memorandum only mention the need to collect information on IDPs in relation to property, suggesting that States set up a system of registration of property to facilitate repossession by IDPs.¹⁴⁰

C. Analysis of national legislation

Initially, due to absence of legal regulations and a designated agency, data on internal displacement was collected in Ukraine by the Ministry of Social Policy and State Emergency Services in a rather unorganized manner, in paper files without any electronic registries. Only in October 2014 did the Government regulate data collection on IDPs. It would have been a logical first step to adopt a law on IDPs that would create an overall framework for IDP protection, including data collection, and only then to pass by-laws with specific regulations, but due to the lack of coordination between the governmental agencies in Ukraine, events happened in the reverse order. First, on 1 October 2014 the Cabinet of Ministers adopted the *Resolution No. 509 on registration of internally displaced persons* that established the registration procedure. Only following this, on 20 October 2014, did the *Verkhovna Rada* (Parliament) of Ukraine pass the *Law on ensuring rights and freedoms of internally displaced persons* stipulating the general framework on IDPs, including the basic rules for data collection on IDPs. Subsequent-

¹³⁹ *National Instruments on Internal Displacement*, p. 30.

¹⁴⁰ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)⁶, CM(2006)36 Addendum, 8 March 2006, para. 10.

ly, on 4 March 2015, the Cabinet of Ministers adopted Resolution No. 79 that amended the Resolution No. 509 to set out more specific (and more discriminatory) rules for registration of IDPs. *Law No. 921 on amending some laws regarding strengthening guarantees of ensuring rights and freedoms of internally displaced persons* as of 24 December 2015 introduced changes to the IDP Law, including new procedures for data collection and issuance of IDP certificates.

IDP database

The *Law on ensuring rights and freedoms of internally displaced persons* provided that a consolidated informational database on IDPs be created for the purpose of registration of IDPs.¹⁴¹ The IDP Law further provides that the creation, maintenance and access procedures for the database be regulated by a separate legal act of the Cabinet of Ministers of Ukraine (CMU). However, the CMU has not yet adopted any legal act that would comprehensively regulate this database. In order to meet the international standards on IDP protection, the IDP database should be created as soon as possible and its work should be comprehensively regulated by the CMU. The CMU should also clearly state in this by-law the purpose of the data collection. Moreover, it should be specified that the database should include not only IDPs from Crimea and Eastern Ukraine, but also other potential internally displaced populations.

The IDP Law also, but very vaguely, stipulates institutional responsibilities for the development and maintenance of the comprehensive database on IDPs. It states that “a central body of executive power that relates to the development and realization of state policy in the field of employment, labour migration, social protection, delivering social services to the population, volunteer activities, questions of family and children, rehabilitation and recreation of children, as well as protection of rights of persons deported based on their nationality that returned to Ukraine” shall be responsible for ensuring the development and maintenance of the IDP database.¹⁴² Perhaps the “central body” referred to by the Law connotes the Ministry of Social Policy of Ukraine; however, it is entirely unclear in the IDP Law. The above-mentioned *CMU Resolution No. 509 on registration of internally displaced persons*, adopted in October 2014, mentions explicitly that the Ministry of Social Policy of Ukraine is responsible for the comprehensive database on IDPs. Further amendments to the IDP Law are needed to align these two pieces of legislation and thereby bring clarity to this question. Additionally,

¹⁴¹ *Law on ensuring of rights and freedoms of internally displaced persons*, Art. 4–1.

¹⁴² *Ibid.*

54 a separate by-law is needed to regulate the duties and obligations of the authority that manages the database.

While the Ministry of Social Policy is responsible for developing and managing the database on IDPs, the participation of other agencies is essential to actually provide and insert the required data on IDPs into the database.¹⁴³ According to the IDP Law, the departments of social protection of population of the local state administrations are to insert information into the IDP database.¹⁴⁴

The IDP law specifies that the following information should be entered into the database: the full name of the IDP; citizenship; place of birth; gender; identification document; number of IDP certificate including the date of its issuance and the name of the issuing authority; information about the IDPs' last place of residence on the territory prior to displacement; information about place of actual residence after displacement; address and phone number for communication; information about social, medical, educational and other needs; and information about any received monetary assistance.

According to *CMU Resolution No. 509 on registration of internally displaced persons*, State bodies and local governments are entitled to receive data about IDPs free of charge from the IDP database (para. 11). While there are no specific procedures stipulated for transferring such data, it is mentioned that data sharing shall be in line with data protection laws. *Law No. 921 on amending some laws regarding strengthening guarantees of ensuring rights and freedoms of internally displaced persons* also provides that data on IDPs can be exchanged among various State registries. However, again, no procedures for regulating the exchange of such information nor for guaranteeing data protection are specified.

Moreover, the terms related to data collection need to be harmonized in the IDP Law. While the Law mostly uses the term “data collection” (“*oblik*” in Ukrainian), in some articles the term “registration” is used. For example, Article 7 stipulates the rights only of “*registered IDPs*” to employment. Such use of terms creates a separate category of “*registered IDPs*” compared with unregistered IDPs, and from the way the Law is written, it is wrongly suggested that registered IDPs are entitled to certain rights to which non-registered IDPs are not entitled. This terminological inconsistency could potentially create a risk of the violation of rights. It should be corrected through amendments to the IDP Law.

¹⁴³ *Ibid.*, Art. 11(3).

¹⁴⁴ *Ibid.*, Art. 11(8)(7).

IDP certificate

To register as an IDP in Ukraine, a person should submit an application to the local office that provides social protection. Together with the application a person should submit an identification document, providing documentary evidence of their place of residence prior to displacement. An IDP certificate shall be issued on the day of application.¹⁴⁵ According to the amendments introduced on 24 December 2015, if a person has no identification document that proves a place of residence, he or she can submit any other documentary evidence that proves their place of residence prior to displacement.¹⁴⁶ Such documentary evidence can be a military certificate with information about military service, an employment record, documents that prove ownership of property, medical documents, photographs or video recordings.

According to the regulation of the Cabinet of Ministers of Ukraine as of 1 October 2014 № 509, after the IDP certificate is received, it has to be validated by the State Migration Service. Further details about validation of the IDP certificate are given later in this chapter.

An application for an IDP certificate can be rejected if there are no circumstances that caused internal displacement, if a person gave false personal information in the application, or an applicant lost identification documents.¹⁴⁷ In case of loss of an identification document, a person should request a temporary ID from the local office of the State Migration Service, which should be provided in one day.¹⁴⁸ (*See also chapter on Civil Documentation.*)

Initially, the *Law on ensuring rights and freedoms of internally displaced persons* stipulated that an IDP certificate is valid for six months, and afterwards could be extended for another six months. With adoption on 24 December 2015 of the *Law on amending some laws regarding strengthening guarantees of ensuring rights and freedoms of internally displaced persons*, IDP certificates now are issued without temporal limits on their validity. However, the by-law that stipulates registration of IDPs has not yet been harmonized with the new amendments; it still stipulates that an IDP certificate is valid for six months with the possibility of extension.¹⁴⁹ Moreover, the amendments to the IDP Law neither clarified whether

¹⁴⁵ *Law on ensuring of rights and freedoms of internally displaced persons*, Art. 4(7).

¹⁴⁶ *Law on amending some laws regarding strengthening guarantees of ensuring rights and freedoms of internally displaced persons*, para. 1 (2) (4).

¹⁴⁷ *Law on ensuring of rights and freedoms of internally displaced persons*, Art. 4(10).

¹⁴⁸ *Resolution of the Cabinet of Ministers of Ukraine No. 509 on registration of internally displaced persons*, para. 4.

¹⁴⁹ *Resolution of the Cabinet of Ministers of Ukraine No. 509 on registration of internally displaced persons*, para. 6.

56 previously issued IDP certificates will remain valid after their expiration date, nor stipulated a procedure for exchanging previously issued certificates for ones with no expiration date. This has caused a situation where thousands of IDPs with expired IDP certificates cannot renew them. This situation must be resolved urgently. Doing so would simply require clarifying the respective procedures in the final provisions of the IDP Law and aligning the by-law with these.

The IDP Law contains other provisions that may limit the validity of the IDP certificate. In particular, the IDP certificate can be revoked if a person is absent from his place of residence for more than 60 days, or in some cases for 90 days.¹⁵⁰ It would be appropriate to amend this provision, adding that in some cases the term of 90 days can be extended, depending on the circumstances of a particular case.

More fundamentally, and contrary to international norms and guidance, the IDP certificate in use in Ukraine in effect creates a legal IDP status, with repercussions for IDPs' enjoyment of their rights under national legislation. According to the current regulations, for IDPs to receive their entitlements to pensions, compulsory state social insurance against unemployment due to temporary disability, and against accident and occupational diseases that caused disability, as well as other social assistance that some categories of Ukrainian citizens are entitled to (e.g. persons with disabilities, children with disabilities, pensioners etc.), an IDP certificate is required. An IDP certificate also is required in order for IDPs to register their children in kindergartens and schools, to access hospitals or to exercise voting rights. Moreover, according to discriminatory provisions of the *Law on creation of free economic zone "Crimea" and on particularities of economic activities in the temporarily occupied territory of Ukraine* adopted on 12 August 2014, IDPs from Crimea are not able to open a bank account unless they provide an IDP certificate.¹⁵¹ In other words, the IDP certificate in Ukraine does not serve a humanitarian purpose but rather is designed to fit the old-fashioned legislative framework that require all persons residing in Ukraine to register their residence address to access basic rights and services.

Registration of place of residence

Once the IDP certificate is received, a person is required to register their address of residency with the State Migration Service. Registration of the residence address is obligatory for IDPs, as it is for all other citizens of Ukraine and foreign-

¹⁵⁰ *Law on ensuring of rights and freedoms of internally displaced persons*, Art. 12.

¹⁵¹ *Law on creation of free economic zone "Crimea" and on particularities of economic activities in the temporary occupied territory of Ukraine*, Art. 5.3.

ers as well as for stateless persons who reside legally in Ukraine.¹⁵² Usually in Ukraine, an official stamp indicating the individual's address in her or his internal passport serves as official registration of a person's residency address.

Although according to Article 2 of the *Law on freedom of movement and free choice of place of residence in Ukraine*, absence of the registered address should not affect a person's access to their rights, in practice, the requirement of the registration stamp creates obstacles in accessing basic rights for many persons in Ukraine. It especially affects IDPs, as the IDP certificate is not valid without the registration stamp.¹⁵³ Moreover, the new rules of registration of IDPs, set out in *Resolution No. 79*, make it even more difficult for IDPs to obtain a residency registration stamp. In order to register residence, an IDP is required to report their factual address to the local office of the State Migration Service within 10 days of receiving an IDP certificate, or 10 days after changing their address. After the address is reported, the local office of the State Migration Service has to verify if an IDP resides there. For this purpose, officials of the State Migration Service are entitled to inspect the houses of IDPs. Only after such an inspection can an IDP receive the stamp in their IDP certificate, which is essential to validate it.¹⁵⁴

Another barrier to IDP registration is connected with taxation issues for rental property. Specifically, IDPs who are renting property from landlords are under pressure from their landlords not to register as IDPs as doing so would impose tax obligations on the landlord for rental income. In addition to impeding IDPs from registering as such, this leaves IDPs highly vulnerable to exploitative rent increases and to arbitrary eviction.

D. Recommendations

- Repeal all legislation and procedures that have the intent or effect of making, for IDPs and other civilians from the conflict areas, access to rights and entitlements (e.g. pensions) that are provided for by law conditional upon their registration as IDPs. In other words, IDP status should be delinked from access to rights and entitlements (e.g. pensions) that are provided for by law.
- Adopt the Cabinet of Ministers of Ukraine Resolution that regulates the creation and operation of and access to the comprehensive database on internally displaced persons. The purpose of data collection should be explicitly stated and the database should include all types of IDPs.

¹⁵² *Law on freedom of movement and free choice of place of residence in Ukraine*, Art. 6.

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

- Harmonize the *Law on ensuring rights and freedoms of internally displaced persons* and the Cabinet of Ministers of Ukraine *Resolution No. 509 on registration of internally displaced persons* to clearly specify which State agency is responsible for the development and management of the comprehensive database on internally displaced persons.
- Amend the *Law on ensuring rights and freedoms of internally displaced persons* and the Cabinet of Ministers of Ukraine *Resolution No. 509 on registration of internally displaced persons* to stipulate procedures for sharing data from the IDP database and to ensure data protection.
- Amend the *Law on ensuring rights and freedoms of internally displaced persons* to explicitly affirm that absence of an IDP certificate does not prevent IDPs from accessing basic rights and services.
- Amend the *Law on ensuring rights and freedoms of internally displaced persons* to add the provisions regarding the procedures of renewal of validity of expired IDP certificates that were issued before the adoption of the *Law No. 921 on amending some laws regarding strengthening guarantees of ensuring rights and freedoms of internally displaced persons* as of 24 December 2015.
- Amend Article 12 of the *Law on ensuring rights and freedoms of internally displaced persons* IDP law to specify that in some cases IDPs are allowed to be absent from a place of factual residence for more than 90 days, depending on their particular circumstances.
- Harmonize the terms related to IDP data collection in the IDP Law and related by-laws.
- Amend the Cabinet of Ministers of Ukraine *Resolution No. 509 on registration of internally displaced persons* to ensure that the absence of a residency registration stamp in an IDP certificate does not make an IDP certificate invalid.
- Harmonise existing laws and by-laws to enable IDPs to register their residency following the general procedure, without creating a distinct category for IDP residency registration which can become a discriminatory measure.
- Amend the Tax Code of Ukraine to exempt landlords who are renting to IDPs from income tax on this rental income, as absent this exemption IDPs are unable to register as IDPs and are highly vulnerable to arbitrary rental price hikes and to eviction.
- Amend the Cabinet of Ministers of Ukraine *Resolution No. 509, Resolution No. 637* and other by-laws to bring them in compliance with the current version of the *Law on ensuring rights and freedoms of internally displaced persons*.

5. RECOGNITION, ISSUANCE, AND REPLACEMENT OF CIVIL DOCUMENTATION

The ability of people to exercise many of their rights typically is contingent on their being able to produce identity documents such as a birth certificate, official identity card, passport, marriage certificate, and so on. However, in the course of displacement, it is common that these documents are lost, destroyed or even confiscated from IDPs. Some IDPs may never have possessed such documents even prior to displacement. During displacement, getting these essential documents (re)issued can be difficult due to legal or administrative obstacles, cost, or distance. Without documentation IDPs are likely to face difficulties accessing essential services such as education, health care and social services and likely will be unable to exercise certain rights, including the right to vote. They also may face difficulties in freedom of movement or challenges working in the formal sector or in renting an apartment and opening a bank account.

Minimum essential elements of State regulation:

Establish institutional mechanisms and facilitated procedures for issuing, or re-issuing, essential documentation to IDPs through facilitated procedures, including use of official records and alternative forms of evidence available to IDPs.

Ensure that, when appropriate and necessary, the issuance of IDP cards for purposes of identification and access to specific assistance is carried out in a rapid and accessible process.

A. International normative framework

Based on international human rights law and international humanitarian law, Principle 20 of the *Guiding Principles on Internal Displacement* affirms that “[e]veryone has the right to recognition everywhere as a person before the law” and elaborates:

To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates, and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one’s area of habitual residence in order to obtain these documents.

60 Women and men have equal rights to obtain such documents and have the right to have such documentation issued in their own name.¹⁵⁵

Specifically in the case of occupied territories in international armed conflict, Article 50(2) of Geneva Convention IV provides: “the Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage.”¹⁵⁶ International case law has elaborated that the responsibility of the Occupying Power includes the registration of births, deaths and marriages.¹⁵⁷

B. Council of Europe standards

The CoE Recommendation on IDPs reflects the content of Guiding Principle 20, adding that documents necessary for the effective exercise of IDPs’ rights should be issued “as soon as possible” following their displacement.¹⁵⁸ The Explanatory Memorandum explicitly refers to Guiding Principle 20 and underlines the link between access to documents and the exercise of several rights such as the right to education and the right to vote. (*See chapters on Education and on Electoral Rights.*) To facilitate the issuance or replacement of documents, the Memorandum suggests practical measures including to “recognise *de facto* addresses for the issuing of documents or [...] waive the cost of documents, if this is what prevents effective access to them” and to create specific institutions or “dislocated offices” (in areas of displacement) to facilitate issuance of these documents.¹⁵⁹

In terms of case law, potentially relevant to the problem IDPs face obtaining documentation in NGCAs is the European Court of Human Rights Chamber Judgment of 23 February 2016 in *Mozer v. the Republic of Moldova and Russia* (Ap-

¹⁵⁵ *Guiding Principles on Internal Displacement*, Principle 20. See also *Annotations to the Guiding Principles*, pp. 92–95.

¹⁵⁶ Geneva Convention IV, Article 50(2).

¹⁵⁷ International Court of Justice, *Legal consequences for States of the continued presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, 21 June 1971 (available at <http://www.icj-cij.org/docket/files/53/5595.pdf>). See, in particular, para. 125 noting: “the non-recognition of South Africa’s administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international cooperation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory.”

¹⁵⁸ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 7.

¹⁵⁹ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 7.

plication no. 11138/10), which underlines the need to avoid a vacuum in the system of human rights protection. It has thus pursued the aim of ensuring that ECHR rights are protected throughout the territory of all Contracting Parties, even on territories effectively controlled by another Contracting Party, for instance through a subordinate local administration.¹⁶⁰

In the case of *Loizidou v. Turkey*,¹⁶¹ the Court noted that the concept of “jurisdiction” in Article 1 was “not restricted to the national territory” of the Contracting States. In addition, the Court stated: “... the responsibility of Contracting Parties can be involved because of acts of their authorities, whether performed within or outside national boundaries, which produce effects outside their own territory. Bearing in mind the object and purpose of the Convention, the responsibility of a Contracting party may also arise when as a consequence of military action – whether lawful or unlawful – it exercises effective control of an area outside its national territory.” In the case of *Cyprus v. Turkey*,¹⁶² the Court has explained that “any other finding would result in a regrettable vacuum in the system of human-rights protection in the territory in question by removing from individuals there the benefit of the Convention’s fundamental safeguards.”

In the case of *Kurić v. Slovenia*, the Court considered eight applications alleging, inter alia, violations of Article 8 of the Convention due to the alleged arbitrary deprivation of the applicants’ permanent resident status after Slovenia declared independence.¹⁶³ Prior to the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY), the applicants had been citizens of various SFRY republics and permanent residents of the republic of Slovenia. After Slovenia declared independence, it enacted new citizenship legislation providing, inter alia, that citizens of former SFRY republics who failed to apply in a timely manner for Slovenian citizenship would become aliens. Once the citizenship deadline passed, the Slovenian government issued instructions stating that the legal status of persons who had not applied for citizenship must be “regulate[d]” and that records would need to be cleared out. Individuals whose names were subsequently removed from the Register of Permanent Residents received no notice and no official documents. As a result of these steps, 18,305 individuals – including 5,360 minors – lost their permanent status. These individuals became known as “the erased.” The erased became “aliens or stateless persons illegally residing

¹⁶⁰ ECtHR, *Mozer v. the Republic of Moldova and Russia*, Application no. 11138/10, judgment of 23 February 2016, para. 136.

¹⁶¹ ECtHR, *Loizidou v. Turkey (Preliminary Objections)*, Application no. 15318/89, judgment of 23 March 1995.

¹⁶² ECtHR, *Cyprus v. Turkey*, Application no. 25781/94, judgment of 10 May 2001.

¹⁶³ ECtHR, *Kurić v. Slovenia*, Application no. 26828/06, judgment of 26 June 2012.

62 in Slovenia.” They had difficulty finding employment, obtaining driving licenses, and securing pensions. They could not leave the country, as they would not be allowed to re-enter without valid papers. Families were thus divided, with some members effectively trapped in Slovenia and other members residing in other former SFRY republics. The Court held that there had been a violation of Article 8 of the Convention. Several judges of the Court noted that Slovenia’s citizenship policies constituted a “legalistic attempt at ethnic cleansing,” designed to keep citizens of other SFRY republics out of Slovenia.

Other institutions and bodies of the Council of Europe have stressed the need to protect IDPs by ensuring the recognition of their status and issuing or replacing their civil documentation, often directly linked to their access to their human rights, including social rights.

C. Analysis of national legislation

The following analysis concerns the procedures of issuing or re-issuing civil documentation. Issuance of IDP certificates for registered IDPs are addressed in another chapter of this study (*see the chapter on Data Collection*).

According to Article 6 of the *Law on ensuring rights and freedoms of internally displaced persons*, IDPs have the right “to issuance of documents that prove Ukrainian citizenship, identify a person or his/her special status.” The State Migration Service and its territorial bodies are responsible for implementation of this provision.¹⁶⁴

Generally, Ukraine has a system of several disjointed electronic registers as concerns of civil documentation, which had been in place for several years prior to the conflict. Under this system, people are able to request reissuance of lost documents in any region of Ukraine, regardless of their place of residence.

The Unified State Demographic Register was established and functions according to the *Law on the Unified State Demographic Register and documents that prove citizenship of Ukraine, identity persons or their special status* adopted in 2012. It is a centralized electronic database for storage, processing, operating and transferring of personal information and of the documents that are created with the Register. In accordance with Article 7 of the Law, the Register contains a range of personal data including name, date of birth or death, place of birth, sex, information about parents, information about citizenship, details of the documents is-

¹⁶⁴ *Law on ensuring of rights and freedoms of internally displaced persons*, Art. 6.

sued to the person, digitized sample of the signature, digitized photo, some additional variable information (registered residence, family status) and so on. The personal data included in the Register is based on official documents issued or reissued after the establishment of the Register in 2012. Among the official identification documents issued according to the Law are internal passports of citizens of Ukraine, passports of citizens of Ukraine for travelling abroad, seafarer identity cards, driver's licences, and so on.

The State Registry of citizens' civil status acts was created according to the *Law on state registration of civil status acts*. It is a database managed by the Ministry of Justice, that contains information about civil status acts, namely regarding an individual's registered birth, origin, marriage, divorce, change of name, and death. The State Registry of citizens' civil status acts contains comprehensive information since 2008; official data collected prior to its establishment is currently being added to it. An individual has a right to receive an excerpt or duplicate copy from the State Registry of her or his civil status acts; the fee for such an excerpt or duplicate copy currently is 73 UAH (about 3 Euro). The relevant rules are provided in *CMU Resolution No. 1064 on adoption of the Rules of maintenance of the State Register of citizens' civil status acts* dated 22 September 2007 (with amendments).

Per the above, all persons, including IDPs, whose data are contained in electronic State registers can fairly easy request the reissue of a lost document. The rules regarding internal passports issued prior implementation of the Unified State Demographic Register are more paper-dependent. However, the procedure for reissuing lost internal passports is well established and not difficult. Per Article 6, paragraph 1 of the *Law on ensuring rights and freedoms of internally displaced persons*, IDPs can request re-issuance of their internal passport and other documents that identify the person and prove their citizenship of Ukraine at any office of the State Migration Service at the place of their factual residence. According to Article 5, paragraph 6 of Article 5 of the *Law on ensuring rights and freedoms of internally displaced persons*, the public authorities have the right to use information from relevant state registers (including the State Register of Voters) for verification of information that concerns IDPs.

The various above mentioned procedures for reissuance of IDPs' official documentation concern official documents that were issued by State bodies prior to the conflict and which have become lost or destroyed. For some IDPs, in particular Roma, it may be that they never had such documents prior to displacement,

placing them at a particular disadvantage in accessing State programs, including those for IDPs, and placing them at heightened risk of statelessness.

Currently a major complication for the State Migration Service of Ukraine in renewing documents of IDPs is the identity verification procedure after the loss of government records and physical identity documents in NGCA areas.

Moreover, there is also the issue of documents to confirm new facts or changes in civil status (e.g. birth, origin, marriage, divorce, change of name, death) which have taken place after the beginning of the conflict and of the Government losing effective territorial control over some areas of the country. According to the *Law on guaranteeing rights and freedoms of citizens and the legal regime on the temporary occupied territory of Ukraine*, any act (decision, document) issued by the bodies and/or officials which administer Crimea contrary to legislation of Ukraine is automatically invalid and without legal consequences (Article 9). There are no legal provisions in place in Ukraine that allow the recognition of any documents issued in Crimea as valid. The only way for children born after the beginning of the conflict and in the territories that are not under Ukraine's control to receive a birth certificate is to request the Ukrainian court to establish the fact of the birth of a Ukrainian citizen and to issue a birth certificate. Once the fact of the birth is established by the court, parents can obtain a birth certificate in any department of citizens' civil status. The same lengthy procedure is required to establish the fact of a death in Crimea and to obtain a death certificate.

To address such cases, on 22 September 2015 the Cabinet of Ministers of Ukraine submitted to the Parliament a draft *Law on amendments to the Civil Procedural Code regarding an expedited process of issuance for birth and death documents of persons on temporarily occupied territories of Ukraine*. On 4 February 2016, the Parliament approved this law and on 24 February 2016 it came into force. The draft law and the newly adopted Article 257–1 of Civil Procedural Code of Ukraine simplifies the procedure of obtaining birth and death certificates through a court procedure by changing the court jurisdiction over these types of cases and allowing submission of such applications to the courts in the Government controlled areas. In the case of establishment of the fact of a birth in the temporarily occupied territories, it prescribes that any court in Ukraine, irrespective of the place of residence of an applicant, can consider such cases (para. 1.1 of Article 257–1). It also entitles the relatives of deceased persons or their representatives to apply to court for the purpose of establishing the fact of death in the temporarily occupied territories (para. 1.2 of Article 257–1). Further, it provides that any such applications should be considered by the court without delay.

Following the introduction of this new procedure to the Civil Procedural Code of Ukraine, many such appeals were sent to the courts, exacting a burden on some of them. A risk of denial of such applications also presented because of the close link with substantial rights, which can be interpreted as not reviewable under this special procedure.

It appears also appears that the changes are largely procedural and shift the burden to the courts.

There are other issues of concern with regard to court procedure for obtaining birth and death certificates. One issue is that of access to free secondary legal aid to IDPs (meaning legal assistance during court procedure). Another is the relatively high court fees (defined as approximately 275,00 UAH) which restrict many IDPs from submitting such applications.

Thus, the introduction of an administrative procedure could simplify the acceptance of birth and death certificates for IDPs, and should be closely considered.

D. Recommendations

- Intensify efforts to assist undocumented persons, including Roma, in accessing civil documentation.
- Ensure an efficient procedure for civil registration, specifically for the documentation of new-born children in Non-government controlled areas (NGCAs) as well as the recognition of the civil status of deaths. An administrative procedure could be introduced, while safeguarding the right of applicants to pursue the issue through judicial procedures if needed. Organize further public discussion between the relevant central bodies, ministries, and civil society to harmonize the practice across regions and for IDPs from NGCAs and Crimea.
- Add IDPs to the list of categories of persons with access to free secondary legal assistance under the Law of Ukraine on Free Legal Aid, and amend the Law of Ukraine on Court Fees to allow for exemptions from court fees, in particular regarding cases brought by IDPs to establish births and deaths and certain other IDP-related cases.

6. MOVEMENT-RELATED RIGHTS

Movement-related rights are critically important so that IDPs can freely and safely move during displacement, not only to seek safety but also to access essential supplies and services such as food, water, and health care, to engage in income-generating activities, to go to school, to register for essential documents, to vote, to visit gravesites of deceased relatives, and so on. Movement-related rights also are integral to IDPs being able to access a safe and voluntary durable solution to displacement. Moreover, freedom of movement is closely linked to the prohibition of arbitrary displacement (*see separate Chapter on this issue*).

Minimum essential elements of State regulation:

Recognize IDPs' right to freedom of movement, including specifically the rights to seek safety in another part of the country and to be protected against forced return to, or resettlement in, any place where their life, safety, liberty and/or health would be at risk.

Abolish administrative obstacles that may exist limiting the possibility of IDPs to reach safe areas or, when conditions allow, to return to their homes.

Recognize the right of all IDPs to make a voluntary and informed choice between return, integration at the location of displacement, or resettlement/relocation in another part of the country.

Provide for specific measures (such as humanitarian demining, re-deployment of police forces, or demobilization in return areas) to ensure safety and security for returning IDPs.

A. International normative framework

Movement-related rights are essential to all phases of displacement: protection from displacement; protection and assistance during displacement; and durable solutions to displacement. They therefore feature significantly and throughout the Guiding Principles. Before summarizing the most relevant such Guiding Principles, it must be emphasized that according to international human rights law, on which the Guiding Principles are based, restrictions on and derogations from the right to freedom of movement are permissible, although only on certain limited grounds. Specifically, in setting out the right to liberty of movement and freedom to choose one's residence, Article 12 of the ICCPR specifies that restrictions to these rights are allowed only if these are "provided by law, are necessary to protect national security, public order, public health or morals, of the

rights and freedoms of others, and are consistent with the other rights recognized in the [ICCPR] Covenant.” Similarly, the European Convention on Human Rights, under Article 15 on derogations during emergencies, permits derogations from certain rights under the Convention for limited periods of time. Such derogations can be registered with the Council of Europe, during war or other public emergencies, if they are “strictly required by the exigencies of the situation, [and] provided that such measures are not inconsistent with its [the State’s] other obligations under international law.” The European Court of Human Rights ultimately determines on a case-by-case basis if the measures taken to derogate are consistent with the State’s obligations under the Convention.

Based on established international law, Principle 6 establishes the right to be protected against arbitrary displacement (*see separate chapter on Protection from Arbitrary Displacement*). Moreover, it emphasizes that any displacement that does occur “shall last no longer than required by the circumstances.”

In a situation of displacement, movement-related rights remain essential. Principle 12, affirming the right of every human being to liberty and security of person and that no one shall be subject to arbitrary arrest or detention, specifies that in a situation of internal displacement this means that IDPs shall not be confined in or interned to a camp; if such confinement or internment is absolutely necessary and lawful, it should not be for a duration longer than that which is “required by the circumstances.”¹⁶⁵ IDPs also must be protected against discriminatory arrest and detention as a result of their displacement. Under no circumstances may IDPs be taken hostage.

More broadly, Principle 14 of the Guiding Principles affirms IDPs’ right to liberty of movement and freedom to choose her or his residence. Principle 14 goes on to specify that for IDPs this right includes the right to move freely in and out of camps or other IDP settlements.

Principle 15 further elaborates that IDPs have the right to seek safety in another part of the country; the right to leave their country; the right to seek asylum in another country; and the right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

In this latter connection, regarding return and resettlement, Principle 28(1) provides:

¹⁶⁵ In accordance with international human rights law and international humanitarian law, internment and confinement of IDPs to camps can only be an exceptional measure where absolutely necessary. ICCPR, Art. 9(1); Geneva Convention IV, Art. 78. See also *Annotations to the Guiding Principles*, pp. 58–60.

Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.

Principle 28(2) emphasizes: “Special efforts should be made to ensure the full participation of [IDPs] in the planning and management of their return or resettlement and reintegration.”

B. Council of Europe standards

The right to freedom of movement is guaranteed by ECHR Protocol No. 4, Article 2 which states: “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”¹⁶⁶ This includes the right to leave the country.¹⁶⁷ Individual or collective expulsion of nationals is prohibited and no person should be denied the right to enter the territory of the state of which s/he is a national.¹⁶⁸

As in international law, the European human rights framework allows some restrictions to the right to freedom of movement provided that these are “in accordance with the law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of public order, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”¹⁶⁹

In a situation of internal displacement, all the above-mentioned guarantees would apply. The CoE Committee of Ministers’ Recommendation on IDPs does not explicitly mention the right to freedom of movement. However, the Recommendation does contain a general recommendation that member States be guided by the UN Guiding Principles and other relevant international instruments of human rights and humanitarian law,¹⁷⁰ which do articulate the right to freedom of movement. Moreover, the CoE Committee of Ministers’ Explanatory Memorandum refers explicitly to the right to freedom of movement and the right to

¹⁶⁶ Council of Europe, Protocol 4 to the ECHR, 16 September 1963, CETS No. 046, Article 2.1.

¹⁶⁷ Council of Europe, Protocol 4 to the ECHR, 16 September 1963, CETS No. 046, Article 2.2.

¹⁶⁸ Council of Europe, Protocol 4 to the ECHR, 16 September 1963, CETS No. 046, Article 3.

¹⁶⁹ Council of Europe, Protocol 4 to the ECHR, 16 September 1963, CETS No. 046, Articles 2.3 and 2.4.

¹⁷⁰ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 1.

free choice of residence by quoting the corresponding ECHR provision, specifically, Protocol 4, Article 2.¹⁷¹

In addition, the Committee of Ministers' Recommendation on IDPs underscores that IDPs must not be sent back to areas where their life would be at risk or where they could be exposed to torture, inhuman or degrading treatment, which would be contrary to Articles 2 and 3 of the European Convention on Human Rights.¹⁷² The European Court of Human Rights, in cases concerning the principle of *non-refoulement* of refugees or asylum seekers to their country of origin, has highlighted the responsibility of States to refrain from taking actions, such as extradition, which have as a direct consequence to expose individuals to the danger of inhuman and degrading treatment.¹⁷³ A similar conclusion arguably could be drawn, by analogy, in situations of internal displacement.

In the case of *Ismoilov and others v. Russia*, a general assurance of “humane treatment” by the Uzbekistan government was not sufficient to counter the evidence from a number of objective sources (e.g. the UN Special Rapporteur on Torture) that there was systematic torture of prisoners generally and that persons, such as the applicants, who were wanted in connection with a serious disturbance aimed at the government, would be particularly at risk of torture.¹⁷⁴

In the case of *Shamayev and others v. Georgia and Russia*,¹⁷⁵ the Court held that the extradition of one of the Chechen applicants from Georgia to Russia would breach Article 3, because of the risk that ill-treatment would be inflicted upon him. He and the other applicants had been detained after crossing the Russian-Georgian border; they were armed and some were injured. The Russians alleged that they were “Chechen terrorists.” In its assessment under Article 3, the Court took into account of the following: that five extradited applicants had been held in solitary confinement in the Northern Caucasus, without access to lawyers; evidence that detainees held in “filtration camps” in the North Caucasus were ill-treated; that the Russian authorities were hampering the internation-

¹⁷¹ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, Explanatory Memorandum, preamble.

¹⁷² Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 5.

¹⁷³ ECtHR, *Cruz Varas and others v. Sweden*, Application no. 15576/89, judgment of 20 March 1991, para. 69: “In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment.” See also ECtHR, *Saadi v. Italy* [GC], Application no. 37201/06, judgment of 28 February 2008, paras. 124–133, cited in *Annotations to the Guiding Principles*, revised edition, p. 70, footnote 17. See also same decision, paras. 146 and 149.

¹⁷⁴ ECtHR, *Ismoilov and others v. Russia*, Application no. 2947/06, judgment of 24 April 2008.

¹⁷⁵ ECtHR, *Shamayev and others v. Georgia and Russia*, Application no. 36378/02, judgment of 12 April 2005.

70 al monitoring of prisoners; and that Chechens who had lodged applications with the Court had been subjected to persecution and murder.

The Committee of Ministers' Recommendation on IDPs and its explanatory Memorandum reaffirm that IDPs have the right to return voluntarily, in safety and dignity, or to resettle elsewhere in the country.¹⁷⁶ The Memorandum further emphasizes the importance of ensuring that return is sustainable, with conditions "conducive to a lasting reintegration of returnees." To this end, member States are expected to "secure the voluntary return of IDPs to their place of origin by creating an area of safety and ensuring the peaceful settlement of conflicts."¹⁷⁷ Further, "to enable the self-reliance of IDPs, competent authorities should provide adequate accommodation, health and education facilities and, as far as possible, employment opportunities."¹⁷⁸ (*See also separate chapters on shelter, health, education and employment.*)

The Committee of Ministers' emphasis that IDPs not only "should be properly informed, but also consulted to the extent possible" regarding any decision affecting their situation, prior, during and after displacement¹⁷⁹ is underscored as "particularly important" regarding reintegration and rehabilitation programmes for IDPs.¹⁸⁰ (*See also separate chapter on consultation with and participation of IDPs.*) In the European human rights framework, the freedom of movement (with a particular emphasis on return) should therefore be interpreted in such a manner as to include comprehensive assistance of the member States to the internally displaced persons, whose movement-related rights are often limited by their material situation or legal uncertainty.

The movement-related rights have been addressed more specifically by the Parliamentary Assembly. The PACE Recommendation 1877 (2009) outlines the different options for the settlement of the IDPs, all requiring the cooperation of the member States:¹⁸¹ *"The right of IDPs to make a voluntary and informed choice between three options: return to their homes, local integration at the site of displace-*

¹⁷⁶ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 12, and Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 12.

¹⁷⁷ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 12.

¹⁷⁸ *Ibid.*

¹⁷⁹ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 11.

¹⁸⁰ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 11.

¹⁸¹ PACE Recommendation 1877(2009), *Europe's forgotten people: protecting the human rights of long-term displaced persons*, 24 June 2009, para. 9.

ment, or settlement in another, safe, part of the country, must be respected.” Particularly, the “IDPs’ right to return under international humanitarian law, as well as under the freedom of movement deriving from international and regional human rights law, must be unconditionally observed and ensured by all responsible authorities.”¹⁸²

The obligation for the member States to assist the IDPs during their return or resettlement involves three important aspects. First, their safety and security must be ensured, namely in locations where landmines and other explosive ordnance were installed.¹⁸³ Second, the member States are called on to promote local reconciliation in cases where displacement was caused by a violent conflict.¹⁸⁴ Third, the PACE underlined the need for informational and legal support to the IDPs wishing to relocate.¹⁸⁵ The principle of assistance to the IDPs exercising their movement-related rights is further underlined in the PACE Resolution 2028 (2015) dedicated to the refugees and internally displaced persons in Ukraine.¹⁸⁶

Lastly, the Council of Europe Commissioner for Human Rights underlined the option of leaving the country in order to seek asylum abroad as envisaged by international law. Unlike the legally vague status of an internally displaced person, international protection provides concrete rights for all asylum-seekers. The Member States may not restrict the rights of their citizens to leave the country, which is an essential step for them to be eligible for international protection.¹⁸⁷

C. Analysis of national legislation

The Constitution of Ukraine recognizes the right to freedom of movement and specifies that it encompasses the right of everyone who legally stays in Ukraine to move freely within the country, to choose a place of residence, and to freely leave the territory of Ukraine, with the exception of cases stipulated by the law.¹⁸⁸

¹⁸² PACE Recommendation 1877(2009), *Europe’s forgotten people: protecting the human rights of long-term displaced persons*, 24 June 2009, para. 10.

¹⁸³ PACE Recommendation 1877(2009), *Europe’s forgotten people: protecting the human rights of long-term displaced persons*, 24 June 2009, para. 15.3.4.

¹⁸⁴ PACE Recommendation 1877(2009), *Europe’s forgotten people: protecting the human rights of long-term displaced persons*, 24 June 2009, para. 15.3.5.

¹⁸⁵ PACE Recommendation 1877(2009), *Europe’s forgotten people: protecting the human rights of long-term displaced persons*, 24 June 2009, para. 15.3.7.

¹⁸⁶ PACE Resolution 2028 (2015), *The humanitarian situation of Ukrainian refugees and displaced persons*, 27 January 2015, para. 14.3.

¹⁸⁷ Commissioner for Human Rights, Issue Paper by the Council of Europe Commissioner for Human Rights: *The Right to Leave a Country*, 2013, p. 31.

¹⁸⁸ Constitution of Ukraine, Art. 33.

72 On the legislative level, freedom of movement is regulated by the *Law on freedom of movement and free choice of place of residence*. Article 2 of this law guarantees freedom of movement inside the country for persons who legally stay in Ukraine, with exceptions stipulated by the law.¹⁸⁹ The law on freedom of movement also envisages a procedure of state registration of persons' place of residence. However, in Article 2 the Law states that lack of such registration cannot prevent persons from exercising their rights and freedoms.¹⁹⁰

Regarding IDPs, the *Law on ensuring rights and freedoms of internally displaced persons* does not restate guarantees regarding freedom of movement. In the *National strategy in the field of human rights*, it is mentioned that the Government faces difficulties in guaranteeing the rights of IDPs. However, in the detailed description of such problematic areas, freedom of movement is not mentioned.¹⁹¹ However, domestic legislation does present a number of challenges to IDPs' right to freedom of movement.

For one, the system of residency registration enshrined in domestic legislation contains administrative obstacles that limit IDPs' freedom of movement. The *Law on freedom of movement and free choice of place of residence* legitimizes the Soviet-era *propiska* system, which in Ukraine is called the registration of place of *prozhyvannya* (place of residence). According to this law, citizens of Ukraine, foreigners and stateless persons who permanently or temporarily reside in Ukraine are obliged to register their place of residence during the first thirty days.¹⁹² Initially, the *Law on ensuring rights and freedoms of internally displaced persons* obliged IDPs to register their residence during the first ten days of their displacement. It was prescribed that IDPs receive registration stamps not in their passports, as is the general procedure for all other categories of persons, but in IDP certificates. On 24 December 2015 the IDP Law was amended and the requirement of receiving a stamp certifying IDPs' place of residence was revoked. In the new version of the IDP Law it is stipulated that an IDP certificate itself provides proof of the place of residence of an IDP.¹⁹³ While these amendments were a step forward towards ensuring the freedom of movement of IDPs, they have not yet been integrated into other pieces of legislation. In particular, *Resolution of the Cabinet of Ministers No. 509 on registration of internally displaced*

¹⁸⁹ *Law on freedom of movement and free choice of place of residence*, Art. 2.

¹⁹⁰ *Law on freedom of movement and free choice of place of residence*, Art. 2.

¹⁹¹ *Decree of the President of Ukraine No 501/2015 on Adoption of the National strategy in the field of human rights*, para. 4 (Protection of rights of internally displaced persons).

¹⁹² *Law on freedom of movement and free choice of place of residence*, Art. 6.

¹⁹³ *Law on ensuring rights and freedoms of internally displaced persons*, Art. 5.

persons still includes the requirement that IDPs shall report their place of residence to the territorial bodies of the State Migration Service, and shall receive a stamp proving their place of residence.¹⁹⁴

The system of IDP registration also raises issues about freedom of movement in terms of choice of residence. On 4 March 2015, the Resolution No. 509 that regulates data collection on IDPs and the procedure of issuance of IDP certificates was amended by the Cabinet of Ministers Resolution No. 79. The amendments introduced a discriminatory procedure of residence registration specifically for IDPs. It entitles officials of the State Migration Service to inspect the houses of IDPs for the purpose of verification of their addresses. Such inspections are to be routine and should cover monthly at least ten per cent of registered IDPs. According to Resolution No. 79 IDP certificates can be revoked if the inspection by the State Migration Service, in cooperation with the Ministry of Interior, finds that IDPs are not living at the address indicated in their IDP certificate. According to the Resolution No. 79, during such checks government officials should put a registration stamp on the IDP certificate.¹⁹⁵ Without such a stamp the IDP certificate is invalid.

Freedom of movement of IDPs is further limited through restrictions on IDPs' ability to move to safe areas. On 12 June 2015, the First Deputy Head of the Counterterrorist Operation Division of the State Security Services of Ukraine adopted *Order No. 415 on approval of the interim order of control over the movement of persons, vehicles and goods along the contact line within the Donetsk and Luhansk regions* which limits the regular movement of private vehicles across the so-called "contact line" which separates the self-proclaimed "Donetsk people's republic" and "Luhansk people's republic" from the rest of Ukraine. According to the Order, the contact line can be crossed only through the official exit/entry check points (para 3.1). The check points work from 6 am to 8 pm in summer season, from 8 am to 5 pm in winter season and from 7 am to 6.30 pm in autumn and spring. Crossing the contact line at other times is permitted only by official decision, specifically by the Head of the counterterrorist operation division (para. 3.1). To cross the contact line within the Government designated counterterrorist zone, a person must have a special permit. In case of illness or death of family members, persons can enter the designated anti-terrorist zone or non-government controlled areas (NGCAs) if they can present official documents that prove the fact of illness or death (para. 3.1). In order to receive this

¹⁹⁴ Resolution of the Cabinet of Ministers No 509 on registration of internally displaced persons, 1 October 2014, para. 7–1.

¹⁹⁵ *Ibid.*

permit, a person should submit an application providing their full name, passport details, residency registration, reasons for crossing the respective road-block as well as itinerary and tax payer's ID. Persons who want to visit their relatives from within or outside the designated counterterrorist area must also provide documentary evidence of their relationship.

Further, *Temporary Order No. 415* indicates that the crossing of the contact line with the NGCAs for children under the age of 16 is to be regulated in compliance with the *Rules for crossing the state border by citizens of Ukraine No. 57* approved by the Cabinet of Ministers of Ukraine on 27 January 1995. Under these rules, notarized consent from the parent not present shall be provided at the time of crossing. At the same time, in the context of conflict, many situations prevent both parents from providing such notarized consent, for example if the parent is not available due to death or disappearance. This limits the freedom of movement of displaced children under the age of 16 into Ukrainian-controlled areas.

From a positive perspective, it should be recognised that the *National Action Plan of Ukraine on the realization of the national strategy in the field of human rights in the period until 2020* provides that persons should be able to cross the contact line using public transportation.¹⁹⁶ To achieve this goal, the Action Plan envisages amendments to that *Temporary Order No. 415 of control over the movement of persons, vehicles and goods along the contact line within the Donetsk and Luhansk regions*.

Another problematic area is freedom of movement in so-called “grey zones,” which are territories of Ukraine along the contact line that are not controlled by rebels but which also fall outside the Government checkpoints close to or on either side of the contact line, and where government services do not operate or operate intermittently. For people in these areas, there is very limited access to executive bodies and local government, and there is very limited transportation available to the villages located in “grey zones.” The resulting isolation and lack of access to services in the “grey zones” triggers further displacement of persons even in the context of very limited transportation. The problem of freedom of movement in grey zones remains unregulated in national legislation.

Moreover, on 9 March 2014 the Cabinet of Ministers adopted *Resolution No. 149-r on additional measures of strengthening control over movement of people in the territory of Ukraine*. According to this resolution, the Administration of

¹⁹⁶ *Resolution of the Cabinet of Ministers No. 1393-r on Adoption of the Action Plan on realization of the National strategy in the field of human rights in the period until 2020.*

the border guards service shall strengthen control over the movement of people at train stations near the administrative border line (ABL) with Crimea, specifically at Kherson, Vadim, Novooleksiivka, and Melitopol. Moreover, the Ministry of Finance, the Ministry of Infrastructure, and the Administration of the border guards service shall take measures to enforce such special measures. Paragraph 3 of this resolution mentions that “the Administration of the border guards service shall continue its responsibilities regarding protection of the state border in the Autonomous Republic of Crimea.” This statement shows that the Cabinet of Ministers treats the ABL as a state border, which is incorrect and contradicts to the *Law on guaranteeing rights and freedoms and legal regime of the temporary occupied territory*, according to which the territory of Crimea is a temporarily occupied territory of Ukraine within its administrative borders.

The rules for crossing the ABL with Crimea are regulated by the Cabinet of Ministers of Ukraine *Resolution No. 367 on approval of rules for entering the temporarily occupied territory of Ukraine and exiting from it* that was adopted on 4 June 2015. According to the regulations, Ukrainian citizens can cross the ABL if they provide any identification document that proves their Ukrainian citizenship (para 3.2), whereas foreigners have to obtain a special permit to enter Crimea (para 3.1).

In practice, the resolution significantly limited freedom of movement and made it almost impossible for foreigners and stateless persons to cross the ABL. The rules were amended by the Cabinet of Ministers *Resolution No. 722* adopted on 16 September 2015. The new rules significantly advance the previous piece of legislation that regulated crossing the ABL. Particularly, further amendments to *Resolution No. 367* specify the rules for crossing the ABL for children under 16 years old.

Resolution No. 367 also expands the list of grounds on which foreigners can obtain a permit to cross the ABL. International organizations, international and foreign NGOs as well as independent human rights missions can receive a permit to enter Crimea if the Ministry of Foreign Affairs of Ukraine gives consent for such. Journalists can receive such a permit provided there is consent of the Ministry of Informational Policy of Ukraine. Foreigners who would like to visit Crimea for religious purposes can obtain such a permit if there is consent of the Ministry of Culture. Also, foreigners who have a registered residence in Crimea can obtain a permit to cross the ABL. A separate provision was adopted to ensure that the members of Crimean Tatar Mejlis are also entitled to a permit. Although the list of categories of persons who can enter Crimea was considerably expanded, it would be still very difficult to claim that the issues involving the restriction of

76 freedom of movement have been resolved, mainly because of the complex bureaucratic procedures for obtaining permits for ABL crossing. According to *Resolution No. 367*, permits for crossing the ABL are issued by the head or deputy head of the territorial office of the State Migration Service in Novotroitskiy and Genichenskiy districts of Kherson region. An application for the permit can take up to 5 working days to process (para. 25).

Also, it should be noted that on 15 April 2014, by Law № 1207-VII, violation of the rules for crossing the ABL with Crimea was criminalized. Article 332–1 of the *Criminal Code* now stipulates that if a person commits such a violation “with the purpose to harm national interests of Ukraine,” this is punishable by up to 3 years’ imprisonment. When such rules are violated by a group of persons, they can be imprisoned for up to 8 years. These provisions introduce disproportional punishments for violating the rules for crossing the ABL, and they should be revoked.

With regard to Crimea, minors under 16 years old of age who would like to leave the territory of Crimea face additional limitations. A person who was born in Crimea after Ukrainian governmental bodies stopped functioning there cannot receive a Ukrainian birth certificate in Crimea. At the same time, such persons cannot travel to the Ukrainian territory under the control of the Government, as according to the Cabinet of Ministers *Resolution No. 367 on approval of rules for entering the temporarily occupied territory of Ukraine and exiting from it*, to cross the ABL citizens of Ukraine under 16 years of age are required to present their passport, passport for international travels, or children’s travel document (para. 3). In the absence of any such documentation, except the medical birth certificate issued by the Crimean authorities, children cannot cross the ABL. To receive a birth certificate for their children, parents have to travel to Ukraine’s government-controlled territory and request the Ukrainian court to establish the fact of the birth of a Ukrainian citizen and to issue a birth certificate.

The *Law on ensuring rights and freedoms of internally displaced persons* explicitly protects IDPs from involuntary return to the place of displacement.¹⁹⁷ Among other rights, the IDP Law entitles IDPs to free transportation to return to the area of their habitual residence when the circumstances that caused displacement are eliminated.¹⁹⁸ Moreover, in the *National strategy in the field of human rights*, the creation of conditions for the voluntary return of IDPs to their previous place of residence is set as an expected result in the field of protection of

¹⁹⁷ *Law of Ukraine on ensuring rights and freedoms of internally displaced persons*, Art. 3.

¹⁹⁸ *Law of Ukraine on ensuring rights and freedoms of internally displaced persons*, Art. 9(1).

rights of IDPs.¹⁹⁹ The *National Programme for Support, Social Adaptation and Reintegration of IDPs for the Period until 2017* envisages a number of measures that will be taken to facilitate voluntary return of IDPs. These include re-establishing effective State control over all territories of Ukraine, restoring destroyed housing, and assistance in returning.²⁰⁰ These measures are of a declarative nature, as the *National Programme for Support, Social Adaptation and Reintegration of IDPs* does not include an action plan with specific steps to be taken to achieve the goals it sets.

D. Recommendations

- Amend *CMU Resolution No. 509 on registration of IDPs* to ensure that non-availability of the stamp with registration of place of residence does not prevent IDPs from accessing their basic rights and entitlements, including pensions, provided for by law.
- Amend *CMU Resolution No. 509* and *No. 637* to revoke the mandate for inspection of IDPs' places of current residence (or location) in the absence of clear regulations about the purpose of these inspections and reasonable appeal procedures. Otherwise, such inspections have significant and potentially irrevocable repercussions, including the loss of IDP registration and therefore loss of IDPs' pensions and other currently linked social entitlements, despite these being general entitlements which should not be contingent upon having IDP registration.
- Revoke Article 332–1 of the *Criminal Code* that stipulates disproportional punishment for violating rules about crossing the administrative borderline with Crimea.
- Amend, in line with the Government's commitment in the National Action Plan for Human Rights, *Temporary Order No. 415 on approval of the interim order of control over the movement of persons, vehicles and goods along the contact line within the Donetsk and Luhansk regions*, to ensure that IDPs can move freely through the contact line without restrictions unless provided for by law and to meet the requirements set out in international and European human rights standards.

¹⁹⁹ Decree of the President of Ukraine No. 501/2015 on Adoption of the National strategy in the field of human rights, para. 4 (Protection of rights of internally displaced persons).

²⁰⁰ Cabinet of Ministers Resolution No. 1094 on approval of the Comprehensive State Program on support, social adaptation and reintegration of the citizens of Ukraine who moved from the temporary occupied territory of Ukraine and area of the counterterrorist operation to other regions of Ukraine, for the period until 2017.

- Adopt the by-law that will guarantee the availability of public transportation in the “grey zones.”
- Revoke CMU Resolution No. 149-r on additional measures of strengthening control over movement of people in the territory of Ukraine.
- Amend CMU Resolution No. 367 on approval of rules for entering the temporarily occupied territory of Ukraine and exiting from it, simplifying the procedure of issuing permits to enter/exit Crimea for foreigners and stateless persons.
- Take legal measures to ensure that the *de facto* blockade of Crimea does not violate the freedom of movement of persons who wish to cross the ABL.

7. FAMILY LIFE

The family is typically the most basic unit of protection. Protection of and non-interference with family life during internal displacement is essential for the well-being of IDPs. Key issues with respect to family life during displacement include preserving family unity; family reunification; determining the fate of any missing family members; and treating the dead with appropriate respect.²⁰¹ In some contexts, “family” may be a broader concept than that used in most legal systems and include not only persons in direct legal or natural relationships, but also “persons belonging to families through shared life, mutual support or emotional ties, in situations where they consider themselves to be part of a family and wish to live together.”²⁰²

Minimum essential elements of State regulation:

Recognize IDPs’ right to family unity.

Assign responsibilities to Government agencies to search for and reunite members of families who have become separated in the course of displacement and/or to seek support from the international community for this task.

If necessary, create national mechanisms charged with investigating the fate of missing persons and providing information and, where possible, handle mortal remains and personal effects of survivors; and/or seek support from the international community for this task.

²⁰¹ Manual for Legislators and Policymakers, p. 93.

²⁰² Manual for Legislators and Policymakers, p. 94.

A. International normative framework

Based on established international law, Principle 17 of the *Guiding Principles on Internal Displacement* reaffirms that every human being has the right to respect of his or her family life. To give effect to this right for IDPs, family members wishing to remain together should be allowed to do so.²⁰³ Principle 17(4) provides that members of IDP families whose personal liberty has been restricted by internment or confinement camps have the right to remain together.²⁰⁴ (See also *chapter on Freedom of Movement*.)

Families separated by displacement should be reunited as quickly as possible, with all appropriate steps taken to expedite the reunion of families, especially those which include children. Authorities shall facilitate inquiries made by family members regarding missing relatives as well as encourage and cooperate the work of humanitarian organisations engaged in family reunification.²⁰⁵

The *Guiding Principles* further provide, in Principle 16, that all IDPs have the right to know the fate and whereabouts of missing relatives. Authorities are expected to endeavour to establish the fate of IDPs reported missing and cooperate with international organisations engaged in this task.²⁰⁶ Authorities must inform next of kin on the progress of any such investigations and notify them of any results. The authorities also are obliged to endeavour to collect and identify the remains of the deceased, to prevent despoliation and mutilation of remains, and to facilitate the return of remains to next of kin, or dispose of them respectfully.²⁰⁷ Gravesites of IDPs are to be protected and respected in all circumstances, and IDPs have the right to access the gravesites of deceased relatives.²⁰⁸

As a general principle, the *Guiding Principles* also emphasize the importance of taking special measures to address the particular needs of children, especially unaccompanied children, as well as other persons including the elderly and persons with disabilities.²⁰⁹

²⁰³ *Guiding Principles on Internal Displacement*, Principle 17(2).

²⁰⁴ *Guiding Principles on Internal Displacement*, Principle 17(4).

²⁰⁵ *Guiding Principles on Internal Displacement*, Principle 17(3).

²⁰⁶ *Guiding Principles on Internal Displacement*, Principles 16(1) and (2).

²⁰⁷ *Guiding Principles on Internal Displacement*, Principle 16(3).

²⁰⁸ *Guiding Principles on Internal Displacement*, Principle 16(4).

²⁰⁹ *Guiding Principles on Internal Displacement*, Principle 4(2).

Family life is strongly enshrined in different texts of the Council of Europe. The *European Convention on Human Rights*, Article 8, guarantees everyone’s “right to respect for private and family life, his home and correspondence” and protects against undue interference by public authorities.²¹⁰

The European Social Charter includes several provisions protecting family life, as family is considered the fundamental unit of society. The family has the right to social, legal and economic protection through measures such as the provision of social benefits or family housing.²¹¹ Children and young persons are to be protected against negligence, violence or exploitation, with specific protection provided to those temporarily or definitively deprived of their family’s support.²¹²

The Committee of Ministers’ Recommendation on IDPs and its Explanatory Memorandum elaborate on these provisions in contexts of displacement. The Recommendation calls for measures to facilitate the reunification of families separated by displacement and to locate missing family members.²¹³ The Explanatory Memorandum refers to a case of the European Court of Human Rights confirming the central importance of family life in contexts of displacement; in particular, family members should be allowed to remain together if they wish to do so, and member States are obliged not to hinder the development of family ties.²¹⁴

The Court has in fact addressed the issue of family life in numerous cases. Conceptually, the Court considers that “family ties can exist between non-marital partners, between siblings, grandparents and grandchildren, or uncles and aunts and nephews and nieces.”²¹⁵ The suffering endured by relatives of missing persons is considered by the Court to amount to inhuman and degrad-

²¹⁰ Council of Europe, ECHR as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, Article 8 – Right to respect for private and family life.

²¹¹ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Article 16 – Right of the family to social, legal and economic protection.

²¹² Council of Europe, Revised ESC, 3 May 1996, ETS 163, Article 17 – Right of children and young persons to social, legal and economic protection.

²¹³ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 6.

²¹⁴ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 6 referring to court case *Kroon and others v. the Netherlands*, Application no. 18535/91, judgment of 27 October 1994, para. 32.

²¹⁵ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, referring to court case *Marckx v. Belgium*, Application no. 6833/74, judgment of 13 June 1979, para. 45.

ing treatment (ECHR Article 3).²¹⁶ The factors taken into account to determine the existence of a violation of Article 3 include the proximity of the family tie, notably the parent-child bond, the extent to which the family member witnessed the events in question, the involvement of the family in obtaining information about the disappeared person and the way authorities responded.²¹⁷ When responsibility for the disappearance is difficult to establish, the Court has examined the diligence of the State in investigating and providing information on such cases as part of the State's procedural obligation to protect the right to life under ECHR Article 2.²¹⁸

In several cases, the Court has determined there to be a violation of the right to family life based on circumstances that are particularly relevant in contexts of displacement, such as restriction of freedom of movement and denial of the right to return²¹⁹ (see also chapter on Freedom of Movement), or house damage or destruction²²⁰ (see also chapter on Housing, Land and Property). In *Cyprus v. Turkey*, the Court considered that the movement restrictions endured by Greek Cypriots disrupted family life to the extent that it violated ECHR Article 8, noting that

... the right of the enclaved Greek Cypriots to family life was seriously impeded on account of the measures imposed by the “TRNC” authorities to limit family reunification. Thus, it was not disputed by the respondent Government in the proceedings before the Commission that Greek Cypriots who permanently left the northern part of Cyprus were not allowed to return even if they left a family behind (see paragraph 29 above). Although arrangements were introduced by the “TRNC” authorities to facilitate to a limited extent family visits in 1998, the period under consideration for the purposes of the instant application was characterised by severe limitations

²¹⁶ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, referring to court case *Cyprus v. Turkey*, Application no. 25781/94, judgment of 10 May 2001, paras. 154–158 and *Ipek v. Turkey*, Application no. 25760/94, judgment of 17 February 2004, paras. 178–183. In both cases the Court found a violation of article 3 of the ECHR on the prohibition of torture, inhuman and degrading treatment. See also the same reasoning in *Utsayeva and others v. Russia*, Application no. 29133/03, judgment of 29 May 2008.

²¹⁷ ECtHR, *Cyprus v. Turkey*, Application no. 25781/94, judgment of 10 May 2001, para. 156.

²¹⁸ ECtHR, *Cyprus v. Turkey*, Application no. 25781/94, judgment of 10 May 2001, para. 131.

²¹⁹ ECtHR, *Cyprus v. Turkey*, Application no. 25781/94, judgment of 10 May 2001, para. 292. See also on displaced persons, same case, para. 175: “there has been a continuing violation of Article 8 of the Convention by reason of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus.” Denial of return also gave rise to a violation of article 8 in ECtHR, *Saghinadze and others v. Georgia*, Application no. 18768/05, judgment of 27 May 2010.

²²⁰ See ECtHR, *Akdivar and others v. Turkey (Article 50)* (99/1995/605/693), judgment of 1 April 1998 and ECtHR, *Khamidov v. Russia*, Application no. 72118/01, judgment of 15 November 2007.

on the number and duration of such visits. Furthermore, during the reference period schoolchildren from northern Cyprus attending schools in the south were not allowed to return permanently to the north after having attained the age of 16 in the case of males and 18 in the case of females. It is also to be observed that certain restrictions applied to the visits of those students to their parents in the north.²²¹

In the case of *McCann v. the United Kingdom*, the Court has stated, on the subject of the applicant's eviction from a local authority-owned dwelling, that "the loss of one's home is a most extreme form of interference with the right to respect for the home."²²²

In the case of *Menteş v. Turkey*,²²³ a case involving the destruction of the applicants' homes by the Turkish security forces during its campaign against the PKK in southeastern Turkey, the Court found that all the applicants, including one who did not own her house, were "within the scope of the protection guaranteed by Article 8 of the Convention."²²⁴ The applicant had a home because of her "strong family connection" and the fact that she regularly spent considerable periods of time there. Therefore, in the absence of a legal interest, a home is found where the applicant lives with the permission of the owner.

In the case of *Sargsyan v. Azerbaijan*,²²⁵ the Court found it established that the applicant had lived in Gulistan for the major part of his life until being forced to leave; he thus had had a "home" there and his inability to return to the village had affected his "private life" for the purpose of Article 8. His prolonged absence could not be considered as breaking the continuous link with his home. The Court considered that, in the circumstances of the case, his cultural and religious attachment to his late relatives' graves in the village might also fall within the notion of "private and family life."²²⁶

In *Demades v. Turkey*²²⁷ and *Diogenous and Tseriotis v. Turkey*,²²⁸ the Court found that a secondary or holiday house can be a home within the meaning of Article 8 of the Convention. It specifically noted "a person may divide his time between two houses or form strong emotional ties with a second house, treating it

²²¹ ECtHR, *Cyprus v. Turkey*, Application no. 25781/94, judgment of 10 May 2001, para. 292.

²²² ECtHR, *McCann v. the United Kingdom*, Application no. 19009/04, judgment of 13 May 2008, para. 50.

²²³ ECtHR, *Menteş and Others v. Turkey (Article 50)* (58/1996/677/867), judgment of 27 July 1998.

²²⁴ ECtHR, *Menteş and Others v. Turkey (Article 50)* (58/1996/677/867), judgment of 27 July 1998, para. 73.

²²⁵ ECtHR, *Sargsyan v. Azerbaijan*, Application no. 40167/06, judgment of 16 June 2015.

²²⁶ ECtHR, *Sargsyan v. Azerbaijan*, Application no. 40167/06, judgment of 16 June 2015, para. 257.

²²⁷ ECtHR, *Demades v. Turkey*, Application no. 16219/90, judgment of 31 July 2003.

²²⁸ ECtHR, *Diogenous and Tseriotis v. Turkey*, Application no. 16259/90, judgment of 22 September 2009.

as his home. Therefore, a narrow interpretation of the word ‘home’ could give rise to the same risk of inequality of treatment as a narrow interpretation of the notion of ‘private life,’ by excluding persons who find themselves in the above situations.”²²⁹

In many of the cases dealing with situations of conflict and displacement, the violation of the right to respect for private and family life, which includes the respect of home,²³⁰ is found in conjunction with a violation of ECHR Protocol 1, Article 1 on peaceful enjoyment of possession.²³¹ This can be based on the fact that denial of return prevents access to the property or is linked to the destruction of property by authorities. In *Dogan and others v. Turkey*, the Court explained the link between right to family life and enjoyment of possession: “The Court is of the opinion that there can be no doubt that the refusal of access to the applicants’ homes and livelihood, in addition to giving rise to a violation of Article 1 of Protocol No. 1, constitutes at the same time a serious and unjustified interference with the right to respect for family lives and homes.”²³² (*See also chapter on Property and possessions.*)

C. Analysis of national legislation

The Constitution of Ukraine states in Article 51 that “[t]he family, childhood, motherhood and fatherhood are under the protection of the State.” The *Family Code of Ukraine* is the main law regulating family life. Some additional norms aimed at family protection and regulation of family relations are found in other laws and by-laws, such as on social protection, education, and civil law.

However, there are inconsistencies among the various pieces of national legislation regarding the issue of family composition. The *Family Code of Ukraine* provides in Article 3 that a family is founded on marriage, blood relationship, adoption, or on other grounds not prohibited by law and that “do not contradict the morals of the society.” Article 1 of the *Law on state social assistance to poor families* utilizes a broader notion, namely that the family consists of persons who live

²²⁹ ECtHR, *Demades v. Turkey*, Application no. 16219/90, judgment of 31 July 2003, para. 32.

²³⁰ Council of Europe, ECHR, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, Article 8.

²³¹ ECtHR, *Chiragov and others v. Armenia*, Application no. 13216/05, judgment of 16 June 2015; ECtHR, *Saghinadze and others v. Georgia*, Application no. 18768/05, judgment of 27 May 2010; ECtHR, *Khamidov v. Russia*, Application no. 72118/01, judgment of 15 November 2007; ECtHR, *Dogan and others v. Turkey*, Application nos. 8803–8811/02, 8813/02 and 8815–8819/02, judgment of 29 June 2004; ECtHR, *Cyprus v. Turkey*, Application no. 25781/94, judgment of 10 May 2001.

²³² ECtHR, *Dogan and others v. Turkey*, Application nos. 8803–8811/02, 8813/02 and 8815–8819/02, judgment of 29 June 2004, para. 159.

84 together, connected by a joint household, and have mutual rights and obligations.²³³ Still other national laws and by-laws, such as refugee legislation and tax legislation, define “family” differently. This legal inconsistency is problematic in the implementation of the provisions for protection of the family. Moreover, the above-cited qualifier that notions of family include only those that “do not contradict the morals of the society” is vague, subjective, and contradicts basic international norms in this field.

Specifically regarding IDPs, Parliament amended the *Law on ensuring rights and freedoms of internally displaced persons* on 24 December 2015 to include the declaration that every IDP has the right to family unity, including the assistance of executive authorities, local governments and private entities in searching for and reuniting with family members who lost contact due to internal displacement.²³⁴ The IDP Law also provides in Article 11 that the central executive body responsible for the implementation of state migration policy (immigration and emigration), namely the State Migration Service, shall facilitate reunification of IDP families through providing such persons with information regarding the location of missing family members. No special measures for unaccompanied or separated children or other vulnerable groups are indicated. Generally, local state administrations are responsible for the placement of orphans and children deprived of parental care into protective institutions.

The Ministry of Social Policy has a legal obligation to maintain a unified database on IDPs.²³⁵ The lack of specification of coordination modalities between the State Migration Service and the Ministry of Social Policy and the potential duplication of functions is not conducive to efficient implementation of family reunification activities. Amendments to the *Law on ensuring rights and freedoms of IDPs* adopted on 24 December 2015 improved this situation somewhat with the introduction of a specific provision for an IDP database. However, the creation, maintenance and access procedures for the database on IDPs are subject to a regulation by the Cabinet of Ministers of Ukraine, which is not in place at the date of analysis.

Personal data on IDPs may be transferred to UN agencies and the International Committee of the Red Cross, with the consent of the IDP. Such exchange is considered as a positive step towards family rights protection, and in particular

²³³ *Law on state social assistance to poor families*, Art. 1.

²³⁴ *Law on Ensuring of Rights and Freedoms of Internally Displaced Persons*, Art. 9.

²³⁵ Order on Registration of Internally Displaced Persons, approved by the Cabinet of Ministers of Ukraine Resolution of 1 October 2014, № 509.

for family reunification. However, a mechanism for IDPs to access information on their missing relatives and receive state support for family reunification is not provided at all, nor are any other mechanisms and instruments for IDPs' family protection.

It should be noted that the implementation of all of the above declarative norms has no extra financial support from the State.

D. Recommendations

- Amend the *Law on ensuring rights and freedoms of internally displaced persons* to specify the obligation of the State to ensure family reunification for IDPs as quickly as possible, in particular where children are involved.
- Amend the *Law on ensuring rights and freedoms of internally displaced persons* to designate a single state authority responsible for family reunification.
- Adopt a regulation of the Cabinet of Ministers specifying the procedures for maintenance of and access to the IDP database in order to ensure proper exchange of information among authorized state bodies and access by IDPs to information for the purposes of family reunification.
- Allocate specific resources from the State Budget to support programs for the reunification of families separated as a result of displacement.

8. BASIC SHELTER AND ADEQUATE HOUSING

Inherent to displacement is the loss of one's usual means of shelter. Without shelter, IDPs are exposed not only to the natural elements but also to a range of other risks, including increased vulnerability to crimes such as sexual violence, physical attack, and the theft of whatever few possessions they managed to carry with them. This chapter addresses the critically important issue of access to basic shelter and housing during displacement. It therefore does not cover the issue of forced eviction or house destruction as a cause of displacement; this is covered in the chapter on protection from arbitrary displacement. Nor does it cover the issue of housing restitution or compensation, which is covered in the chapter on property and possessions.

Minimum essential elements of State regulation:

Recognize IDPs' right to basic shelter and adequate housing.

Designate a governmental agency responsible for addressing the shelter and housing needs of displaced persons.

Seek and accept the support of the international community if needs cannot be sufficiently satisfied at the domestic level.

Establish procedures to identify and prioritize beneficiaries of basic shelter and adequate housing on the basis of need and particular vulnerability.

Remove legal obstacles, contained for example in building and similar codes, to the construction of transitional shelters or the rebuilding of houses in return or re-location areas.

Create specific guarantees to protect IDPs against forced evictions where general guarantees are insufficient.

A. International normative framework

Based on established standards of international law, Principle 18 of the *Guiding Principles on Internal Displacement* affirms the right of every person, including IDPs, to an adequate standard of living and specifies that, at minimum, regardless of the circumstances and without discrimination, authorities must provide and ensure safe access to basic shelter and housing for IDPs.²³⁶ Special efforts are to be made to ensure the full participation of women in the planning and distribution of such essential assistance.²³⁷

“Adequate housing” is defined as housing which affords its occupants:

- Legal security of tenure, especially in the form of protection against forced evictions;
- Available services and infrastructure (access to water, energy for cooking, heating, and lighting);
- Affordable housing costs so that the attainment of other basic needs is not threatened;
- Habitability in the sense of adequate space, physical safety, and protection from cold, damp, heat, rain, wind, structural hazards, and disease vectors;

²³⁶ *Guiding Principles on Internal Displacement*, Principle 18(1) and (2)(b). For a summary of the international standards from which Principle 18 is derived, see *Annotations to the Guiding Principles*, pp. 85–86.

²³⁷ *Guiding Principles on Internal Displacement*, Principle 18(3).

- Sufficient accessibility that disadvantaged or vulnerable groups are not left without shelter appropriate to their particular needs;
- A physical location allowing affordable access to employment options, health care services, schools, child-care centres, and other social facilities, and avoiding risks from pollution sources;
- Materials and construction appropriate for the expression of cultural identity;
- Compliance with safety standards aimed at minimizing damage from future disasters.²³⁸

B. Council of Europe standards

The ECHR and its Additional Protocols do not make any explicit reference to basic shelter and housing. Nor does the Committee of Minister's Recommendation (2006)6 on Internal Displacement or its Explanatory Memorandum. However, by way of the commitment of the Committee of Ministers to implement international human rights law and international humanitarian law as well as the *Guiding Principles on Internal Displacement*,²³⁹ the Council of Europe has confirmed that national authorities have a responsibility to provide IDPs with humanitarian assistance, including access to basic shelter and housing (see above).

The revised *European Social Charter* (ESC) affirms in Article 31 the right to housing and obliges member States "to promote access to housing of an adequate standard; to prevent and reduce homelessness with a view to its gradual elimination; to make the price of housing accessible to those without adequate resources."²⁴⁰ Also relevant is Article 30 of the revised ESC which articulate a right to protection against poverty and social exclusion and obliges States "to take measures [...] to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance." The revised ESC further provides that such measures need to be reviewed and adapted when necessary.²⁴¹ Moreover, non-provision of basic shelter and housing could in certain circumstances amount to inhuman and degrading

²³⁸ UN, CESCR, *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, 13 December 1991, UN Doc. E/1992/23 (13 December 1991), paras. 8(a)-(g); see also *Manual*, pp. 129–30.

²³⁹ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, Preamble.

²⁴⁰ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 31, Right to housing.

²⁴¹ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Article 30 b, Right to protection from poverty and social exclusion.

88 treatment, which is prohibited by Article 3 of the ECHR, or a threat to the right to health affirmed in Article 11 of the revised European Social Charter (ESC).²⁴²

The Committee of Ministers' Recommendation on IDPs confirms that national authorities have a responsibility to provide IDPs with humanitarian assistance.²⁴³ As noted above, the Guiding Principles specify that such essential humanitarian assistance includes basic shelter and housing. Further, in the event of dispossession of property or possessions, the Committee of Ministers reaffirm that IDPs should be allowed to benefit from restitution or compensation²⁴⁴ (*see chapter on Property and possessions*). Finally, in the context of durable solutions, the Recommendation recalls the responsibility of States to create conditions for proper and sustainable integration of IDPs,²⁴⁵ and the Explanatory Memorandum lists the provision of adequate accommodation as one of these conditions.²⁴⁶

In the case of *Dogan and others v. Turkey*, the European Court of Human Rights referred inter alia in its judgment to Guiding Principle 18 regarding IDPs' right to adequate shelter during displacement. The Court determined that failure of the authorities to facilitate the return of the IDP applicant's home and land as well as the lack of provision of alternative housing and employment, combined with inadequate efforts from the State to "ensure an adequate standard of living or a sustainable return process," amounted to an excessive burden on the IDP applicant and amounted to a violation of ECHR Protocol 1, Article 1 on the peaceful enjoyment of property and possession as well as a violation of Article 8 on family life.²⁴⁷ Beyond the shelter dimension, the Court also referred to other aspects of adequate housing such as "inadequate heating, sanitation and infrastructure" in concluding that IDPs were living in conditions of extreme poverty.²⁴⁸

The Court's jurisprudence reaffirms the right of IDPs to be protected from forced eviction from the accommodation where they live during their displacement. In *Saghinadze and others v. Georgia*, the Court considered that the tem-

²⁴² Council of Europe, Revised ESC, 3 May 1996, ETS 163, Article 30, Right to protection from poverty and social exclusion.

²⁴³ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 4.

²⁴⁴ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 8.

²⁴⁵ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 12.

²⁴⁶ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 12.

²⁴⁷ ECtHR, *Dogan and others v. Turkey*, Application nos. 8803–8811/02, 8813/02 and 8815–8819/02, judgment of 29 June 2004, paras. 153–155.

²⁴⁸ ECtHR, *Dogan and others v. Turkey*, Application nos. 8803–8811/02, 8813/02 and 8815–8819/02, judgment of 29 June 2004, para. 153.

porary housing in which IDPs had been living, accommodated by the authorities for the past decade, represented a possession in the sense of Article 1 of ECHR Protocol 1 on the peaceful enjoyment of possession. Consequently, the Court declared that the unlawful eviction suffered by the IDP applicant represented a violation of the ECHR Protocol, noting that it is “not possible to evict an IDP against his or her will from an occupied dwelling without offering in exchange either similar accommodation or appropriate monetary compensation.”²⁴⁹ In a subsequent judgment on just satisfaction for the same case, the Court required the transfer to the applicant of full ownership of an apartment of a similar size of the one previously occupied, and in the same city.²⁵⁰ Further, the Court concluded that the repossession by the authorities of the cottage which had been allocated to the IDP as temporary shelter and had served as his home for more than ten years “constituted an unlawful interference with his right to respect for his home.”²⁵¹

At the same time, the necessity for authorities to provide housing to IDPs and protect them from forced eviction during displacement should not result in interference with others’ right to the peaceful enjoyment of property and possession. The Court has ruled in several cases that, while the existence of a large number of IDPs needing housing may create challenges for authorities, this does not justify lengthy delays in the execution of eviction orders against IDPs illegally occupying property, especially when no compensation had been given to the holders of the property or possessions.²⁵² The Court has concluded that, in relation to housing, a situation of displacement “calls for a fair distribution of the social and financial burden involved. This burden cannot be placed on a particular social group or a private individual alone, irrespective of how important the interests of the other group or the community as a whole may be.”²⁵³ In *Gulmammadova v. Azerbaijan* and other cases, the court considered that “in the absence of any compensation for having this excessive individual burden to be borne by the applicant, the authorities failed to strike the requisite fair balance between the general interest of the community in providing the IDPs with temporary housing and the protection of the applicant’s right to peaceful enjoyment of her pos-

²⁴⁹ ECtHR, *Saghinadze and others v. Georgia*, Application no. 18768/05, judgment of 27 May 2010, paras. 15 and 17.

²⁵⁰ ECtHR, *Saghinadze and others v. Georgia*, Application no. 18768/05, judgment of 27 May 2010, paras. 15 and 17.

²⁵¹ ECtHR, *Saghinadze and others v. Georgia*, Application no. 18768/05, judgment of 27 May 2010, para. 122.

²⁵² ECtHR, *Gulmammadova v. Azerbaijan*, Application no. 38798/07, judgment of 22 April 2010, paras. 46–49.

²⁵³ ECtHR, *Gulmammadova v. Azerbaijan*, Application no. 38798/07, judgment of 22 April 2010, para. 47. See also ECtHR, *Radanović v. Croatia*, Application no. 9056/02, judgment of 21 December 2006, para. 49.

sessions.”²⁵⁴ Similarly, in *Radanović v. Croatia*, the Court considered that the applicant, who could not enforce the judgment to repossess her occupied flat, had to “bear a burden – which should have been borne by the State – of providing the temporary occupant with a place to stay, a weight she eventually had to carry for more than six years.”²⁵⁵

In the case of *James and others v. the United Kingdom*, the Court stated that “[e]liminating what are judged to be social injustices is an example of the functions of a democratic legislature. More especially, modern societies consider housing of the population to be a prime social need, the regulation of which cannot entirely be left to the play of market forces.”²⁵⁶ In the case of *Budina v. Russia*, the Court held that an obligation to secure shelter for particularly vulnerable individuals may in exceptional cases flow from Article 8 of the Convention.²⁵⁷

C. Analysis of national legislation

The Constitution of Ukraine declares in Article 47 that everyone has the right to housing. In this connection, the State has an obligation to create conditions that enable every citizen to build, purchase as property, or rent housing, while citizens in need of social protection are to be provided with housing by the State and bodies of local self-government free of charge or at a price affordable for them, in accordance with the law. Further, no one shall be forcibly deprived of housing other than in accordance with the law and pursuant to a court decision.²⁵⁸ Article 48 of the Constitution further affirms: “Everyone has the right to a standard of living sufficient for himself or herself and his or her family that includes adequate nutrition, clothing and housing.”²⁵⁹

Procedures and conditions for the provision and distribution of housing by the State are stipulated in the Housing Code of Ukraine.²⁶⁰ The Housing Code

²⁵⁴ ECtHR, *Gulmammadova v. Azerbaijan*, Application no. 38798/07, judgment of 22 April 2010, para. 49. See also ECtHR, *Isgandarov and others v. Azerbaijan*, Application nos. 50711/07, 50793/07, 50848/07, 50894/07 and 50924/07, judgment of 8 July 2010, para. 35, and ECtHR, *Soltanov v. Azerbaijan*, Application nos. 41177/08, 41224/08, 41226/08, 41245/08, 41393/08, 41408/08, 41424/08, 41688/08, 41690/08 and 43635/08, judgment of 13 January 2011, para. 18.

²⁵⁵ ECtHR, *Radanović v. Croatia*, Application no. 9056/02, judgment of 21 December 2006, para. 49.

²⁵⁶ ECtHR, *James and others v. the United Kingdom*, Application no. 8793/79, judgment of 21 February 1986, para. 47.

²⁵⁷ ECtHR, *Budina v. Russia* (decision on admissibility), Application no. 45603/05, decision of 18 June 2009.

²⁵⁸ Constitution of Ukraine, Art. 47.

²⁵⁹ Constitution of Ukraine, Art. 48.

²⁶⁰ *Housing Code of Ukraine*, adopted on 30 June 1983.

dates from 1983, and although numerous amendments have been incorporated, it nonetheless remains a legacy of Soviet times and contains many regulations that have largely become inapplicable in contemporary Ukraine. For example, it regulates the provision of State housing to citizens within the paradigm of a socialist State where the majority of dwelling places belong to the State.

The more recent *Law of Ukraine on Social Housing*²⁶¹ dating from January 2006 stipulates that citizens in need of social assistance are to be provided with social housing free of charge (Article 2). This Law also establishes a detailed mechanism for providing social housing. As the Law indicates, only citizens are eligible to apply for social housing; foreigners and stateless persons are not able to do so.

For IDPs specifically, according to the *Law on ensuring rights and freedoms of internally displaced persons*, local state administrations are to provide IDPs with information about places and conditions for their temporary residence/stay, considering proposals from local authorities, associations, charitable organizations and other legal entities and individuals, and the state of infrastructure and the environment in such places, and shall provide IDPs with “appropriate housing or social housing for temporary use.”²⁶² The Law further provides that local governments shall, “within their powers” provide IDPs with “suitable housing for accommodation, from communal property” with the IDP responsible for payment of utility costs.²⁶³ Additionally, local governments shall “decide the question of acquisition of rights to land from communal ownership by internally displaced persons at the place of their factual stay, pursuant to the laws of Ukraine.”²⁶⁴

However, there are no special provisions that guarantee to IDPs the right to demand housing, nor is there any reference in the IDP Law to the *Law on Social Housing*. Moreover, the *Law on Social Housing* introduces some requirements that are almost impossible for IDPs to comply with. For example, in order to apply for social housing a person must provide authorities with numerous documents, such as a certificate confirming the composition of the family, information about the value of property owned by the family, and so on (see the Cabinet of Ministers *Resolution No. 682 on certain aspects of implementation of the Law*

²⁶¹ *Law of Ukraine on Social Housing*, adopted 12 January 2006.

²⁶² *Law on ensuring rights and freedoms of internally displaced persons*, Article 11(8)(3) and (6).

²⁶³ *Law on ensuring rights and freedoms of internally displaced persons*, Article 11(9).

²⁶⁴ *Ibid.*

92 of Ukraine on Social Housing, dated 23 July 2008).²⁶⁵ Inability to provide all of the required documents automatically leads to rejection of the application (Article 18 of the *Law on Social Housing*). Moreover, eligibility for inclusion in the register of persons in need of social housing requires the total income of a family for the previous year to be less than the average price of rented housing in the settlement plus a minimum cost-of-living allowance per person. The value of property owned by the family members is to be taken into account when determining their average total income (Article 10 of the *Law on Social Housing*). Many IDPs therefore cannot apply for social housing because they own property that they were compelled to abandon as a result of displacement.

There are also some gaps in the regulation of basic shelter and adequate housing. For example, Ukrainian legislation does not provide any regulations for the provision of shelter in emergency situations, for example through the establishment of camps, the temporary use of schools for emergency shelter and other measures of that kind. Regulations specifying minimum standards for housing provided to IDPs are lacking. Legislation also does not provide IDPs with protection against forced eviction from their temporary housing.

Moreover, State policy in the banking sphere prevents IDPs from purchasing housing. This is a result of State banking regulations that are described in more detail in the chapter on discrimination. In short, IDPs often fail to get banking credits because of discrimination related to their IDP status (they are treated as “risky” clients in banking terminology).

In summary, questions of housing and basic shelter are regulated by general rules that often do not consider the special situation of IDPs and their urgent need for temporary shelter.

D. Recommendations

- Amend the *Law on Social Housing* and legislation related to the Law to ensure that the eligibility requirements for IDPs to be able to benefit from social housing are adapted to their situation, including by relaxing (for IDPs) the requirements to provide documentation, which IDPs may not be able to access because of their displacement, and by not considering as assets property that IDPs were compelled to abandon as result of their displacement.

²⁶⁵ CMU, *Resolution No. 682 on certain aspects of implementation of the Law of Ukraine on Social Housing*, adopted 23 July 2008.

- Develop and adopt regulations for providing IDPs with social housing, including procedures to identify particular vulnerable IDPs for prioritized housing assistance.
- Amend the Housing Code to incorporate standards regarding the adequacy of any housing (social housing or other) provided by the Government, including in terms of safety and access for persons with disabilities and for elderly persons.
- Formulate State policy, and any necessary regulations, for the construction of transitional shelters for IDPs, seeking support from the international community if needs cannot be sufficiently satisfied at the domestic level.
- Develop and adopt State and regional programs for the allocation of emergency shelter to IDPs in potential emergency situations, whether arising from conflict or disaster.
- Introduce guarantees into national legislation to protect IDPs against forced eviction from places of temporary residence.
- In banking regulations, eliminate obstacles that place limits on the ability of IDPs to buy housing with their own funds (such as a prohibition on demanding early termination of their deposits).

9. RIGHT TO FOOD

Food is essential for human survival, and is therefore a fundamental precondition for the exercise of virtually all human rights. In 2016, humanitarian organisations estimated that 1.1 million conflict-affected people in Ukraine, including 200,000 IDPs, required food assistance.²⁶⁶ The UN Special Rapporteur on the Human Rights of Internally Displaced Persons, following his mission to Ukraine, emphasized the need for the Government to do much more to ensure IDPs' right to food:

Addressing urgent needs in the area of provision of food [...] must be a high priority for national and regional governments to ensure the health and well-being of IDPs. Provision of essential assistance cannot be left to voluntary contributions from the general public or non-government organisations as has been commonplace in the response in some regions to date.²⁶⁷

²⁶⁶ UN, Ukraine: 2016 Humanitarian Response Plan, January–December 2016 (January 2016), p. 23.

²⁶⁷ UN, *Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons, Chaloka Beyani. Mission*

Minimum essential elements of State regulation:

Recognize IDPs' right to adequate food.

Provide for penalties, as a war crime, for the use of starvation as a method of war, in accordance with the Rome Statute of the International Criminal Court.

Designate a governmental authority as responsible for the procurement, storage, and distribution of food to IDPs, and allocate sufficient funds for this purpose.

Seek and accept the support of the international community if needs cannot be sufficiently satisfied at the domestic level.

Establish procedures to identify and prioritize beneficiaries of food and other nutritional assistance on the basis of need and particular vulnerability.

Eliminate any obstacles hindering the domestic sourcing of food, such as subsidies, or price regulation on domestic materials and commodities that set their prices above global levels.

Facilitate the importing of food aid (for example, by waiving restrictions and quotas, custom duties and other taxes).

A. International normative framework

Based on established standards of international law, Principle 18 of the *Guiding Principles on Internal Displacement* affirms the right of every person, including IDPs, to an adequate standard of living and specifies that, at the minimum, regardless of the circumstances and without discrimination, authorities must provide and ensure IDPs safe access to essential food.²⁶⁸ Special efforts are to be made to ensure the full participation of women in the planning and distribution of these supplies.²⁶⁹

The right to adequate food is fulfilled when every person has physical and economic access at all times to adequate food or means for its procurement.²⁷⁰ Food adequacy is measured by factors including the availability of food of sufficient quantity and quality, physical access to food for all, economic access to food, cul-

²⁶⁷ *to Ukraine*, UN Doc. A/HRC/29/34/Add.3 (2 April 2015), para. 88.

²⁶⁸ *Guiding Principles on Internal Displacement*, Principle 18(1) and (2)(a).

²⁶⁹ *Guiding Principles on Internal Displacement*, Principle 18(3).

²⁷⁰ *Manual for Legislators and Policymakers*, p. 105; UN, CESCR, *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, 12 May 1999.

tural and consumer acceptability of food, quality of food and non-discriminatory access to food.²⁷¹

Principle 24 of the *Guiding Principles* affirms: “All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination” and, in this connection, provides that “Humanitarian assistance to IDPs shall not be diverted, in particular for political or military reasons.”²⁷² Humanitarian assistance encompasses all materials and services essential for the survival of IDPs, including food.²⁷³

B. Council of Europe standards

Neither the ECHR nor the Council of Minister’s Recommendation on internal displacement and its Explanatory Memorandum refer explicitly to the right to food. However, by way of the commitment of the Committee of Ministers to implement the *Guiding Principles*,²⁷⁴ the CoE confirms that national authorities have a responsibility to provide IDPs with humanitarian assistance, including access to essential food (see above section on GP 18). Access to essential food is also necessary for the right to life (Article 2) and the prohibition of inhuman and degrading treatment (Article 3), both protected by the ECHR. It is also a precondition for the protection of health (Article 11) and the protection against poverty and social exclusion (Article 30) included in the European Social Charter.²⁷⁵ Although this is not specifically stated in the mentioned articles, the provision of essential food is arguably one of the measures that member States should take to “remove as far as possible the causes of ill health”²⁷⁶ and to alleviate poverty and social exclusion.²⁷⁷

In the case of *Budina v. Russia*, the Court did not rule out the possibility that the state bore responsibility on account of the treatment meted out to the applicant, who was wholly dependent on state support and found herself faced with official

²⁷¹ UN, CESCR *General Comment* 12.

²⁷² *Guiding Principles on Internal Displacement*, Principle 24(1) and (2).

²⁷³ *Guiding Principles on Internal Displacement*, Principle 24; *Guiding Principles on Internal Displacement Annotations*, p. 113.

²⁷⁴ “The Committee of Ministers [...] stressing the commitment to the spirit and provisions of the United Nations *Guiding Principles* and its willingness to implement them,” Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, Preamble.

²⁷⁵ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Art. 30.

²⁷⁶ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Art. 11.

²⁷⁷ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Art. 30.

96 indifference despite living in a position of great hardship incompatible with human dignity.²⁷⁸

In the case of *M.S.S. v. Belgium and Greece*, in which an asylum seeker, because of the authorities' inaction, had found himself living on the streets for several months with no resources or access to sanitary facilities and without any means of providing for his essential needs, the Court found that the applicant had been the victim of humiliating treatment showing a lack of respect for his dignity and that the situation had aroused in him feelings of fear, anguish or inferiority capable of inducing desperation. The Court considered that such living conditions, combined with the prolonged uncertainty in which he had remained and the total lack of any prospects of his situation improving, had attained the level of severity required to fall within the scope of Article 3 of the Convention.²⁷⁹

C. Analysis of national legislation

The Constitution of Ukraine provides that every person has the right to an adequate standard of living for her/himself and their family, specifying that this includes adequate food, clothes and housing.²⁸⁰ The Constitution of Ukraine also establishes that while exercising these rights, persons shall not be discriminated against on account of race, political opinion, religious and other beliefs or other characteristics.²⁸¹

Ukraine has not ratified the Rome Statute of the International Criminal Court and has not harmonized criminal legislation in accordance with its standards. In particular, the Criminal Code of Ukraine does not penalize the use of starvation as a method of war nor other war crimes.

Specific legislation regarding the protection of IDPs only minimally addresses issues concerning the right to food. The *Law on ensuring rights and freedoms of internally displaced persons* provides that IDPs are entitled to an adequate standard of living at their permanent or temporary place of residence.²⁸² Specifically regarding food, the Law stipulates that IDPs are entitled to receive food free of charge only during the first month after their displacement. The IDP Law specifies that IDPs are entitled to one month of food assistance provided by the

²⁷⁸ ECtHR, *Budina v. Russia* (decision on admissibility), Application no. 45603/05, decision of 18 June 2009.

²⁷⁹ ECtHR, *M.S.S. v. Belgium and Greece*, Application no. 30696/09, judgment of 21 January 2011, para. 263.

²⁸⁰ Constitution of Ukraine, Art. 48.

²⁸¹ Constitution of Ukraine, Art. 24.

²⁸² *Law on ensuring of rights and freedoms of internally displaced persons*, Art. 9(1).

Government unless they have employment or are registered as unemployed, in which case they would be receiving unemployment benefits. Local state administrations are designated by the Law to distribute this Government food assistance to IDPs.²⁸³ Otherwise, there are no other specific provisions on allocation of food in the IDP legislation. The IDP Law does not establish procedures to identify or to prioritize recipients of food assistance.

More broadly, the *Law on ensuring rights and freedoms of internally displaced persons* articulates a right of IDPs to humanitarian and charitable aid.²⁸⁴ It stipulates that the Government shall cooperate with non-government and charitable organizations as well as with the international community regarding allocation of humanitarian aid to IDPs.²⁸⁵ Moreover, the IDP Law provides that international humanitarian aid shall be exempted from tax and customs fees.²⁸⁶ On 24 December 2015, the *Tax Code* was amended and a tax exemption for international humanitarian aid was introduced.²⁸⁷ (See also chapter on Cooperation with the International Community.)

D. Recommendations

- Ratify the *Rome Statute of the International Criminal Court*.
- Amend the *Criminal Code of Ukraine* to penalize the use of starvation as a method of war, as well as other war crimes.
- Amend the *Law on ensuring rights and freedoms of internally displaced persons* to specify procedures, including vulnerability assessment criteria, for identifying and prioritizing recipients of food assistance.
- Amend the *Law on ensuring rights and freedoms of internally displaced persons* to extend, based on assessed need, IDPs' entitlement to food assistance beyond the first month after their displacement.
- Adopt a resolution of the Cabinet of Ministers of Ukraine stipulating national procedures and vulnerability assessment criteria for the distribution of humanitarian aid to IDPs, applicable in all regions of Ukraine.

²⁸³ *Law on ensuring of rights and freedoms of internally displaced persons*, Arts. 11(8)(5) and 11(8)(11).

²⁸⁴ *Law on ensuring of rights and freedoms of internally displaced persons*, Art. 9(1).

²⁸⁵ *Law on ensuring of rights and freedoms of internally displaced persons*, Arts. 16 and 18.

²⁸⁶ *Law on ensuring of rights and freedoms of internally displaced persons*, Art. 18(3).

²⁸⁷ *Tax Code of Ukraine*, Art. 197, para. 197.11.

Access to water is essential for human survival, and is therefore a fundamental precondition for the exercise of virtually all human rights. In 2016, humanitarian organisations assess that 2.9 million conflict-affected people in Ukraine, including 200,000 IDPs, are in need of water, sanitation and hygiene (WASH) services, emphasizing that “Individuals with special needs and vulnerable groups among people in conflict-affected areas and IDPs, are in need of support to access WASH services, and in particular hygiene items.”²⁸⁸

Minimum essential elements of State regulation:

Recognize IDPs’ right to potable water.

Designate an agency at the local level responsible for the provision and maintenance of water and sanitation services for IDPs, whether or not in camps.

Seek and accept the support of the international community if needs cannot be sufficiently satisfied at the domestic level.

Establish procedures to identify and prioritize beneficiaries of water and sanitation services on the basis of need and particular vulnerability.

A. International normative framework

The right to an adequate standard of living includes the right to adequate water.²⁸⁹ The right to adequate water is fulfilled when every person has secure and non-discriminatory access at all times to safe and potable water for personal and domestic uses in order to prevent disease.²⁹⁰ Adequacy of water is measured by factors including sufficient and continuous availability, safe physical access, affordability, water quality, and non-discrimination. In situations of displacement, States must make special efforts to provide adequate water facilities and services to IDPs, whether they are living in camps or dispersed in urban or rural areas.²⁹¹ In situations of armed conflict, the targeting, by parties to the conflict, of drinking water installations and supplies or irrigation works is illegal, and States must ensure that civilians have access to adequate water.²⁹²

²⁸⁸ UN, Ukraine: 2016 Humanitarian Response Plan, January–December 2016 (January 2016), p. 23.

²⁸⁹ International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 11; Convention on the Elimination of Discrimination against Women (CEDAW), Article 14(2)(h); Convention on the Rights of the Child (CRC), Article 4(2)(c); UN, CESCR, *General Comment 15*, para. 3.

²⁹⁰ UN, CESCR, *General Comment 15*, para. 3.

²⁹¹ UN, CESCR, *General Comment 15*, para. 16(f).

²⁹² Protocol I to the Geneva Conventions, Articles 54 and 5; Protocol II to the Geneva Conventions, Article 54; Ge-

Based on established international law standards, Principle 18 of the *Guiding Principles on Internal Displacement* affirms the right of every person, including IDPs, to an adequate standard of living and specifies that, at minimum, regardless of the circumstances and without discrimination, authorities must provide and ensure IDPs safe access to potable water and sanitation.²⁹³ Special efforts are to be made to ensure the full participation of women in the planning and distribution of these supplies.²⁹⁴

Principle 24 of the *Guiding Principles* affirms: “All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination” and, in this connection, provides: “Humanitarian assistance to IDPs shall not be diverted, in particular for political or military reasons.”²⁹⁵ Humanitarian assistance encompasses all materials and services essential for the survival of IDPs, including potable water and sanitation.²⁹⁶

The UN Special Rapporteur for the Human Rights of Internally Displaced Persons, following his mission to Ukraine, has called for humanitarian assistance in regions affected by the armed conflict, including projects to restore civilians’ access to clean water.²⁹⁷

B. Council of Europe standards

Neither the ECHR nor the Council of Ministers’ Recommendation on internal displacement and its Explanatory Memorandum refer explicitly to water and sanitation. However, ensuring adequate water and sanitation can be considered the responsibility of member States for several reasons. The first of these is the commitment of the Committee of Ministers to implement the *Guiding Principles*,²⁹⁸ which do include a reference to access to potable water (see above section re: GP 18).

neva Convention IV, Article 55; UN, CESCR, *General Comment 15*, para. 22.

²⁹³ *Guiding Principles on Internal Displacement*, Principle 18(1) and (2)(a).

²⁹⁴ *Guiding Principles on Internal Displacement*, Principle 18(3).

²⁹⁵ *Guiding Principles on Internal Displacement*, Principle 24(1) and (2).

²⁹⁶ *Guiding Principles on Internal Displacement*, Principle 24; *Guiding Principles on Internal Displacement Annotations*, p. 113.

²⁹⁷ UN, *Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani. Addendum: Mission to Ukraine*, UN Doc. A/HRC/29/34/Add.3 (2 April 2015), para. 99.

²⁹⁸ “The Committee of Ministers [...] stressing the commitment to the spirit and provisions of the United Nations *Guiding Principles* and its willingness to implement them,” Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, Preamble.

The second is that the provision of water and sanitation is a precondition to other rights protected by the ECHR and the European Social Charter. In the case law of the European Court, the protection of health, which is closely linked to access to adequate water and sanitation, has mainly been covered under the right to life (ECHR, Article 2), and the prohibition of inhuman and degrading treatment (ECHR, Article 3). Moreover, the revised European Social Charter includes the right to protection of health (ECHR, Article 11), which provides that member States should take measures to “remove as far as possible the causes of ill health” and prevent epidemics and other diseases. Responsibility to ensure the provision of water and sanitation to IDPs, notably in collective centres, camps or informal settlements, therefore can derive from the above-mentioned obligations.

The Council of Europe Commissioner for Human Rights, in his report on the crisis in Ukraine, devoted specific attention to concerns regarding access to clean water and sanitation.²⁹⁹

Article 8 has been relied on in various cases in which environmental concerns are raised.³⁰⁰ In the case of *Dubetska and others v. Ukraine*, water pollution was one of the factors which was found to affect the applicants’ health and hence their ability to enjoy their home, private and family life.³⁰¹

In the case of *Dzemyuk v. Ukraine*, the applicant, relying in particular on Article 8 (right to respect for private and family life and the home), alleged that the construction of the cemetery near his house had led to the contamination of his water supply – both for drinking and gardening purposes – leaving his home virtually uninhabitable and his land unusable. The Court held that the high level of “*E. coli*, regardless of its origin, coupled with clear and blatant violation of environmental health safety regulations confirmed the existence of environmental risks, in particular, of serious water pollution, to which the ap-

²⁹⁹ Commissioner for Human Rights, Report by Nils Muižinieks, Commissioner for Human Rights of the Council of Europe, following his visit to Ukraine from 29 June to 3 July, Doc. CommDH(2015)23, 3 November 2015, paras. 12–14. In para. 13, the Commissioner cited a special report by the OSCE Special Monitoring Mission to Ukraine (SMM) detailing the challenges of access to clean water in conflict-affected areas, as a result of which the spread of water and sanitation-related disease had increased posing particular risk to the most vulnerable groups such as children, persons with disabilities, the chronically ill and older persons living in the least accessible conflict-affected areas. OSCE Special Monitoring Mission to Ukraine, Access to water in conflict-affected areas of Donetsk and Luhansk regions, SEC.FR/741/15, 10 September 2015, p. 5.

³⁰⁰ See e.g. ECtHR, *Fadeyeva v. Russia*, Application no. 55723/00, judgment of 9 June 2005.

³⁰¹ ECtHR, *Dubetska and others v. Ukraine*, Application no. 30499/03, judgment of 10 February 2011, paras. 110 and 113.

plicant was exposed.”³⁰² Accordingly, the Court concluded that the construction and use of the cemetery so close to the applicant’s house and the consequent impact on the environment and the applicant’s “quality of life” had constituted interference with the applicant’s right to respect for his home and private and family life.

C. Analysis of national legislation

Article 9 of the *Law on ensuring rights and freedoms of internally displaced persons* declares that IDPs have the right to safe living conditions and health; appropriate conditions for their temporary or permanent residence; provision by government and local authorities and by private persons of opportunities of free temporary residence (utilities are to be paid by IDPs); and “other rights provided by the Constitution and laws of Ukraine.”

According to Article 24 of the *Law on Potable Water and Water Supply*, governmental bodies have a responsibility, as a preventive measure, to stock adequate supplies of potable water as a preparedness measure for human-made and natural disasters. There are no such provisions for cases of armed conflict.

The *Law on ensuring sanitary and epidemiological welfare* does not specify any obligations for governmental bodies in the event of conflict or of human-made or natural disasters, nor any obligations regarding IDPs.

D. Recommendations

- Recognize in relevant national legislation, including IDP-specific legislation, the right of all persons, including IDPs and other conflict-affected populations, to safe access to adequate water, sanitation and hygiene.
- Assign a State body responsibility for ensuring provision and maintenance of adequate water, sanitation and hygiene services, including for IDPs, in cases of emergency and displacement, whether caused by conflict or disaster, and including preparedness measures.
- Address water and sanitation issues in the context of housing and basic shelter and ensure that minimum living conditions include standards for safe access to water, sanitation and hygiene.

³⁰² ECtHR, *Dzemyuk v. Ukraine*, Application no. 42488/02, judgment of 4 September 2014, para. 83.

11. RIGHT TO HEALTH

Displacement can aggravate IDPs' health due, for instance, to inadequate temporary accommodation, inadequate food and clothing, poor water supply and sanitation, or psychosocial trauma. At the same time, displacement often challenges IDPs' access to medical services as a result of damage to medical infrastructure or financial constraints, or due to unreasonable, even discriminatory, policies that frustrate IDPs' access to essential medical treatment.

Minimum essential elements of State regulation:

Recognize IDPs' right to health.

Designate a governmental agency or organization responsible for providing essential health services to IDPs in cases where IDPs cannot easily access regular services available to the general population.

Seek and accept the support of the international community if needs cannot be sufficiently satisfied at the domestic level.

Establish procedures to identify and prioritize beneficiaries of health services on the basis of need and particular vulnerability.

Provide for the waiver of standard and universal requirements (e.g. specific documentation, residency requirements, health insurance coverage) that limit or exclude access by IDPs to health services, and for free access to such services on the basis of need and particularly vulnerability.

A. International normative framework

Every person has the right to enjoy the highest attainable standard of physical and mental health, without discrimination.³⁰³ The right to health encompasses access to timely and appropriate health care as well as the “underlying determinants of health” including safe access to adequate food, potable water, adequate sanitation, adequate housing³⁰⁴ (*see also chapters on Right to Food, Water and Sanitation, as well as Basic and Adequate Shelter*) and adequate occupational standards. In situations of armed conflict, international humanitarian law sets an obligation for parties to a conflict to ensure that the wounded and sick receive medical attention as well as to seek, permit and facilitate the safe passage of

³⁰³ ICESCR, Article 12; International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Article 5(e)(iv); CEDAW, Articles 11(1)(f) and 12; CRC, Article 24.

³⁰⁴ UN, CESCR, *General Comment 14*, para. 4

humanitarian assistance, including medical supplies and medical personnel (see also chapter *Cooperation with the International Community*).

Based on established standards of international law, the *Guiding Principles on Internal Displacement* address the right to health in some detail. Principle 7(2) sets out the legal obligation of authorities undertaking any action requiring the displacement of persons to ensure that persons so displaced are received in satisfactory conditions, including in relation to “health and hygiene.”³⁰⁵ In all situations of displacement, Principle 18 of the *Guiding Principles* affirms the right of every person, including IDPs, to an adequate standard of living and specifies that, at the minimum, regardless of the circumstances and without discrimination, competent authorities must provide and ensure IDPs safe access to essentials for human life including essential medical services.³⁰⁶

Principle 19 elaborates on the requirement to ensure IDPs have access to medical care. Specifically:

1. All wounded and sick internally displaced persons, as well as those with disabilities, shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.
2. Special attention should be paid to the health needs of women including access to female health care providers and services, such as reproductive health care, and appropriate counselling for victims of sexual abuse and other abuses.
3. Special attention should be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.³⁰⁷

Principle 19(1) adopts wording used in customary international law in order to set the highest attainable standard of health and facilities for all those in need, without discrimination. The inclusion of the phrase, “to the fullest extent practicable” highlights that it is sometimes difficult to provide the level of care required.³⁰⁸ (See also chapter *Cooperation with the International Community*.)

³⁰⁵ *Annotations to the Guiding Principles*, p. 36.

³⁰⁶ *Guiding Principles on Internal Displacement*, Principle 18(1) and (2)(a). According to Principle 18(3): “Special efforts are to be made to ensure the full participation of women in the planning and distribution of these supplies.”

³⁰⁷ *Guiding Principles on Internal Displacement*, Principle 19.

³⁰⁸ *Annotations to the Guiding Principles*, pp. 89–91.

104 Guiding Principle 4 stresses as a general principle that IDPs with particular needs, including children, expectant mothers, persons with disabilities and elderly persons, “shall be entitled to protection and assistance required by their conditions and to treatment which takes into account their special needs.”

B. Council of Europe standards

The European Convention on Human Rights and its Additional Protocols do not include specific provisions on the right to health. However, this right can be linked to the right to life, protected by ECHR Article 2.³⁰⁹ This link between health and the right to life has been confirmed by the European Court of Human Rights in *Cyprus v. Turkey*:

The Court observes that an issue may arise under Article 2 of the Convention where it is shown that the authorities of a Contracting State put an individual’s life at risk through the denial of health care which they have undertaken to make available to the population generally. It notes in this connection that Article 2 § 1 of the Convention enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction.³¹⁰

In this same case, the Court further found that restrictions to access to health contributed, among other factors, to a violation to family life (ECHR, Article 8).³¹¹ More specifically, the Court considered that the various restrictions which beset the daily lives of the enclaved Greek Cypriots created a feeling among them “of being compelled to live in a hostile environment in which it is hardly possible to lead a normal private and family life.”³¹²

The Court has stated in the case of *L.C.B. v. the United Kingdom* that the first sentence of Article 2 of the European Convention, which ranks as one of the most fundamental provisions in the Convention and also enshrines one of the basic

³⁰⁹ Council of Europe, ECHR, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, Article 2, Right to life: “Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally, save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”

³¹⁰ ECtHR, *Cyprus v. Turkey*, Application no. 25781/94, judgment of 10 May 2001, para. 219.

³¹¹ ECtHR, *Cyprus v. Turkey*, Application no. 25781/94, judgment of 10 May 2001, para. 299: “the specific complaints invoked by the applicant Government regarding impediments to access to medical treatment [...] are elements which fall to be considered in the context of an overall analysis of the living conditions of the population concerned from the angle of their impact on the right of its members to respect for private and family life.”

³¹² ECtHR, *Cyprus v. Turkey*, Application no. 25781/94, judgment of 10 May 2001, para. 300.

values of the democratic societies making up the Council of Europe, enjoins the State not only to refrain from the “intentional” taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction.³¹³

In the case of *Calvelli and Ciglio v. Italy*, the Court established that the *L.C.B.* positive obligations under Article 2 to take steps to protect life apply to health care and require the state “to make regulations compelling hospitals, whether public or private, to adopt appropriate measures for the protection of their patients’ lives.”³¹⁴

The revised European Social Charter (ESC) includes extensive guarantees regarding protection of health. State parties undertake “to remove as far as possible the causes of ill-health; to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health; to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.”³¹⁵ The revised ESC further requires States to put in place conditions for the realisation of just conditions of work, which includes the elimination of “risks in inherently dangerous or unhealthy occupations.”³¹⁶ Moreover, States have an obligation to take measures “to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families” to, inter alia, medical assistance.³¹⁷ This provision is potentially very important for IDPs.

Special health measures are required in support of elderly persons’ right to social protection. These include the “provision of housing suited to their needs and their state of health or of adequate support for adapting their housing” as well as “the health care and the services necessitated by their state.”³¹⁸

In the revised ESC, States agreed that the realization of social rights is to be pursued “by all appropriate means” in order to ensure “the attainment of conditions in which the following rights and principles may be effectively realised.”³¹⁹ Although Ukraine has not agreed to be bound by Part II, Article 12 on the right to social security,³²⁰ nor by Article 13 on the right to social and medical assistance,

³¹³ ECtHR, *L.C.B. v. the United Kingdom*, (14/1997/798/1001), judgment of 9 June 1998, para. 36.

³¹⁴ ECtHR, *Calvelli and Ciglio v. Italy* [GC], Application no. 32967/96, judgment of 17 January 2002, para. 49.

³¹⁵ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 11.

³¹⁶ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 2 para. 4. See also ESR rev. Articles 3, 7, 8, 22, and 26.

³¹⁷ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 30, para. a.

³¹⁸ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 23, paras. a and b.

³¹⁹ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part I.

³²⁰ See Reservations and declarations for treaty No. 163 European Social Charter revised, declarations in force.

which elaborates on Part I of the revised ESC, it is at least bound by Part I, Article 13, which states: “Anyone without adequate resources has the right to social and medical assistance.”

Regarding IDPs, there is no explicit mention of health in the Committee of Ministers’ Recommendation on Internal Displacement. The Recommendation nonetheless does include a call for “particular attention” to be paid “to the protection and assistance requirements of the most vulnerable groups.”³²¹ On this point, the Explanatory Memorandum references the above-mentioned Guiding Principle 4(2) that certain IDPs, such as, inter alia, expectant mothers, persons with disabilities, elderly persons and children, are “entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.”³²² The only explicit reference to IDPs’ health comes in the Explanatory Memorandum on internal displacement, and specifically in the context of durable solutions. The text recalls the responsibility of States to put in place conditions for proper and sustainable integration of IDPs and to enable their self-reliance, including through the provision of adequate health and other facilities.³²³ More generally, and by way of the commitment of the Committee of Ministers to implement the Guiding Principles,³²⁴ the CoE implicitly confirms that national authorities have a responsibility towards IDPs’ health (see section on Guiding Principles above).

Beyond these provisions, the Council of Europe Recommendation on internal displacement and its Explanatory Memorandum include several provisions indirectly protecting the health of IDPs. States are obliged to take appropriate measures to prevent violations of the right to life, to physical integrity and to liberty and security.³²⁵ They should also prohibit torture.³²⁶ Any alleged violation of these rights should be effectively investigated.³²⁷ The Explanatory Memorandum on internal displacement confirms that the prohibition of inhuman and degrading treatment refers to both physical and mental suffering.³²⁸ Moreover, recom-

³²¹ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 3.

³²² Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 3.

³²³ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 3.

³²⁴ “The Committee of Ministers [...] stressing the commitment to the spirit and provisions of the United Nations Guiding Principles and its willingness to implement them,” Committee of Ministers, Recommendation 2006(6) on internally displaced persons, 5 April 2006, Preamble.

³²⁵ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 5.

³²⁶ *Ibid.*

³²⁷ *Ibid.*

³²⁸ Council of Europe, Co, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Adden-

mentation 5 provides that IDPs shall not be sent back to areas where they would face a real risk of being subjected to treatment contrary to the right to life and which could amount to torture, inhuman or degrading treatment.³²⁹ Such violations can arguably have a negative impact on physical and mental health.

As part of the necessity to pay particular attention to the protection and assistance of persons belonging to the most vulnerable groups,³³⁰ the Explanatory Memorandum specifies that these groups include “children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons”³³¹ which have specific needs, notably in relation to health.

C. Analysis of national legislation

The Constitution of Ukraine recognizes health as the highest social value in Ukraine.³³² Equality of rights and the non-discrimination principle are supported by the obligation of the State to establish special measures for the protection of the health of women.³³³ Article 49 affirms: “*Everyone has the right to health protection, medical care and medical insurance.*” The State has an obligation to create conditions for effective medical service accessible to all citizens. State and communal health protection institutions are to provide medical care free of charge; the existing network of such institutions shall not be reduced. The State is to promote the development of medical institutions of all forms of ownership. Health protection is to be ensured through state funding of the relevant socio-economic, medical and sanitary, health improvement and prophylactic programmes.

While State health care in principle is free, in practice it can only be provided within the limits of State budgetary financing for such programmes at State medical establishments. Health facilities are functionally subordinate to the Ministry of Health, but managerially and financially answerable to the regional and local self-government; this constrains the implementation of health policy and fragments health financing. Health care expenditure in Ukraine is low by regional standards and has not increased significantly as a proportion of gross domestic

dum, 8 March 2006, addendum, para. 5.

³²⁹ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 5.

³³⁰ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 3.

³³¹ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 3.

³³² Constitution of Ukraine, Art. 3.

³³³ Constitution of Ukraine, Art. 24.

108 product (GDP) since the mid-1990s; expenditure does not match the constitutional guarantees of access to unlimited care. As an alternative, private medical care is relatively expensive and therefore not accessible to the vast majority of the population. A legal entity of any form, as well as an individual entrepreneur, is allowed to practice medicine subject to a licensing procedure. Medical licenses are issued by the Ministry of Health Care of Ukraine, on an indefinite basis, after the fulfilment of all relevant requirements.

Constitutional principles regarding the right to health are further elaborated in the *Law on Fundamentals of the Legislation of Ukraine on Health Care*. Medical (or health care) law in Ukraine is not codified and includes a number of laws and by-laws. Laws have been adopted on specific medical issues, such as the *Law on Medicines*, the *Law on ensuring sanitary and epidemiological welfare of population*, the *Law on protection of the population against infectious diseases*, and so on.

Regarding IDPs, the State has reaffirmed IDPs' right to health, to medical treatment in accordance with procedures provided in legislation, and to necessary medical assistance in state and communal health care institutions.³³⁴ The Ministry of Health Care is responsible for providing medical assistance and health care services, undertaking comprehensive measures in sanitary and epidemiological security and quarantine measures at the place where IDPs factually stay.³³⁵ Some of the practical implementation of State policy is imposed on local authorities; for example, local state administrations are responsible for providing any necessary medical and psychological assistance to IDPs and for ensuring the proper functioning of medical institutions in order to provide necessary health care services to IDPs in the respective locality. Local governments are to provide such medical care in public health facilities based on information on the number of registered IDPs temporarily residing in the respective locality.

Some special beneficial provisions for IDPs are established by the legislation. For example, the *Law on healing and recreation of children* defines registered IDP children as a group needing special social attention and support.

The main challenge to IDPs' access to medical care is a practical problem, in particular that the State health care system lacks adequate human and financial resources. The State does not allocate special funds at the budgets of all levels and state programs adopted to support IDPs do not envisage some resources alloca-

³³⁴ *Law on IDPs № 1105*, Art. 9.

³³⁵ *Law on IDPs № 1105*, Art. 11.

tion at all. Meanwhile, the private health care system is expensive and therefore is not accessible to many IDPs.

Another obstacle for IDPs is legal, namely the provision in the by-laws that such services are provided only at the place of permanent residence. For instance, the *Resolution of the Board of the Social Insurance Fund against industrial accidents and occupational diseases of 11.12.2014 № 20* provides that IDP can obtain such services at the factual place of residence indicated in the IDP certificate. Considering that the recent amendments to the IDP Law cancelled the obligation to register IDPs' residence, the establishment of this place of residence seems to be more than problematic.

This problem is connected to the general complication arising from by-laws stating that free State health care is to be provided only at the actual registered place of residence. It contradicts the principle of free choice of medical care provider established by Ukrainian laws. However, due to limits on the number of patients to be serviced by a doctor and other standards, heads of clinics question this principle. They "semi-officially" establish different "donations" to ensure access to the medical care institution for non-residents. And if the IDP is not so lucky as to prove the illegality of such "donations," this imposes an additional financial burden on her or him.

Considering the situation of IDPs, especially their vulnerability as a result of displacement, and that a high proportion of IDPs in Ukraine are senior citizens, a more proactive position is required from the State to operationalize IDPs' right to health, such as establishing free special medical procedures or treatment for them. In most cases, IDPs lost their medical records in the NGCAs. They need to have a general medical examination in their new place of residence. The State should provide them with the possibility of receiving this examination for free at a State medical institution. Another proactive measure that could be proposed for the Government is introducing special types of treatment and recreation for the IDPs, such as recreation (sanatorium) treatment or the provision of medicines, secondary or specialised medical treatment in non-state facilities partially (or fully) compensated by the State; these provisions should be guaranteed by the allocation of funds in State and local budgets.

- Amend the *Law on ensuring rights and freedoms of internally displaced persons* to include a provision that free medical care be provided to IDPs in the place of actual residence (not in their officially registered place of residence).
- Amend the *Law on ensuring rights and freedoms of internally displaced persons* to provide IDPs with the possibility of undergoing a full medical examination at State medical institutions free of charge (with the costs borne by the State budget).
- Amend the *Law on ensuring rights and freedoms of internally displaced persons* to introduce special types of treatment and recreation for IDPs, such as recreation (sanatorium) treatment, or the provision of medicines, secondary or specialised medical treatment in non-state facilities partially (or fully) compensated by the State.
- Allocate necessary funds from the State Budget to local governments to provide health care programs for IDPs relative to the number of IDPs residing in that local administrative-territorial unit.

12. **EMPLOYMENT AND SOCIAL PROTECTION**

Employment, participation in economic activities, and access to social protection programmes are essential in order for IDPs to be able to enjoy an adequate standard of living while displaced and eventually to recover from their displacement, develop self-sufficiency, and access a durable solution. However, displacement typically results in IDPs losing not only their usual livelihood but also the assets and social networks that support economic activities. Even in cases where IDPs' livelihoods can be maintained, these often are severely constrained due to changes (for example in terms of access to markets, to land, and so on) as a result of the context causing displacement. In many cases IDPs also lack the documentation required to establish entitlement to social protection programmes or to prove their professional qualifications (*see chapter on Documentation*). In addition to these challenges, IDPs may face discrimination that hinders their attempts to re-enter the job market or access social protection programmes. As a result of these difficulties, and without appropriate support, IDPs are at significant risk of long-term impoverishment and reliance on humanitarian assistance. These circumstances heighten IDPs' exposure to the dangers of exploitation in the informal economy, which may particularly harm vulnerable IDPs, especially children, women and minorities.

Minimum essential elements of State regulation:

Recognize IDPs' right to work and right to access social protection programmes.

Take specific measures to protect IDPs against discrimination in the labour market and to give IDPs access to social protection programmes.

Direct government agencies responsible for employment and social security specifically to evaluate and take action in response to the particular problems faced by IDPs (for example, through provisional work programmes, access to microcredit and other assistance, skills transfer and vocational training, and access to labour market and social protection programmes).

Provide for measures (such as microcredit systems, vocational training, and the distribution of farming implements, seeds or animals) that help former IDPs to regain their livelihoods or engage in new economic activities in their place of settlement.

A. International normative framework

Based on established international law, the *Guiding Principles on Internal Displacement* affirm that “[i]nternally displaced persons [...] shall not be discriminated against as a result of their displacement in the enjoyment of the [...] right to seek freely opportunities for employment and to participate in economic activities.”³³⁶ Further, the *Guiding Principles* provide that “[e]ducation and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.”³³⁷ In addition, the *Guiding Principles* provide that “[w]hen necessary, internally displaced persons shall have access to [...] social services” both during their displacement and following their resettlement.³³⁸

B. Council of Europe standards

There is no explicit mention of employment or social protection in the Council of Europe's Recommendation on internal displacement. The Recommendation nonetheless does include a call for “particular attention” to be paid “to the protection and assistance requirements of the most vulnerable groups.”³³⁹ On this

³³⁶ *Guiding Principles on Internal Displacement*, Principle 22(1)(b).

³³⁷ *Guiding Principles on Internal Displacement*, Principle 23(4).

³³⁸ *Guiding Principles on Internal Displacement*, Principles 19(1) and 29(1).

³³⁹ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 3.

112 point, the Explanatory Memorandum references the above-mentioned Guiding Principle 4(2) that certain IDPs, such as, inter alia, expectant mothers, persons with disabilities, elderly persons and children, are “entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.”³⁴⁰ The Explanatory Memorandum includes only a few references to employment and social protection. It emphasises that IDPs’ lack of documentation can result in a lack of access to social services and formal employment.³⁴¹ In the context of durable solutions, the Memorandum recalls the responsibility of States to put in place conditions for proper and sustainable integration of IDPs and to enable their self-reliance, including through measures of social protection such as “adequate accommodation, health and education facilities and, as far as possible, employment opportunities.”³⁴²

The European Convention on Human Rights and its Additional Protocols similarly do not include provisions on the right to work or on social protection. However, as detailed below, the revised European Social Charter includes extensive guarantees regarding these two issues. All of the rights articulated in the ESC “shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.”³⁴³ Derogations are allowed in times of war or public emergency threatening the life of the nation “to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.”³⁴⁴

Employment

Article 1 of the revised ESC lists the key components of the right to work. States undertake to achieve and maintain “as high and stable a level of employment as possible, with a view to the attainment of full employment” and to “protect effectively the right of the worker to earn a living in an occupation freely entered

³⁴⁰ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, Addendum, para. 3.

³⁴¹ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 7.

³⁴² Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 12.

³⁴³ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part III, Article E.

³⁴⁴ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part III, Article F.

upon,” maintain free employment services and provide appropriate vocational guidance, training and rehabilitation.³⁴⁵

States undertake to take measures to ensure that workers benefit from fair conditions of work such as reasonable working hours, four weeks of annual leave with pay, and weekly rest.³⁴⁶ Measures should also be taken to ensure fair remuneration,³⁴⁷ safe and healthy working conditions³⁴⁸ (*see chapter on Health*) and the freedom of workers to organise and to protect their social and economic interests³⁴⁹ and bargain collectively.³⁵⁰ Workers have the right to take part in the determination and improvement of work conditions and the working environment³⁵¹ and to be informed about the economic situation of their employer and consulted on the decisions that may substantially affect their interests and employment.³⁵²

In order to ensure their right to dignity at work, workers should be protected from sexual and other forms of harassment through information and preventive action.³⁵³ Moreover, workers also have a right to be protected against termination of employment without valid reasons, or to be compensated.³⁵⁴ This can be useful with regard to IDPs who may be at such risk as a result of their displacement. The ESC prohibits discrimination on the grounds of sex and promotes equal opportunities and treatment in different fields such as access to employment, protection against dismissal, vocational guidance and training, remuneration, and career development.³⁵⁵ In addition, the ESC includes provisions adapted to the protection and specific needs of certain groups in relation to employ-

³⁴⁵ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 1. See also on vocational guidance and training, revised ESC, Part II, Articles 9 and 10.

³⁴⁶ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 2.

³⁴⁷ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 4.

³⁴⁸ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 3.

³⁴⁹ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 5.

³⁵⁰ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 6. See also revised ESC, Part II, Article 28 on the right of workers’ representatives to protection in the undertaking and facilities to be accorded to them.

³⁵¹ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 22.

³⁵² Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 21. See also revised ESC, Part II, Article 29 on the right to information and consultation in collective redundancy procedures.

³⁵³ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 26.

³⁵⁴ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 24, which mentions “the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service.”

³⁵⁵ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 20.

114 ment, such as family,³⁵⁶ children and young adults,³⁵⁷ persons with disabilities³⁵⁸ or women in situation of maternity.³⁵⁹

Additionally, the Council of Europe standards for the employment of IDPs can be derived from the PACE Recommendation 1899 (2009) instructing the member States to “*make income-generating activities available to IDPs to facilitate their social and economic reintegration and, in particular, to ensure full and non-discriminatory access to jobs offered by private or public employers.*”³⁶⁰ The PACE therefore again underlines the need for a proactive IDP policy by the member States. A later Resolution 1879 (2012) on “*The situation of IDPs and returnees in the North Caucasus region*” made an even more specific suggestion for reintegration to the labour market, including professional retraining and micro-credits for income-generating projects.³⁶¹

Social protection

According to the revised ESC, States are to ensure “by all appropriate means” the attainment of conditions in which the social rights and principles contained in the revised ESC may be effectively realised.³⁶² Although Ukraine has not agreed to be bound by the specific measures detailed in the revised ESC concerning the right to social security³⁶³ or the right to social and medical assistance, it has agreed, under Part I of the revised ESC, to direct its policy towards realisation of the right to social security³⁶⁴ and the right for anyone without adequate resources to social and medical assistance.³⁶⁵

Furthermore, the revised ESC articulates a right to benefit from social welfare services³⁶⁶ and a right to be protected against poverty and social exclusion.³⁶⁷ To give effect to these rights, States should “take measures within the framework

³⁵⁶ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 27 Right of workers with family to equal opportunities and treatment.

³⁵⁷ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 7.

³⁵⁸ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 15.

³⁵⁹ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 8.

³⁶⁰ PACE Recommendation 1877(2009), *Europe's forgotten people: protecting the human rights of long-term displaced persons*, 24 June 2009, para. 15.3.8.

³⁶¹ PACE Resolution 1879(2012), *The situation of IDPs and returnees in the North Caucasus region*, 26 April 2012, para. 8.1.5.

³⁶² Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part I.

³⁶³ See Reservations and declarations for treaty No. 163 European Social Charter revised, declarations in force.

³⁶⁴ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part I, Article 12.

³⁶⁵ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part I, Article 13.

³⁶⁶ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 14.

³⁶⁷ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 30.

of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance.”³⁶⁸ Such provisions would be relevant to IDPs living in a situation of poverty or social exclusion. Other measures of social protection included in the ESC include the right to health³⁶⁹ (see *Health chapter*) and the right to housing³⁷⁰ (see *chapter on Basic shelter and housing*), which also are also relevant for IDPs.

The revised ESC includes several measures addressing the social protection of and specific needs of certain groups such as families³⁷¹ as well as children and young persons.³⁷² For elderly persons, States undertake to adopt or encourage, “either directly or in co-operation with public or private organisations,” appropriate measures to promote the social integration of elderly persons, notably through the provision of adequate resources, information on availability of services and facilities for them, and the provision of housing and health care suited to their needs.³⁷³

While neither the ECHR nor the ESC refer to a right to an old age pension, the European Court has ruled on several occasions, including in cases of IDPs, that pensions can be considered as a possession in the meaning of ECHR, Protocol I, Article 1 on property and possession, where the national legislation provides for the payment of such pensions. In a case concerning pensioners displaced from Kosovo to Serbia whose pensions were suspended by the Kosovo pension branch after their displacement, the Court considered that this suspension of pensions violated the right to property and possession, arguing that nothing in national legislation indicated that recognized pension rights could “depend on whether or not current pension insurance contributions can be collected in a given territory.”³⁷⁴ In *Pichkur v. Ukraine*, the applicant whose pension was terminated after he moved his residence abroad complained of discrimination on

³⁶⁸ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 30.

³⁶⁹ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 11.

³⁷⁰ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 31.

³⁷¹ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 16 on the right of family to social, legal and economic protection and Article 27 on the right of workers with family responsibilities to equal opportunities and equal treatment.

³⁷² Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 17 on the right of children and young persons to social, legal and economic protection.

³⁷³ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Part II, Article 23 on the right of elderly people to social protection.

³⁷⁴ ECtHR, *Grudić v. Serbia*, Application no. 31925/08, judgment of 17 April 2012, paras. 72, 77 and 80.

116 the basis of his residence. The Court concluded that this difference in treatment constituted a violation of Article 14 on non-discrimination in conjunction with ECHR Protocol I, Article 1. The Court reasoned:

The entitlement to the pension itself had been made dependent on the applicant's place of residence, resulting in a situation in which the applicant, having worked for many years in Ukraine and having contributed to the pension scheme, had been deprived of it altogether, on the sole ground that he no longer lived there. He had been in a relevantly similar situation to pensioners living in Ukraine. No justification for the difference in treatment had ever been advanced by the authorities.³⁷⁵

Although this case concerns a person who lived abroad, the reasoning of the Court could *a fortiori* apply in the case of internally displaced persons. (For more on ECtHR cases regarding pensions of IDPs, see the *Chapter on Property and possessions*.)

In the case of *Stec v. the United Kingdom*, the Court accepted that the notion of “possessions” contained in Article 1 of the First Additional Protocol to the Convention could extend to all social security benefits, whether contributory or non-contributory.³⁷⁶ The Court observed that in the modern democratic state “many individuals are, for all or part of their lives, completely dependent for survival on social security and welfare benefits [...] Where an individual has an as-sertable right that can be asserted under domestic law to a welfare benefit, the importance of that interest should also be reflected by holding Article 1 of Protocol No. 1 to be applicable.”³⁷⁷

Of course, this does not mean that the states party to the Convention are henceforth required to guarantee social security benefits that do not exist within their legal system.³⁷⁸ However, Article 1 of Protocol No. 1, read in conjunction with Article 14 of the Convention, precludes refusing such benefits, where they exist, on grounds of sex,³⁷⁹ marital status³⁸⁰ or nationality.³⁸¹

³⁷⁵ ECtHR, *Pichkur v. Ukraine*, Application no. 10441/06, judgment of 7 November 2013, Legal summary, Information Note on the Court's case law No. 168, November 2013.

³⁷⁶ ECtHR, *Stec and others v. the United Kingdom* [GC], Application nos. 65731/01 and 65900/01, judgment of 06 July 2005.

³⁷⁷ ECtHR, *Stec and others v. the United Kingdom* [GC], Application nos. 65731/01 and 65900/01, judgment of 06 July 2005, para. 51.

³⁷⁸ ECtHR, *Stec and others v. the United Kingdom* [GC], Application nos. 65731/01 and 65900/01, judgment of 06 July 2005, para. 54.

³⁷⁹ ECtHR, *Willis v. the United Kingdom*, Application no. 36042/97, judgment of 11 June 2002.

³⁸⁰ ECtHR, *Wessels-Bergervoet v. the Netherlands*, Application no. 34462/97, judgment of 4 June 2002.

³⁸¹ ECtHR, *Koua Poirrez v. France*, Application no. 40892/98, judgment of 30 September 2003.

As for other bodies of the Council of Europe, little has been elaborated on the standards for social protection of IDPs. The PACE Recommendation 1877 (2009) merely calls upon the member States to “*guarantee living conditions and access to basic needs according to relevant standards.*”³⁸² The Congress of Local and Regional Authorities issued Resolution 218 (2006) dedicated to the social rights of immigrants. However, as the document calls the local and regional authorities “*to play an increasing role in the provision of basic social services and should therefore act as guarantors of equal access by all groups to such services and of full respect for the social rights of the whole population,*”³⁸³ it can be assumed that it applies also to the situation of internally displaced persons across Europe.

C. Analysis of national legislation

The Constitution of Ukraine provides that everyone has the right to labour and declares an obligation of the State to create conditions for full implementation of the right to labour, to ensure guarantees of equal opportunity to choose a profession and type of labour activity, and to implement programmes of vocational education, training and retraining. Any kind of discrimination in the labour sphere is prohibited. Equal rights for women and men is ensured in work and its remuneration; by providing women with opportunities for professional training; by special measures for the protection of the work and health of women; by establishing pension privileges; and by creating conditions that allow women to combine work and motherhood.³⁸⁴ The right to labour includes, inter alia, the right to proper, safe and healthy work conditions; to remuneration at no less than the minimum wage established by law; the prohibition of hazardous work by women and minors; protection from unlawful dismissal; the right to timely payment; the right to strike for the protection of economic and social interests; and the right to rest for those who are employed.³⁸⁵ The maximum number of working hours, the minimum duration of rest, and paid annual vacation as well as other labour conditions are determined by law. Forced labour is prohibited.

A right to social protection is articulated in Article 46 of the Constitution which also specifies that this includes the right to provision in cases of complete, partial or temporary disability; the loss of the principal wage-earner; unemployment

³⁸² PACE Recommendation 1877(2009), *Europe's forgotten people: protecting the human rights of long-term displaced persons*, 24 June 2009, para. 15.3.9.

³⁸³ Congress of Local and Regional Authorities, Resolution 218 (2006) on *Effective access to social rights for immigrants: the role of local and regional authorities*, 1 June 2006, Art. 2.

³⁸⁴ Constitution of Ukraine, Art. 24.

³⁸⁵ Constitution of Ukraine, Arts. 44 and 45.

118 due to circumstances beyond control of the individual; old age; and in other cases established by law. This right is guaranteed by general compulsory state social insurance based on the insurance payments made by citizens and employees and also on budgetary and other sources of social security, including the establishment of a network of state, community and private institutions.

All the above-mentioned principles and declarations regarding the right to work are elaborated in the *Code of the Laws on Labour* (CLL). Adopted in 1971 during socialist times, despite some subsequent changes and amendments the CLL still embodies a socialist orientation on labour issues that is not adapted to contemporary Ukraine. The CLL therefore will be replaced by a new Labour Code, which has been submitted for adoption by the Parliament.³⁸⁶

The CLL provides, among other general rules, for compulsory state social insurance and pensions. Presently, the legislation envisages various types of state social insurance for cases of unemployment; for cases of temporary inability to work; for cases involving workplace accidents and occupational diseases which triggered an inability to work; and medical and pension insurance. All types of compulsory state insurance are administered by respective State Funds, to which contributions are made both by employers and employees. When the insured event occurs the employee receives an allowance from the respective State Fund.³⁸⁷

In addition, Ukrainian legislation along with common pensions (compulsory pension insurance) provides for special state pensions. Among them are special pensions for different categories of employees, such as state servants, policemen, members of the military, and so on, established by laws on different types of occupations (Law of Ukraine “On Civil Service”).

Another type of state support – social assistance – is provided through social programs to improve the situation of certain segments of the population (such as the public housing subsidy program) and quality of the network of relevant social institutions (such as nursing and boarding homes) for those whose standard of living is below the minimum subsistence level, taking into account mainly the financial position of the person.

³⁸⁶ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=53221

³⁸⁷ Laws of Ukraine “On compulsory state social insurance for the cases of unemployment,” “On state social assistance to the poor families,” “On State Assistance to Families with Children,” “On compulsory state social insurance.”

The *Law on ensuring rights and freedoms of internally displaced persons* provides in Article 7 that IDPs shall enjoy rights to employment, pension benefits, mandatory state social insurance against unemployment, temporary disability, accident and occupational disease that caused disability, as well as the right to social benefits for elderly and disabled persons, disabled children and other persons in difficult circumstances in the same way as other citizens at the place of residence shown on the IDP's certificate of registration. Unemployed IDPs are to be re-registered by the State employment service as set forth by the Cabinet of Ministers of Ukraine. The State is responsible for all issues concerning social protection, in particular, the restoration of all social benefits to IDPs. The Cabinet of Ministers *Resolution No. 505 on providing monthly targeted financial support to internally displaced persons from the temporarily occupied territory of Ukraine and counterterrorist operation area to cover livelihood, including community services* as of 1 October 2014 stipulates that financial assistance shall be paid to registered IDPs for a period of six months. Such grants are limited to one per family. However, financial aid is not granted when any family member has a bank deposit in the amount exceeding 10 times the living minimum wage.³⁸⁸

To ensure IDPs' proper access to the labour market and social security funds, the Government has issued numerous legal acts, the most notable of which are:

- CMU Resolution of 5 November 2014 r. No. 637 "On the implementation of social benefits for persons who have moved from the temporarily occupied territory of Ukraine and areas of the counterterrorist operation," of 8 September 2015.
- CMU Resolution No. 696 "On approval of measures to promote employment, return of funds to finance such measures in case of violation of employment guarantees for internally displaced persons," of 8 September 2015.
- CMU Resolution No. 505 "On the approval of basic ways of solving problems of employment of internally displaced persons for 2015–2016," of 8 July 2015.
- CMU Resolution No. 81 "On part-time work of employees of state enterprises, institutions and organisations that moved from areas of the counterterrorist operation," of 4 March 2015.

³⁸⁸ Cabinet of Ministers *Resolution No. 505 on providing monthly targeted financial support to internally displaced persons from the temporarily occupied territory of Ukraine and counterterrorist operation area to cover livelihood, including housing and utilities*, adopted 1 October 2014, para. 6.

- Order of the Board of the Social Insurance Fund for protection against temporary inability to work of 26 December 2014 № 37 *On approval of the material support from the Fund for persons moved temporarily from the occupied territory of Ukraine and areas of the counterterrorist operation and many others.*

The legislation provides for a special procedure for those IDPs who cannot re-tire or terminate their position because of displacement and who do not have employment at the place of displacement. Such persons are to be registered and shall receive support and social benefits in accordance with mandatory state social insurance against unemployment may terminate labour relations through providing a notarized notice of termination of employment together with confirmation that the relevant statement has been sent by the citizen to their employer by registered mail. Registered IDPs who cannot provide any documents required for the status of unemployed shall acquire this status without fulfilment of the requirements set forth in the standard procedure. Termination of self-employment shall be carried out based on an application using a simplified procedure as well. Thus national legislation established simplified procedures for exercising IDPs' rights to employment, pensions, compulsory state social security, social services, and so on.

To ensure the constitutional rights of IDPs, the Government introduced mechanisms for a better implementation of their rights in the absence of all normally required documents (for example, due to the inability to confirm the fact of dismissal or termination of employment, the period of labour activities, income, education, and so on). Thus for the period from June to August 2014 the Cabinet of Ministers of Ukraine introduced appropriate changes to a number of legislative and regulatory acts in the field of social security and labour. In particular:

- The mechanism of payment of pensions to citizens of Ukraine residing in the temporarily occupied territory, including IDPs (Resolution of the CMU of 02.07.2014 №234 “On approval the payment of pensions and provision of social services for the citizens of Ukraine, living in the Autonomous Republic of Crimea and in Sevastopol”);
- A simplified procedure of acquiring the status of unemployed, as well as a reduction of the list of documents required for its acquisition (Resolution of the CMU of 27.08.2014 №403 “on amendments to the Rules of registration, re-registration of unemployed and keeping records of persons who are seeking employment”);

- A simplified mechanism for providing rehabilitation services for people with disabilities and disabled children to ensure their means of rehabilitation (Resolution of the CMU of 6 August 2014 №306 “on amending the rules approved by the resolutions of the Cabinet of Ministers Ukraine of 31.01.2007 №80 and of 05.04.2012 №321”);
- A regulated mechanism to transfer pensions and state aid to the place of IDPs’ actual residence during displacement.

Even so, and as evident from the analysis below, national legislation in this area still needs to be improved.

The CMU Resolution of 7 November 2014 No. 595 on “some issues of financing budget institutions, paying social benefits and providing financial support to enterprises and organisations in Donetsk and Luhansk regions” cancels all pensions and other social benefits including compulsory state social insurance for those residing in the NGCA. This rule was cancelled by a decision of the High Administrative Court of Ukraine of 16 October 2015. However, Government practice does not yet follow this judgment.

Some problems are caused by the lack of financing from the State and a generally weak economic situation. Delays in the payment of pensions and social benefits in most cases are caused by the long wait for revenue into the Pension Fund of Ukraine. The State and local budgets do not envisage enough funds for the social assistance and rehabilitation as well as the provision of disabled persons with the technical means of rehabilitation. IDPs are provided with such allowance or means by the residual principle at the “end of the queue.”

Some problems arise regarding the payment of insurance benefits for accidents and occupational diseases for those who are leaving the territories no longer under the effective control of the Ukrainian authorities. The Resolution of the Board of the Social Insurance Fund against industrial accidents and occupational diseases of 11 December 2014 No. 20 “On adoption of the rules of provision of insurance benefits, financing costs for medical and social assistance provided by the compulsory state social insurance against industrial accidents and occupational diseases for persons who move temporarily from the temporarily occupied territory and areas of the counterterrorist operation” provided, for this social insurance, for persons who temporarily move away from the occupied territory and the areas of the Government’s counterterrorist operations, two starting points for payments: a) from the month of submission of the relevant application and b) from the month of non-payment in the NGCA. However, this Order

122 does not provide unequivocally interpretable reasons to use one of these starting points rather than the other. Therefore, payments are sometimes made starting with the (later) time of the submission of the application and payments due for time in the NGCA are not made.

The problem of payment of pensions for special types of employees under particular laws is still in place. Such pensions are higher and the calculation of the proper amount requires not only information on total salary, which could be obtained from the personalized electronic registry, but also information available only by submitting original documents from the employer. These requirements seem impossible for IDPs coming from NGCAs to meet.

The *Law of Ukraine on Compulsory State Social Unemployment Insurance* provides that payment of unemployment benefits begins on the eighth day after the adoption of individual registration in the State Employment Service (part 3 of Article 22 of the Law). This rule doesn't apply to IDPs who had resigned from their last job on the temporarily occupied territory of Ukraine or on the territory of the counterterrorist operation, because they were resigned voluntarily. Under Part 4 of Article 23 of the Law, they can count on these payments only on the 91st day after registration.

Currently, the procedure for calculating the average wage (approved by the Resolution of the Cabinet of Ministers № 1266 of 26 September 2001) stipulates that its calculation is made by taking into account payments for the last six months prior to the individual's resignation. Payment amounts must be confirmed by the fact of the employer paying the social contribution to the account of State Fiscal Service of Ukraine opened in the State Treasury Service of Ukraine. As employers no longer remit this contribution now that Ukraine has lost effective control over the temporarily occupied territory of Ukraine and in the areas of the Government's counterterrorist operation in the Luhansk and Donetsk regions, IDPs are regarded as persons who haven't confirmed the amount of their salary. Thus, the allowance is calculated for them based on the minimum amount set by the State rather than IDPs' actual income, which may be higher.

IDPs from the Crimea and in Sevastopol have another problem with the documents concerning their civil status, in particular birth certificates and certificates of marriage, divorce, death, and so on. Ukrainian authorities do not recognize certificates issued by the *de facto* authorities. Current legislation of Ukraine does not provide for a replacement of such civil status documents with comparable civil status documents issued by authorities in Ukraine. (*See chapter on Civil Documentation.*)

D. Recommendations

- Develop and adopt an up-to-date and comprehensive national action plan to support integration of IDPs, with clear specification of necessary financing and sources of funding;
- Develop a national strategy for supporting the livelihoods of IDPs which recognizes and strengthens the capabilities of IDPs and provides opportunities to develop their creative, labour and economic potential, and ensure that this strategy includes a clear specification of necessary financing and sources of funding;
- Establish the mechanisms of definition of special types of pensions that require the provision of documents clarifying employer;
- Amend Resolution of the Board of the Social Insurance Fund against industrial accidents and occupational diseases of 11 December 2014 № 20 on adoption of the rules of provision of insurance benefits, financing costs for medical and social assistance provided by the compulsory state social insurance against industrial accidents and occupational diseases for persons who move temporarily from the temporarily occupied territory and areas of the counterterrorist operation, allowing clearly define the starting point of the insurance payment to pay all debts of the state;
- Amend the *Law on Compulsory State Social Unemployment Insurance*, in particular Article 23, paragraph 4, so that it no longer excludes persons who resigned from their employment in the NGCAs or in the Government-designated counterterrorist operation area;
- Amend paragraph 8 of the procedure for the calculation of the average wage (approved by the Resolution of the Cabinet of Ministers № 1266 of 26 November 2001) providing that persons who resigned from employment in the NGCAs or in the counterterrorist operation area during the period for which the average wage is calculated (income, allowance) for insured persons the last six calendar months are included prior to the termination of the employer paying the single social contribution to the account of State Fiscal Service of Ukraine opened in the State Treasury Service of Ukraine;
- Amend the *Law on ensuring rights and freedoms of internally displaced persons* to allow recognition of civil status of IDPs on the basis of information contained in the civil status documents issued in the NGCAs and in Crimea.

Displacement typically causes severe disruption to education. Ensuring IDPs' right to education is critically important for children's development and future opportunities. Continued school attendance also provides IDPs with a degree of stability, security, structure and normalcy in the context of the upheaval, uncertainty and trauma that the experience of displacement entails. It can also provide IDP children with an important source of psychosocial support and can help to reduce their exposure to threats including sexual exploitation and military recruitment. Equal access to education is an important indicator of IDPs' integration into the local community, both while they are displaced as well as once they return to their home areas or resettle elsewhere.

Minimum essential elements of State regulation:

Recognize IDPs' right to receive primary school education that is either free or provided on at least as favourable a basis as it would be for poor members of the host community.

Abolish administrative obstacles that may unreasonably and discriminatorily limit access to schools because they do not sufficiently take into account the specific problems faced by IDPs (such as requirements related to documentation, formal transfer from the previous school, or the pupil's ability to provide books and school uniforms).

Establish a clear obligation on the part of the competent authority to provide education to IDPs located in areas from which existing schools are inaccessible.

A. International normative framework

Every human being has the right to free and compulsory education at the primary level.³⁸⁹ Principle 23 of the Guiding Principles reaffirms this right and then specifies that to give effect to this right for IDPs, authorities are to ensure that IDPs, in particular IDP children, receive education which is free and compulsory at the primary level.³⁹⁰ Education should respect IDPs' cultural identity, language and religion.³⁹¹ Special efforts are to be made to ensure the full and equal partic-

³⁸⁹ UDHR, Article 26(1); ICESCR, Article 13(2)(a) and Article 14 regarding developing countries that have not yet introduced free primary school services; CRC, Article 28(1)(a).

³⁹⁰ *Guiding Principles on Internal Displacement*, Principle 23(2).

³⁹¹ Principle 23(2).

ipation of women and girls in educational programmes.³⁹² Education and training facilities shall be made available to IDPs, in particular adolescents, whether or not living in camps, as soon as conditions permit.³⁹³

The right to education is also to be secured in the context of durable solutions to displacement in accordance with authorities' obligation to ensure IDPs' "equal access to public services" upon their safe and voluntary return or resettlement in another part of the country.³⁹⁴

B. Council of Europe standards

The *European Convention on Human Rights* affirms that "[n]o person shall be denied the right to education," and provides that States should respect the right of parents to ensure this education in conformity with their own religious and philosophical convictions.³⁹⁵ Contrary to Guiding Principle 23, the ECHR does not provide that primary education should be compulsory. However, the European Social Charter goes one step further than this Principle by calling for the provision of free primary and secondary school.

The *European Social Charter* requires States to take measures to encourage the full development of children and young adults' personality, physical and mental health. This includes the provision of education and training institutions and the provision of free primary and secondary education.³⁹⁶ The above provisions are reinforced by other articles of the ESC articulating the right to vocational training, in particular through the provision of a system of apprenticeship for training young boys and girls in their field of employment.³⁹⁷ To protect the right to education, employment is only allowed from 15 years of age and only if it does not interfere with compulsory education.³⁹⁸ Also important with regard to IDPs is the requirement to reduce or abolish tuition fees, and when necessary, to provide further financial assistance for vocational training.³⁹⁹

³⁹² Principle 23(3).

³⁹³ Principle 23(4).

³⁹⁴ Principle 29(1).

³⁹⁵ Council of Europe, Protocol 1 to the ECHR, 20 March 1952, ETS 9, Article 2 on the right to education.

³⁹⁶ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Article 17 on the right of children and young persons to social, legal and economic protection, paras. 1a and 2.

³⁹⁷ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Article 10 (2) on the right to vocational training.

³⁹⁸ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Article 7 (3) and (4) on the right of children and young adolescents to protection.

³⁹⁹ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Article 10, para. 5.

The Framework Convention for the Protection of National Minorities includes several provisions relating to the education of minorities. States “shall take measures in the field of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.”⁴⁰⁰ This includes the promotion of equal opportunities for access to education at all levels (Article 12.3) and adequate opportunities for teacher training, access to textbooks and facilitating contacts among students and teachers of different communities (Article 12.2). Within the framework of the State education system, States should also allow national minorities the right to establish and manage their own private educational and training establishments without this entailing a financial obligation for the State (Article 13). Members of national minorities have the right to learn their minority language, and therefore, if there is sufficient demand in their traditional areas or where numbers are substantial, States shall endeavour to facilitate the teaching of minority languages or instruction in these languages (Articles 14.1 and 14.2). However, this should not be at the expense of learning and being taught in the official language (Article 14.3). The right to access to education in minority and regional languages is further elaborated by the European Charter for Regional or Minority Languages (ECRML).⁴⁰¹

Neither the CoE Committee of Ministers’ Recommendation nor the accompanying Explanatory Memorandum makes any reference to IDPs’ right to education. However, both of these texts do emphasize the applicability of the Guiding Principles on Internal Displacement which, as indicated above, do contain specific provisions on IDPs’ right to education. Additionally, the Explanatory Memorandum on internal displacement clarifies that the requirement to protect and assist vulnerable groups mentioned in paragraph 3 of the Committee of Ministers’ Recommendation (2006) refers notably to the requirement to address the specific needs and ensure the protection, inter alia, of IDP children, especially unaccompanied minors.⁴⁰² Education can arguably be one of the measures taken to address the needs of these groups. As far as higher education is concerned, it is important to take into account Recommendation No. R (98) 3 of the Committee of Ministers to Member States on Access to Higher Education. This document invited the member States to encourage all disadvantaged groups to access the higher education system, and to ensure their even participation by “legisla-

⁴⁰⁰ Council of Europe, FCNM, 1 February 1995, ETS 157, Article 12, para. 1.

⁴⁰¹ Council of Europe, ECRML, 4 November 1992, ETS 148, Article 8.

⁴⁰² Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 3; and Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 3.

tion against discrimination within a policy of equal opportunities should be complemented by positive action in favour of under-represented groups.”⁴⁰³ These measures shall include targeted financial assistance.⁴⁰⁴

The most important document of the Parliamentary Assembly is Recommendation 1652 (2004) on the education of refugees and internally displaced persons, an invitation to a Europe-wide action to create comprehensive education policies aiming at helping refugees and IDPs integrate into society and gain civic awareness and professional training.⁴⁰⁵ Similarly, the Congress of Regional and Local Authorities called for ensuring access to education for immigrants in 2006. When there is, for example, an evident need for an intensified integration program for ethnic minorities, the resolution suggests “*establishing or expanding after-school tuition centres*”⁴⁰⁶ for children.

Case law in the ECtHR framework provides some additional guidance as to how the right to education is to be understood in situations of displacement. In the context of the de facto separation of Cyprus into two different entities as a result of conflict, the European Court of Human Rights considered that the impossibility for Greek Cypriot children living in northern Cyprus to pursue secondary education in Greek in northern Cyprus represented a violation of the right to education. In *Cyprus v. Turkey*, the Court considered that the abolition of Greek secondary education by the Turkish Republic of Northern Cyprus, while still maintaining primary education in Greek, represented a violation of the right to education. Moreover, the ability of Greek Cypriot children from northern Cyprus to attend secondary school in the south was not considered an adequate solution by the Court due to its impact on family life.⁴⁰⁷

The language of instruction in schools was the key issue in the case of *Catan and others v. Moldova and Russia*.⁴⁰⁸ The case arose out of the breakup of the USSR, after which Moldova became an independent state, but with the territory of Transdniestria within it. With its large Russian/Ukrainian ethnic population, Transdniestria was controlled not by the Moldovan government but by Rus-

⁴⁰³ Council of Europe, Committee of Ministers, Recommendation (98) 3 on Access to Higher Education, 17 March 1998, Art. 3.

⁴⁰⁴ Council of Europe, Committee of Ministers, Recommendation (98) 3 on Access to Higher Education, 17 March 1998, Art. 8.3.

⁴⁰⁵ PACE Recommendation 1652(2004), *Education of refugees and internally displaced persons*, 2 March 2004.

⁴⁰⁶ Congress of Local and Regional Authorities, Resolution 218 (2006) on *Effective access to social rights for immigrants: the role of local and regional authorities*, 1 June 2006, Art 10 J.

⁴⁰⁷ ECtHR, *Cyprus v. Turkey*, Application no. 25781/94, judgment of 10 May 2001, paras. 277–278 and 280.

⁴⁰⁸ ECtHR, *Catan and others v. Moldova and Russia* [GC], Application nos. 43370/04, 8252/05 and 18454/06, judgment of 19 October 2012.

sia, which had troops based in it. After separatists had proclaimed the “Moldovan Republic of Transdniestria” (MRT), the MRT authorities closed schools in Transdniestria that taught in the Moldovan/Romanian language, which used the Latin alphabet and was the official language of Moldova. The schools were forced to move to premises that had inferior facilities and involved longer journeys for pupils. On their way to school, children were abused and had Latin script books seized by the police. The choice for members of the Moldovan community in the MRT was to either tolerate this harassment or move their children to a school in the MRT in which the teaching would be in a language in the Cyrillic script (Russian, Ukrainian or “Moldovan”). The Grand Chamber held that the forced closure of the schools and the subsequent harassment of the children constituted, in violation of Article 2 of First Additional Protocol to the Convention, interference with the children’s right of access to educational institutions existing at a given time and right to be educated in their national language.⁴⁰⁹ The measures taken by the MRT authorities were “intended to enforce the russification of the language and culture of the Moldovan community living in Transdniestria, in accordance with the MRT’s overall political objectives of uniting with Russia and separating from Moldova,” and run counter to the “fundamental importance of primary and secondary education for each child’s personal development and future access.”⁴¹⁰

C. Analysis of national legislation

The Constitution of Ukraine, the *Law on Education* and the *Law on Higher Education* constitute the legal framework for Ukrainian higher education. Relevant legislation includes, as well, decrees and regulations of the President and the Cabinet of Ministers of Ukraine. Article 53 of the Constitution of Ukraine declares that everyone has the right to education. Complete general secondary education is compulsory in Ukraine. The State has a legal responsibility to ensure accessible and free pre-school; complete general secondary, vocational and higher education in state and community educational establishments; the development of pre-school, complete general secondary, extra-curricular, vocational, higher and post-graduate education, various forms of instruction; and the provision of state scholarships and privileges to pupils and students. Citizens are entitled to free higher education in State and community educational establishments on

⁴⁰⁹ ECtHR, *Catan and others v. Moldova and Russia* [GC], Application nos. 43370/04, 8252/05 and 18454/06, judgment of 19 October 2012, para. 143.

⁴¹⁰ ECtHR, *Catan and others v. Moldova and Russia* [GC], Application nos. 43370/04, 8252/05 and 18454/06, judgment of 19 October 2012, para. 144.

a competitive basis, or on a contractual basis in any educational establishment. Non-citizens must pay for higher education.

For IDPs, Article 7 of the *Law on ensuring rights and freedoms of internally displaced persons* declares that IDPs shall have the right to continue their education at a given level in other regions of Ukraine, with costs covered by the State budget or other sources; the Cabinet of Ministers of Ukraine is to set the procedure for financing education of this type. Article 9 of the IDP Law affirms the right of an IDP to enrol in primary and secondary educational institutions. Article 11 provides that the Ministry of Education and Science shall establish conditions under which IDPs can obtain pre-school, complete general secondary, extra-curricular, vocational and higher education; shall coordinate the activities of local education authorities in order to meet the educational needs of IDPs; and shall perform certain other functions. Local state administrations and local governments shall enrol children in public pre-school and secondary educational institutions.

The Law of Ukraine “On Guaranteeing the Rights and Freedoms of Citizens and on the Legal Regime in the Temporarily Occupied Territory of Ukraine” states that citizens of Ukraine who reside in the temporarily occupied territory or who have been displaced from it have a right to continue their education in other regions of Ukraine at the expense of the State Budget of Ukraine. Such persons may take part in competitions for admission to study in Ukraine’s state and community educational institutions under the general procedure, with a student hostel residence provided during these studies. If after completion of their studies such persons are not offered a State-funded education, the educational entity shall increase the number of places funded by the State according to the procedure stipulated by the Cabinet of Ministers of Ukraine for financing additional State-funded places for persons residing in the temporarily occupied territory or displaced from it. In 2014, the CMU adopted a procedure for the provision of additional places for education at State expense for citizens of Ukraine residing in the temporarily occupied territory or displaced finished previous educational establishments.⁴¹¹ However, a general procedure has not yet been approved.

On 14 May 2015, Parliament amended legislation regarding State support for technical, professional and higher education for the following groups of people: children who are registered as internally displaced persons; combatants and their children; and children with a parent who died in the area of the Government’s counterterrorist operation, in fighting or armed conflict, or during the

⁴¹¹ CMU Resolution of 17.09.2014 № 450.

130 mass actions of civic protests.⁴¹² Through these amendments to general education legislation, the State assumed obligations to registered IDPs who are under 23 years of age, namely full or partial tuition covered by the State and local budgets; long-term loans for education; social eligibility for the social stipend (a monthly allowance for students, irrespective of their school marks or rankings, belonging to specially protected groups or vulnerable groups); the provision of free textbooks; free internet access and access to database systems in state and communal educational establishments; free hostel accommodation; and other measures approved by the Cabinet of Ministers of Ukraine. However, as of yet, no resources have been allocated in the State Budget to enable implementation of these provisions for IDPs.

One of the main problems that IDPs face in exercising their educational rights is that implementation of the IDP law is contingent on the adoption of various by-laws and regulations. The Cabinet of Ministers has previously adopted some resolutions covering issues specific to IDPs, while others are still pending, including many in the educational sphere. A second problem is that other matters are not being implemented due to a lack of regulatory provisions and financial resources within local and regional authorities.

Another significant obstacle to IDPs' enjoyment of their right to education and several other rights is that according to the IDP Law, the rights specified therein are to be implemented at the place of the IDPs' registered residence. This problem was addressed by the Parliament on 24 December 2015 with amendments to the *Law on Ensuring and of Rights and Freedoms of Internally Displaced Persons* that eliminate the limitation of rights to the officially registered place of residence of IDPs. However, no new amendments concerning educational issues were adopted.

Another difficulty regulated by the State is that Ukrainian educational institutions do not accept diplomas and certificates issued in Crimea after the secession of this territory in March 2014 and by the educational institutions located in the NGCA. As a result, at a given educational level, an IDP must have a diploma or certificate issued by an institution on governmentally controlled territory in order to continue her or his education. At the same time, there is no legal act outlining the procedure for obtaining such a diploma. The Ministry of Education and Science of Ukraine recommended utilizing distance or external forms of education for persons who wish to obtain a state diploma or certificate recognized

⁴¹² <http://zakon3.rada.gov.ua/laws/show/425-19>

in the GCA of Ukraine.⁴¹³ This mechanism is proposed in particular for those who want to transfer from an educational institution located in the NGCA to a school or college in the GCA. For example, a person with a certificate confirming completion of the ninth year of school in the NGCA should be allowed to use an external or distance system of learning to finish the same class of school in the GCA that established additional administrative barriers to IDPs' obtaining an education. This proposal remains pending.

D. Recommendations

- Adopt the Cabinet of Ministries' regulation elaborating and adopting the required procedures for financing the free education of IDPs.
- Cancel rules that establish a connection between IDPs' residence registration and the place of their education.
- Allocate, in the State budget and local budgets, adequate resources to cover costs for ensuring IDPs' education.
- Cancel the rules that prohibit the recognition of diplomas/certificates issued by educational institutions in Crimea, and provide for relevant procedures (such as certification or testing to expedite this process and placement of IDPs at an appropriate educational level). Ensure analogous facilitation for IDPs from NGCAs.

14. ELECTORAL RIGHTS

Participation in the political process, while not as immediately evident or lifesaving a need as physical protection, water, food and shelter, is a crucial element in the protection of IDPs. If IDPs are not able to participate in elections and referenda as voters and candidates for election, they are disenfranchised and as a result, governments may be less attentive to their concerns. However, IDPs often face significant barriers to exercising their rights to participate in public and governmental affairs, in particular their rights to vote and to stand for election. Typically, voter eligibility, especially in local and parliamentary elections, is inherently linked to residency. If IDPs are displaced outside of their usual electoral district, they will likely face challenges participating in elections, regardless of whether they wish to vote by absentee ballot in their usual district or re-register in the electoral district to which they were displaced. Uncertainty as to whether

⁴¹³ Letter of the Ministry of Education and Science of 14.09.2015 # 1/9–436, "On continuing secondary education by persons residing in the temporarily occupied territory of Ukraine."

132 IDPs are allowed to cast their votes in the place of their displacement, or have to go back to their former residence in order to do so, is often an issue. Voter registration requirements, in particular the need to supply identity documents (which may have been lost during displacement), can be another challenge. Lack of adequate voting information for IDPs, and inadequate voting facilities or security at voting stations can further frustrate IDPs' participation in the electoral process.

Minimum essential elements of State regulation:

Provide mechanisms for IDPs to be registered as voters during displacement, such as through facilitated procedures to maintain existing voter registration, to transfer voter registration, and/or to waive requirements that would prevent IDPs from registering at the site of displacement.

Allow IDPs to cast their vote, at the location of displacement, in either the constituency of origin (by absentee ballot) or the constituency of displacement.

A. International normative framework

Political participation is a human right which remains intact during situations of displacement. Principle 22 of the *Guiding Principles on Internal Displacement* affirms that even in a situation of displacement IDPs still have the right to participate in public and governmental affairs, including the right to vote. Authorities are to ensure that IDPs have access to the means necessary to exercise these rights. Also relevant to political participation, the *Guiding Principles* reaffirm IDPs' rights to freedom of thought, conscience, religion or belief, opinion and expression.⁴¹⁴

Furthermore, the *Guiding Principles* require authorities to facilitate the issuance of identity and other personal documents "necessary for the enjoyment and exercise of legal rights." Access to civil documentation is essential for the exercise of electoral rights. (See chapter on *Civil Documentation*.)

B. Council of Europe standards

The right to free elections is guaranteed by Article 3 of Protocol I of the *European Convention on Human Rights* which provides that member States should "undertake to hold free elections at reasonable intervals by secret ballot, under con-

⁴¹⁴ *Guiding Principles on Internal Displacement*, Principle 22.

ditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”⁴¹⁵ The right to freedom of expression can be subject to restrictions in certain circumstances prescribed by law.⁴¹⁶ In a situation of internal displacement, the Committee of Ministers’ Recommendation on IDPs underlines the responsibility of States to take the legal and practical measures necessary to ensure that IDPs can exercise their right to vote in national, regional or local elections.⁴¹⁷

In the case of *Aziz v. Cyprus*,⁴¹⁸ the applicant complained that he was refused permission to be registered on the electoral roll, in order to vote in parliamentary elections, because he was a member of the Turkish-Cypriot community. The Court noted that Article 63 of the Cypriot Constitution, which entered into force in August 1960, provided for separate electoral lists for the Greek-Cypriot and Turkish-Cypriot communities. Nonetheless, the participation of Turkish-Cypriot members of parliament was suspended from 1963, from which time the relevant articles of the Constitution providing for the parliamentary representation of the Turkish-Cypriot community and the quotas to be adhered to by the two communities became impossible to implement in practice. The Court noted that the situation in Cyprus deteriorated following the occupation of northern Cyprus by Turkish troops. It further observed that, despite the fact that the relevant constitutional provisions had been rendered ineffective, there was a notable lack of legislation to resolve the resulting problems. Consequently the applicant, as a member of the Turkish-Cypriot community living in the Government controlled area of Cyprus, was completely deprived of any opportunity to express his opinion in the choice of the members of the house of representatives of the country of which he was a national and where he had always lived. Accordingly, the Court held that there had been a violation of Article 3 of Protocol No. 1 of the Convention.

The PACE resolutions make further specifications that explicitly apply to the case of IDPs in PACE Recommendation 1877 (2009), suggesting that it be ensured “*that IDPs can exercise their right to participate in public affairs at all levels,*

⁴¹⁵ Council of Europe, Protocol 1 to the ECHR, 20 March 1952, ETS 9, Article 3.

⁴¹⁶ The grounds for limitations are described in ECHR, Article 10 para. 2 and should be “prescribed by law and [...] necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

⁴¹⁷ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 9.

⁴¹⁸ ECtHR, *Aziz v. Cyprus*, Application no. 69949/01, judgment of 22 June 2004.

134 including their right to vote or stand for election, which may require special measures such as IDP voter registration drives, or absentee ballots.”⁴¹⁹

Also, of particular significance to the right to vote of Internally Displaced Persons is PACE Resolution 1459 (2005)¹ *Abolition of restrictions on the right to vote*, particularly paragraph 11.b, which requires member States to “grant electoral rights to all their citizens (nationals), without imposing residency requirements.”⁴²⁰ Although this Resolution primarily addresses resident non-nationals and expatriates wishing to vote from abroad, its aim of granting the right to vote to the highest number of voters possible in fact covers the problems the IDPs may face due to possible requirements for local residency and timely registration. Furthermore, as the same resolution stresses in the case of other marginalized groups, it is important to enable and encourage IDPs to exercise their right to stand as a candidate and represent their community in the elected bodies. The difficulties of registering IDPs as voters are addressed indirectly in PACE Resolution 1897 (2012) *Ensuring greater democracy in elections*. The relevant authorities of the member States are encouraged to “[draw] up electoral registers in such a way as to ensure that as many voters as possible register. First-time registration should be automatic, electoral registers should be permanent and recourse to supplementary lists exceptional.”⁴²¹ As regards the right to vote of IDPs, local authorities should therefore ensure their prompt registration for any upcoming elections.

Lastly, with respect to the problem of local registration and the right to vote of displaced persons, the Venice Commission had suggested a different approach in its 2002 *Code of Good Practice in Electoral Matters*. The Commission concludes that “if persons, in exceptional cases, have been displaced against their will, they should, provisionally, have the possibility of being considered as resident at their former place of residence.”⁴²² However, sustaining an active and passive electoral right in a place of former residence is rather unattainable in cases of armed conflict where IDPs have been displaced from their usual electoral district and this area is no longer under the effective control of the Government, as is the case in Ukraine.

⁴¹⁹ PACE Recommendation 1877(2009), *Europe’s forgotten people: protecting the human rights of long-term displaced persons*, 24 June 2009, para. 15.3.12.

⁴²⁰ PACE Resolution 1459(2005), *Abolition of restrictions on the right to vote*, 24 June 2005.

⁴²¹ PACE Resolution 1897(2012), *Ensuring greater democracy in elections*, 3 October 2012, para. 8.1.1.

⁴²² Venice Commission, 2002, *Code of Good Practice in Electoral Matters*, p. 15.

C. Analysis of national legislation

In Ukraine, general principles governing elections are set out in the Constitution of Ukraine. Under Articles 69 to 71 of the Constitution, the right to vote is universal and is enjoyed by citizens of Ukraine who have reached the age of eighteen on the day of an election, excepting only those who have been deemed incompetent by a court. Elections to state and local government bodies are free and are held on the basis of universal, equal and direct suffrage, by secret ballot. The electoral system for presidential elections is a direct countrywide vote. For local and parliamentary elections, it is a mixed parallel (proportional-majoritarian) system, with open party lists.

The various types of election processes are regulated by three distinct laws: “On the Election of National Deputies of Ukraine”; “On the Election of the President of Ukraine”; and “On Local Elections.” These three laws establish regulations for the electoral system, the threshold for gaining mandates, the participants in the electoral process, the staffing procedure for election commissions, and some additional electoral procedures. The legal framework for elections also comprises the Law on the Central Election Commission, the Law on the State Voter Register, the Law on Political Parties in Ukraine, the Code of Administrative Proceedings, and other laws as well as regulations of the Central Election Commission. Comprehensive election legislation is not codified. Two such drafts were submitted to Parliament for consideration in mid-2015 (neither draft includes any specific provisions to ensure IDPs’ participation in elections).

The most significant overall problem with the election legislation that it is not unified or stable. In the absence of codified comprehensive electoral legislation, almost every election is conducted under a new election law. Each new electoral law is adopted close to the timing of elections and brings significant changes to the electoral system and procedures. Therefore, the electoral procedures provided by the law undergo major adjustments during each electoral process. The fact that electoral procedures are constantly in flux poses a significant challenge. At the same time, it also presents opportunities to address, without delay, the limitations that IDPs face in exercise their rights to vote.

IDPs face major complications in participating in all three levels of elections (local, parliamentary and presidential), but most significantly in parliamentary and local elections. Common to all three types of elections is the requirement that voter eligibility is conditional upon the individual being registered

136 in the voter list for the respective election precinct (a typical requirement in electoral legislation globally). This requires additional actions by IDPs that are not required of the ordinary voter. Under Article 8 of the Law “On ensuring of rights and freedoms of internally displaced persons” IDPs of eligible voting age shall enjoy the right, in any type of elections, to change their place of voting (that is, where they cast their ballot) without changing their voting address, as is the usual procedure provided in part three of Article 7 of the *Law of Ukraine on State Voter Register*. To do so, the IDP should submit an application together with her or his passport and IDP card to the Voter Register Maintenance Body (RMB) for the electoral precinct where they are living currently no later than five days before the election. The certificate issued by the voter registration authority to the IDP confirms the IDP’s temporary change of polling station. This certificate means that the IDP is to be included on the voters’ list in the precinct in question. In practice, however, this still requires some additional actions on the part of the IDP in comparison with other persons who need to change their voting place (such as prisoners or members of the military); in these other cases, the State maintains information in special registers and ensures information exchange between different registers before the election in order to automatically include these persons to the lists of voters. For IDPs, a similar automated system should be possible, using the IDP database (see chapter on Data Collection).

It should be noted that State bodies made some efforts in the presidential and parliamentary elections of 2015 to ensure the voting rights of IDPs. Specifically, for IDPs from Donetsk and Luhansk *oblasts* (regions), the Central Election Commission adopted a simplified procedure (comparatively speaking) for changing their voting place without changing their permanent voting address in their pre-displacement precinct. Similarly, IDP voters from the Crimean peninsula benefit from a simplified procedure under which they can temporarily change the voting address indicated in their domestic passports to the address where they are registered as living while displaced.

Another limitation much more significantly violates IDPs’ right to vote, in particular in local elections. Under the *Law of Ukraine on Local Elections*, IDPs who have been displaced outside of the electoral district of their habitual residence are deprived of the right to vote since they do not have permanent residence in the constituency where they are living while an IDP; at the same time, they are disenfranchised from the local election in their place of permanent residence as there are no provisions for them to participate in such elections by absentee ballot if indeed such elections take place (and no elections are taking place

in NGCAs under Ukrainian legislation). More confusingly, although they are thereby unable to vote in local elections either in their “home” electoral district or in the district where they are living while displaced, the *Law on local elections* allows them to register as candidates and be elected to local government bodies in the electoral district where they are living while displaced. Essentially, the law on local elections impedes IDPs from voting in any local elections.

In fact, in the local elections that occurred in 2015, a significant number of internally displaced Ukrainian citizens were disenfranchised, specifically all IDPs who did not change their permanent place of residence. There is ongoing discussion among academics, NGOs, and MPs on how to grant voting rights in local elections to IDPs in their place of residence while displaced. There is broad support for the idea that IDPs should, in line with international standards, be granted voting rights in local elections; however, further discussion of the modalities is needed, not least because changing one’s electoral district is also extremely difficult for other groups of persons in Ukraine, such as economic migrants, which underscores again the need for comprehensive electoral reform. Civil society organizations have developed a draft law, No 2501a-1, to ensure the right of IDPs to participate in local elections. Moreover, two more alternative draft laws have been registered with the Parliament. However, none of these draft laws have been adopted by the Parliament. An alternative approach was presented by the Committee of Voters in Ukraine (CVU) on 20 May 2015. CVU proposed that IDPs be allowed to vote for local government bodies from their place of registration before displacement. For this purpose, absentee ballots and special polling stations would need to be created in areas where there are high concentrations of IDPs. This proposal also was not adopted into law. As a result, when the last local elections were held on 25 October 2015, IDPs still were deprived of their right to vote in local elections.

According to international standards, both approaches are needed: provisions enabling IDPs to register as voters in their place of residence while displaced regardless of the official registration of residence indicated in their passport, and, should they so choose, provisions enabling them to vote in the electoral district of their habitual residence, in which case absentee voting is required. Legislative amendments are essential in order to enable IDPs to participate as voters in local elections.

- Adopt a comprehensive *Election Code for Ukraine*.
- Amend the election legislation to include the procedure for including IDPs in the voters' list based on information from the State body managing the IDP database, and reserving the right of IDPs either to register as a voter at their address while displaced or to maintain their right to vote in the electoral district of their permanent residence.
- Amend the legislation on local elections, in particular to include provisions establishing a mechanism enabling IDPs to vote in local elections in their place of displacement, as is the case for parliamentary elections, or, if they so choose, in their place of origin by absentee ballot.

15. **PROPERTY AND POSSESSIONS**

Recovery of housing, land, property and possession left behind as a result of displacement is a right of IDPs, refugees and other affected persons. It also is an essential element for the achievement of durable solutions to internal displacement. However, complicating factors for realizing this right include loss or destruction of housing, land, and property records, and the appropriation or occupation of this property by others during IDPs' and refugees' absence. Protecting IDPs' property during displacement from unlawful appropriation or occupation and looting or other damage, as well as establishing procedures for restitution of such property to IDPs upon their return, must be prioritised in any effort to address internal displacement.

Minimum essential elements of State regulation:

Recognize the property rights of IDPs to their abandoned homes, property, and land, including the right to protection and restitution of such property.

Take basic measures to secure homes, lands, and property left behind by IDPs against destruction, unlawful use or occupation, and appropriation.

Develop facilitated procedures to restore or compensate IDPs' rights to housing, land, and property; where this is not possible, provide support to informal dispute resolution bodies to take into account human rights law in negotiating solutions to local property claims.

Recognize individual rights to a minimum level of tenure security, regardless of tenure status.

A. International normative framework

Based on well-established standards of international law, Principle 21(1) of the *Guiding Principles on Internal Displacement* reaffirms the general principle that “[n]o one shall be arbitrarily deprived of property and possessions.”⁴²³ Principle 21(2) then elaborates that the property and possessions of IDPs “shall in all circumstances be protected, in particular, against: pillage; direct or indiscriminate attacks or other acts of violence; being used to shield military operations or objectives; being made the object of reprisal; and being destroyed or appropriated as a form of collective punishment.” Principle 21(3) affirms that any property and possessions left behind by IDPs “shall be protected against destruction and arbitrary and illegal appropriation, occupation or use.” On this last point, the *Annotations* to the *Guiding Principles* elaborate that States are expected to take three types of protective action regarding property: (1) preventive actions, such as deploying troops to protect property; (2) deterrent actions, such as prosecuting individuals who destroy or illegally appropriate property; and (3) preparatory actions, including registration of land and ownership rights.⁴²⁴ Also relevant is Principle 29(2), which provides:

Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery or such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.⁴²⁵

More detailed guidance on this issue is found in the *Principles on Housing and Property Restitution for Refugees and Displaced Persons*,⁴²⁶ which were developed by the UN Sub-Commission Special Rapporteur on Housing and Property Restitution, Paulo Sérgio Pinheiro, and accordingly have come to be known as the *Pinheiro Principles*. The Principles reaffirm the rights of IDPs and refugees to protection against arbitrary displacement, to peaceful enjoyment of their posses-

⁴²³ *Guiding Principles on Internal Displacement*, Principle 21(1). For a summary of the international law on which Principle 21 is based, see *Annotations to the Guiding Principles*, pp. 96–100.

⁴²⁴ *Annotations to the Guiding Principles*, p. 99, citing a report of the UN Secretary-General regarding the protection of civilians.

⁴²⁵ *Guiding Principles on Internal Displacement*, Principle 29(2). For a summary of the international law on which Principle 29(2) is based, see *Annotations to the Guiding Principles*, pp. 132–40.

⁴²⁶ UN Sub-Commission on Promotion and Protection of Human Rights, Resolution 2005/21, “Principles on Housing and Property Restitution for Refugees and Displaced Persons,” adopted on 11 August 2005 (hereinafter *Pinheiro Principles*).

140 sions, to freedom of movement and voluntary return, and to recovery of property or, where this is factually impossible, compensation.⁴²⁷

An entire section of the *Pinheiro Principles*, spanning Principles 11 to 22, is devoted to legal, policy, procedural and implementation mechanisms. To begin with, Principle 11 affirms: “States should ensure all housing, land and property restitution procedures, institutions, mechanisms and legal frameworks are fully compatible with international human rights, refugee and humanitarian law and related standards, and that the right to voluntary return in safety and dignity is recognized therein.”

Principle 12 is devoted to issues concerning national procedures, institutions and mechanisms, providing guidance including that “States should establish and support equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims” and should ensure that such “procedures, institutions and mechanisms are age and gender sensitive, and recognize the equal rights of men and women.” States are to “take all appropriate administrative, legislative and judicial measures to support and facilitate the housing, land and restitution process” and “should provide all relevant agencies with adequate financial, human and other resources to successfully complete their work in a just and timely manner.”

Principle 13 begins by affirming:

Everyone who has been arbitrarily or unlawfully deprived of housing, land or property should be able to submit a claim for restitution and/or compensation to an independent and impartial body, to have a determination on their claim and to receive notice of such determination. States should not establish any preconditions for filing a restitution claim.

This right, as Principle 13 indicates, applies to “everyone” who has been arbitrarily or unlawfully deprived of housing, land or property; this includes tenants and other non-owners.⁴²⁸ The remainder of Principle 13 elaborates on the accessibility of restitution claims procedures, including that States should ensure that: “all aspects of the restitution claims process, including appeals procedures, are just, timely, accessible, free of charge, and are age and gender sensitive”; that the restitution claims process is accessible to IDPs and refugees regardless of their place of residence during their period of displacement; that claims forms are “simple and easy to understand and use”; that persons needing special assistance, includ-

⁴²⁷ *Pinheiro Principles*, Principles 2, 5–7, and 9–10.

⁴²⁸ *Pinheiro Principles*, Principle 13(6) and Principle 16.

ing persons with disabilities and the illiterate, are provided with special assistance to ensure they are not denied access to the process; and that “adequate legal aid is provided, if possible free of charge, to those seeking to make a restitution claim.”⁴²⁹

States are to “develop a legal framework for protecting the right to housing, land, and property restitution which is clear, consistent and, where necessary, consolidated in a single law.”⁴³⁰ This legal framework must “clearly delineate every person and/or affected group that is legally entitled to the restitution of their housing, land and property.”⁴³¹ Moreover, States “should take immediate steps to repeal unjust or arbitrary laws and laws that otherwise have a discriminatory effect on the enjoyment of the right to housing, land and property restitution.”⁴³² States also should establish national cadastral or other appropriate systems for the registration of housing, land and property rights, and ensure that existing registration systems are not destroyed in times of conflict or post-conflict.⁴³³ States must designate specific agencies for enforcing restitution decisions and ensure that “local and national authorities are legally obligated to respect, implement and enforce” restitution decisions.⁴³⁴ Further, States should ensure that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent impartial tribunal. Even then, the holder of the right “should have the option to repair or rebuild wherever possible.”⁴³⁵

When addressing housing and property restitution for IDPs and refugees, the *Pinheiro Principles* and companion guidance⁴³⁶ should be read in full.

B. Council of Europe standards

The right to property is guaranteed by ECHR Protocol I, Article 1, affirming that individuals and legal persons have the right to benefit from peaceful enjoyment of their possessions and to be protected from dispossession. Restrictions to this right are allowed if based on the public interest and in accordance with the law

⁴²⁹ *Pinheiro Principles*, Principle 13, in particular Principle 13(1), 13(2), 13(4), 13(7), 13(10) and 13(11).

⁴³⁰ *Pinheiro Principles*, Principle 18(1).

⁴³¹ *Pinheiro Principles*, Principle 18(2).

⁴³² *Pinheiro Principles*, Principle 19(2).

⁴³³ *Pinheiro Principles*, Principle 15(1) and 15(2).

⁴³⁴ *Pinheiro Principles*, Principle 20.

⁴³⁵ *Pinheiro Principles*, Principle 21(2).

⁴³⁶ *Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the “Pinheiro Principles”* (FAO, IDMC, OCHA, OHCHR, UN-Habitat and UNHCR, 2007).

142 and international standards.⁴³⁷ Provided these conditions are met, States are allowed to enact laws to control the use of property for various purposes.⁴³⁸ This provision is key not only to protect properties left behind by IDPs and facilitate their restitution, but also to allow the use of abandoned property to house IDPs in need of accommodation, in the public interest, where needs are significant.

Also relevant is ECHR, Article 8, which provides: “Everyone has the right to respect for his private and family life, his home and his correspondence.” Interference by a public authority with exercise of this right is allowed only if in accordance with the law and as “necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”⁴³⁹

To prevent situations of “demographic engineering” where property destruction or occupation could be used as a tool, the *Framework Convention for the Protection of National Minorities* provides that States “shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework convention.”⁴⁴⁰

Regarding displacement specifically, the Committee of Ministers’ Recommendation on internal displacement recalls the right of IDPs to enjoyment of their possessions and IDPs’ right to repossess any property they left and to receive adequate compensation if they have been deprived of such property.⁴⁴¹ The Explanatory Memorandum for the Recommendation quotes extensively from ECHR Protocol I, Article 1, and elaborates on several aspects of property that have been relevant to displacement situations in a number of Council of Europe member States. More specifically, the Memorandum recalls that “occupancy rights,” which are long-term housing rights granted under former socialist regimes, are protected by the ECHR’s articulation of the right to property.⁴⁴² It also emphasises the duty of States to provide compensation for any interference with property, based on case law of the European Court for Human Rights (ECtHR; see below). Failure of a State to pay an amount reasonably related to

⁴³⁷ Council of Europe, Protocol 1 to the ECHR, 20 March 1952, ETS 9, Protocol I, Art. 1.

⁴³⁸ Council of Europe, Protocol 1 to the ECHR, 20 March 1952, ETS 9, Art. 1 para. 1.

⁴³⁹ Council of Europe, ECHR, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, Article 8.

⁴⁴⁰ Council of Europe, FCNM1 February 1995, ETS 157, Art. 16.

⁴⁴¹ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 8.

⁴⁴² Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 8.

the value of the property “will normally constitute a disproportionate interference, and a total lack of compensation can be considered justifiable under Article 1 only under exceptional circumstances.”⁴⁴³

In order to limit dispossession and destruction of property, the Explanatory Memorandum calls on States to protect properties left behind by IDPs⁴⁴⁴ and to set up “an adequate system of registration of property with a view to facilitating repossession by IDPs upon their return.”⁴⁴⁵ It further highlights that the ECtHR has repeatedly considered that “destruction of houses and possession, coupled with anguish and distress” causes suffering of sufficient severity to be considered as a violation of Article 3 of the ECHR regarding torture, inhuman and degrading treatment.⁴⁴⁶

Also most relevant is the resolution on “Solving property issues of refugees and internally displaced persons” adopted by PACE.⁴⁴⁷ The resolution considers that loss of housing, land and property is the foremost challenge to the achievement of durable solutions to displacement, and that restitution is the optimal response to this loss.⁴⁴⁸ PACE calls on States to take into account the *Pinheiro Principles* (see above, section A) in order to resolve the housing, land and property issues of refugees and IDPs as well as to follow a series of recommendations based on international standards and the experience of restitution and compensation programmes carried out in Europe.⁴⁴⁹ States are to guarantee timely and effective redress for the loss of access and rights to housing, land and property⁴⁵⁰ and are to set up special adjudicatory bodies to address any situations where displacement and dispossession were systematic.⁴⁵¹ Possessory rights that are not for-

⁴⁴³ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 8, footnote 29, quoting ECtHR, *The Holy Monasteries v. Greece*, Application no. 13092/87; 13984/88, judgment of 9 December 1994, para. 71.

⁴⁴⁴ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 8.

⁴⁴⁵ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 10.

⁴⁴⁶ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 5 and note 15 quoting several ECtHR cases.

⁴⁴⁷ PACE Resolution 1708(2010), *Solving property issues of refugees and internally displaced persons*, 28 January 2010.

⁴⁴⁸ PACE Resolution 1708(2010), *Solving property issues of refugees and internally displaced persons*, 28 January 2010, paras. 1 and 4.

⁴⁴⁹ PACE Resolution 1708(2010), *Solving property issues of refugees and internally displaced persons*, 28 January 2010, para. 9.

⁴⁵⁰ PACE Resolution 1708(2010), *Solving property issues of refugees and internally displaced persons*, 28 January 2010, para. 10.1.

⁴⁵¹ PACE Resolution 1708(2010), *Solving property issues of refugees and internally displaced persons*, 28 January 2010, para. 10.6. See also 10.7 on impartiality of adjudicatory body and enforcement.

144 malised but which were treated as *de facto* valid by authorities (such as in the case of informal Roma settlements) should be granted “equal and effective access to legal remedies”;⁴⁵² and occupancy rights are recognised as protected by ECHR Article 8 and ECHR Protocol I, Article 1.⁴⁵³ To address circumstances where IDPs who are holders of occupancy and tenancy rights risk losing their rights based on absence from their accommodation due to displacement, States are to consider this absence as justified until conditions allow for voluntary return in safety and dignity.⁴⁵⁴ States confronted with numerous property restitution claims related to displacement are encouraged to cooperate with other member States, to seek technical assistance, and to work with academic and civil society actors and consult IDPs to address the issue.⁴⁵⁵

In terms of reparations, and drawing largely from the Court’s case law, the PACE resolution lists the various measures that States can take to ensure the effectiveness of redress through restitution and compensation for abandoned property, including: compensation for non-pecuniary damage (such as mental suffering) based on circumstances of displacement and dispossession; compensation for loss of income and extra costs resulting from non-access to abandoned property and possessions; compensation for wrongful destruction or damage to immovable property or loss of significant moveable property attributable to acts or omissions of authorities; assistance and reintegration measures to facilitate durable solutions such as reconstruction of homes and infrastructure, provision of secure environment and socio-economic support; and public acknowledgment of responsibility for displacement-related violations of human rights by authorities.⁴⁵⁶

The European Court for Human Rights (hereinafter ECtHR or “the Court”) has developed significant case law on property issues in displacement contexts that serves to clarify how a range of property-related issues that often arise in displacement issues should be addressed.

⁴⁵² PACE Resolution 1708(2010), *Solving property issues of refugees and internally displaced persons*, 28 January 2010, para. 10.3.

⁴⁵³ PACE Resolution 1708(2010), *Solving property issues of refugees and internally displaced persons*, 28 January 2010, para. 10.4.

⁴⁵⁴ PACE Resolution 1708(2010), *Solving property issues of refugees and internally displaced persons*, 28 January 2010, para. 10.5.

⁴⁵⁵ PACE Resolution 1708(2010), *Solving property issues of refugees and internally displaced persons*, 28 January 2010, para. 11.

⁴⁵⁶ PACE Resolution 1708(2010), *Solving property issues of refugees and internally displaced persons*, 28 January 2010, para. 10.8.

Defining property, possessions and home

The Court has progressively detailed its understanding of the notion of “possessions” in a way that covers a large range of dispossession situations under ECHR Protocol I, Article 1. This includes situations where claimants were not the registered owners of the house or land of which they were dispossessed. In *Dogan and others v. Turkey*, the Court considered as possessions the unregistered houses and land of some of the IDP claimants based on the uncontested use of it they had enjoyed for generations as well as the fact that they were drawing their livelihood from this land. The economic income and resources derived from the use of land were considered to represent a possession.⁴⁵⁷ Based on this, the Court concluded the need to grant pecuniary damage for dispossession or denial of access to the unregistered house, land and even livestock.⁴⁵⁸

In the same case, the Court also confirmed that possessions are not limited to property: “the notion ‘possessions’ [...] in Article 1 has an autonomous meaning which is certainly not limited to ownership of physical goods: certain other rights and interests constituting assets can also be regarded as ‘property rights,’ and thus as ‘possessions’ in the meaning of ECHR Protocol I, Article 1.”⁴⁵⁹ Based on the same reasoning, the Court, in a later case, not only recognized occupancy rights as a possession (since they provided a long-term right of use and possession with a possibility to privatize the flat), but also considered that a claim to an occupancy right based on a valid occupancy-right voucher represented a possession.⁴⁶⁰

A claimant’s old age pension has also been regarded as a possession in the meaning of ECHR Protocol I, Article 1 in several cases, including in cases of IDP claimants. While there is nothing in the ECHR on old age pensions, the Court found that the fact that national legislation provided for the payment of such pensions and that the claimants had duly contributed to the pension fund was sufficient to create a proprietary interest. In this situation, the reduction or discontinuance of

⁴⁵⁷ ECtHR, *Dogan and others v. Turkey*, Application nos. 8803–8811/02, 8813/02 and 8815–8819/02, judgment of 29 June 2004, para. 139.

⁴⁵⁸ ECtHR, *Akdivar and others v. Turkey (Article 50)*, (99/1995/605/693), judgment of 1 April 1998.

⁴⁵⁹ ECtHR, *Dogan and others v. Turkey*, Application nos. 8803–8811/02, 8813/02 and 8815–8819/02, judgment of 29 June 2004, para. 139. See also ECtHR, *Akimova v. Azerbaijan*, Application no. 19853/03, judgment of 27 September 2007, para. 39.

⁴⁶⁰ ECtHR, *Akimova v. Azerbaijan*, Application no. 19853/03, judgment of 27 September 2007, paras. 40–41; ECtHR, *Gulmammalova v. Azerbaijan*, Application no. 38798/07, judgment of 22 April 2010, para. 44; ECtHR, *Jafarov v. Azerbaijan*, Application no. 17276/07, judgment of 11 February 2010; and ECtHR, *Soltanov v. Azerbaijan*, Application nos. 41177/08, 41224/08, 41226/08, 41245/08, 41393/08, 41408/08, 41424/08, 41688/08, 41690/08 and 43635/08, judgment of 13 January 2011.

146 a pension may constitute interference with the peaceful enjoyment of a possession.⁴⁶¹ (See also chapter on Employment and social protection.)

In addition to these cases concerned with IDPs repossessing the property they had left behind, the Court also addressed the property rights of IDPs developed during their displacement. In *Saghinadze and others v. Georgia*, where the IDP claimant had been evicted from the property he had been granted by authorities after 10 years of uninterrupted occupation, the Court considered that this temporary housing had amounted to a home and possession and it concluded that the IDP's eviction constituted an "unlawful interference" with his right to property and a violation of the right to family life.⁴⁶² Since restitution was materially impossible, the Court ordered the State to transfer full ownership to the claimant of an apartment of a similar size and in the same city.⁴⁶³

In *Demopoulos v. Turkey*, after ruling in previous cases to protect the interests of Greek Cypriots dispossessed of their homes, land and property in northern Cyprus, the Court recognised the need to also protect the right to the homes of Turkish Cypriot secondary occupants. The Court considered that "some thirty-five years after the applicants, or their predecessors in title, left their property, it would risk being arbitrary and injudicious [...] to impose an obligation on the respondent State to effect restitution in all cases, or even in all cases save those in which there is material impossibility," concluding that "a blanket restitution of all the cases of Greek Cypriot dispossessions could give rise to 'disproportionate new wrongs,' namely if the Court were to "to impose an unconditional obligation on a Government to embark on the forcible eviction and rehousing of potentially large numbers of men, women and children even with the aim of vindicating the rights of victims of violations of the Convention."⁴⁶⁴

Acts resulting in violations of ECHR, Article 8 and ECHR Protocol I, Article 1

On many occasions, the Court has found acts by States of dispossession, occupation or destruction of housing, land and property to constitute an interference with IDPs' homes and a violation of the right to private and family life as

⁴⁶¹ ECtHR, *Grudić v. Serbia*, Application no. 31925/08, judgment of 17 April 2012, para. 72.

⁴⁶² ECtHR, *Saghinadze and others v. Georgia*, Application no. 18768/05, judgment of 27 May 2010, paras. 104–108 and 122.

⁴⁶³ ECtHR, *Saghinadze and others v. Georgia*, Application no. 18768/05, judgment of 27 May 2010, paras. 14–15.

⁴⁶⁴ Rhodri Williams, "When do home and property part ways? New paper on the ECHR and the Cyprus property questions," *Terra nullius*, 19 October 2011, quoting ECtHR, *Demopoulos v. Turkey* (decision on admissibility), Application nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04, decision of 1 March 2010, paras. 116–117.

well as, often, a violation of the right to property and possessions.⁴⁶⁵ With regard to the destruction of property the Court has pronounced that “there can be no doubt that the deliberate burning of the applicants’ homes and their contents constitutes at the same time a serious interference with the right to respect for their family lives and homes and with the peaceful enjoyment of their possessions.”⁴⁶⁶ In cases where the Court could not prove a forced eviction or the involvement of authorities in the destruction, it focused on the denial of access to home, property and possessions. In *Dogan and others v. Turkey*, the Court held that the consequences of a denial of the right to return for a period of ten years, by depriving IDP claimants of their livelihood and leading them to live in conditions of extreme poverty, represented an excessive burden and violated the right to a home.⁴⁶⁷ In *Cyprus v. Turkey*, the Court determined that denial of IDPs’ right of return and restrictions on their freedom of movement contributed to a violation of the right to family life and the right to property.⁴⁶⁸

The Court also has determined that the lack of measures by authorities to mitigate the impact of the dispossession (such as lack of access or denial of return) amounted to an excessive or disproportionate burden on the claimant. In *Dogan and others v. Turkey*, the Court referred to Principles 18 and 28 of the *Guiding Principles on Internal Displacement* recalling the obligation for authorities to “establish conditions, as well as provide the means, which allow the applicants to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.”⁴⁶⁹ The Court considered that the measures taken by Turkey were inadequate and ineffective, as they did not include any alternative housing, employment or funding which would ensure an adequate standard of living or a sustainable return process for the IDP claimants.⁴⁷⁰

⁴⁶⁵ E.g. ECtHR, *Dogan and others v. Turkey*, Application nos. 8803–8811/02, 8813/02 and 8815–8819/02, judgment of 29 June 2004; ECtHR, *Cruz Varas and others v. Sweden*, Application no. 15576/89, judgment of 20 March 1991; ECtHR, *Saghinadze and others v. Georgia*, Application no. 18768/05, judgment of 27 May 2010; and ECtHR, *Khamidov v. Russia*, Application no. 72118/01, judgment of 15 November 2007.

⁴⁶⁶ ECtHR, *Akdivar and others v. Turkey (Article 50)* (99/1995/605/693), judgment of 1 April 1998, para. 88. See ECtHR, *Khamidov v. Russia*, Application no. 72118/01, judgment of 15 November 2007.

⁴⁶⁷ ECtHR, *Dogan and others v. Turkey*, Application nos. 8803–8811/02, 8813/02 and 8815–8819/02, judgment of 29 June 2004, paras. 155–156 and 159–160.

⁴⁶⁸ ECtHR, *Cyprus v. Turkey*, Application no. 25781/94, judgment of 10 May 2001, paras. 175, 183 and 189, and 292–293.

⁴⁶⁹ ECtHR, *Dogan and others v. Turkey*, Application nos. 8803–8811/02, 8813/02 and 8815–8819/02, judgment of 29 June 2004, para. 154.

⁴⁷⁰ ECtHR, *Dogan and others v. Turkey*, Application nos. 8803–8811/02, 8813/02 and 8815–8819/02, judgment of 29 June 2004, para. 154. See also ECtHR, *Chiragov and others v. Armenia*, Application no. 13216/05, judgment of 16 June 2015, in which the Court considered that there was no justification for denying the appli-

148 Delays in implementing a decision of restitution without providing adequate compensation also can constitute a disproportionate interference and put an excessive burden on applicants. In *Gulmammadova v. Azerbaijan*, where authorities did not enforce a national court decision on restitution for over seven years, alleging that they had no alternative accommodation to provide to the IDP occupants, the Court considered that “in the absence of any compensation for having this excessive individual burden to be borne by the applicant, the authorities failed to strike the requisite fair balance between the general interest of the community in providing the IDPs with temporary housing and the protection of the applicant’s right to peaceful enjoyment of her possessions.”⁴⁷¹ In other cases, the Court even made suggestions as to the type of compensation that could have been provided, for example that the authorities occupying a property could enter into a lease agreement with the applicant.⁴⁷² In cases of failure to execute a national court judgement on property restitution, the Court has not only found a violation of the right to property but also a violation of the right to a fair trial⁴⁷³ or of the right to an effective remedy.⁴⁷⁴

Remedies

In cases of violation of property rights or rights to family life and home, restitution is the remedy that the Court most frequently requires. In addition, the Court often requires compensation for pecuniary or non-pecuniary damage.⁴⁷⁵ In terms of pecuniary damage, the Court takes into account the loss of income resulting from the lack of access to the claimant’s property and the length of dispossession. In *Akdivar and others v. Turkey*, the applicants received compensation for the loss of income from their houses,⁴⁷⁶ cultivated and arable lands, and

cants access to their property without providing them with compensation. *Press release ECHR 206(2015)*.

⁴⁷¹ ECtHR, *Gulmammadova v. Azerbaijan*, Application no. 38798/07, judgment of 22 April 2010, paras. 45 and 49. See also ECtHR, *Isgandarov and others v. Azerbaijan*, Application nos. 50711/07, 50793/07, 50848/07, 50894/07 and 50924/07, judgment of 8 July 2010, para. 35; and ECtHR, *Soltanov v. Azerbaijan*, Application nos. 41177/08, 41224/08, 41226/08, 41245/08, 41393/08, 41408/08, 41424/08, 41688/08, 41690/08 and 43635/08, judgment of 13 January 2011, para. 18.

⁴⁷² ECtHR, *Khamidov v. Russia*, Application no. 72118/01, judgment of 15 November 2007.

⁴⁷³ ECtHR, *Gulmammadova v. Azerbaijan*, Application no. 38798/07, judgment of 22 April 2010.

⁴⁷⁴ ECtHR, *Radanović v. Croatia*, Application no. 9056/02, judgment of 21 December 2006.

⁴⁷⁵ ECtHR, *Akdivar and others v. Turkey*, Application no. 21893/93, judgment of 16 September 1996; ECtHR, *Soltanov v. Azerbaijan*, Application nos. 41177/08, 41224/08, 41226/08, 41245/08, 41393/08, 41408/08, 41424/08, 41688/08, 41690/08 and 43635/08, judgment of 13 January 2011; ECtHR, *Loizidou v. Turkey (Article 50)* (40/1993/435/514), judgment of 28 July 1998.

⁴⁷⁶ ECtHR, *Radanović v. Croatia*, Application no. 9056/02, judgment of 21 December 2006, paras. 62–66; and ECtHR, *Isgandarov and others v. Azerbaijan*, Application nos. 50711/07, 50793/07, 50848/07, 50894/07 and 50924/07, judgment of 8 July 2010, paras. 39 and 42.

for the loss of their livestock. The Court rejected the objection of the State to paying damage for unregistered houses and livestock. In addition, the claimant was granted compensation for the cost of the alternative accommodation he had to rent for six years as a result of the illegal occupation of his property.⁴⁷⁷

As cases of dispossession are frequent in situations of conflict and displacement and result in numerous claims before the Court, the Court has required States to put in place mechanisms at the national level to receive and address property claims through restitution or compensation. In *Xenides-Arestis v. Turkey*, the Court requested Turkey to put in place a property redress mechanism within three months.⁴⁷⁸ This led to the establishment of the Immovable Property Commission, which was considered by the Court as an effective remedy despite the fact that the redress offered was compensation rather than restitution.⁴⁷⁹ This existence of this mechanism at the national level resulted in the dismissal of a significant number of cases against Turkey before the Court. More recently, the Court requested Armenia and Azerbaijan to set up a property claims mechanism “which should be easily accessible and provide procedures operating with flexible evidentiary standards, allowing the applicant and others in his situation to have their property rights restored and to obtain compensation for the loss of their enjoyment.”⁴⁸⁰

Jurisdiction based on effective control

In several property cases taking place in occupied territories, the Court has clarified the conditions under which responsibility could be ascribed either to the occupying state or to the occupied state. In *Loizidou v. Turkey*, the Court found Turkey responsible for violations committed in Northern Cyprus, noting:

As regards the question of imputability, the Court recalls [...] the concept of “jurisdiction” under Article 1 of the Convention is not restricted to the national territory of the Contracting States. Accordingly, the responsibility of Contracting States can be involved by acts and omissions of their authorities which produce effects outside their own territory. Of particular significance

⁴⁷⁷ ECtHR, *Akdivar and others v. Turkey*, Application no. 21893/93, judgment of 16 September 1996, paras. 16–19, 24–25, 30, 33.

⁴⁷⁸ ECtHR, *Xenides-Arestis v. Turkey*, Application no. 46347/99, judgment of 22 December 2005.

⁴⁷⁹ ECtHR, *Demopoulos v. Turkey* (decision on admissibility), Application nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04, decision of 1 March 2010.

⁴⁸⁰ ECtHR, *Chiragov and others v. Armenia*, Application no. 13216/05, judgment of 16 June 2015, para. 199; and ECtHR, *Sargsyan v. Azerbaijan*, Application no. 40167/06, judgment of 16 June 2015, para. 238. See also Philip Leach, “Thawing the Frozen Conflict? The European Court’s Nagorno-Karabakh Judgments,” blog, 6 July 2015.

150 to the present case the Court held, in conformity with the relevant principles of international law governing State responsibility, that the responsibility of a Contracting Party could also arise when as a consequence of military action – whether lawful or unlawful – it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration.⁴⁸¹

In a similar vein, in 2015, in two judgments issued on the same day, the Court found that both Armenia and Azerbaijan, who have been in a decades-long armed conflict, had interfered with the property and family life of IDPs because each State had not provided effective measures to facilitate restitution of property or alternative measures to compensate for denied access to their property and possessions. Armenia was found to be in violation of the ECHR on the basis of its effective control over Nagorno-Karabakh.⁴⁸² The Court considered that Azerbaijan could not prove that it did not have effective control of the disputed territory where the applicant lived, noting:

The Court was not convinced by the respondent Government’s argument that, since the village was located in a disputed area, surrounded by mines and encircled by opposing military positions, Azerbaijan had only limited responsibility under the Convention. In contrast to other cases in which the Court had found that a State had only limited responsibility over part of its territory due to occupation by another State or the control by a separatist regime, it had not been established that Gulistan was occupied by the armed forces of another State.⁴⁸³

Moreover, the Court considered that the violations of the right to property and the right to family life were related to the State’s failure to create a mechanism which would allow the applicant to have his rights in respect of property and home restored and to obtain compensation for the losses suffered.⁴⁸⁴

⁴⁸¹ ECtHR, *Loizidou v. Turkey*, Application no. 15318/89, judgment 18 December 1996.

⁴⁸² ECtHR, *Chiragov and others v. Armenia*, Application no. 13216/05, judgment of 16 June 2015.

⁴⁸³ ECtHR, *Sargsyan v. Azerbaijan*, Application no. 40167/06, judgment of 16 June 2015, legal summaries, Information Note on the Court’s case-law 186, June 2015, para. ii.

⁴⁸⁴ ECtHR, *Sargsyan v. Azerbaijan*, Application no. 40167/06, judgment of 16 June 2015, legal summaries, Information Note on the Court’s case-law 186, June 2015, in conclusion on Article 13.

C. Analysis of national legislation

Article 41 of the Constitution of Ukraine guarantees the right of everyone the right to own, use and dispose of his or her property and the results of his or her intellectual and creative activity. No one shall be unlawfully deprived of the right of property. The right of private property is inviolable. The expropriation of private property may be applied only as an exception for reasons of social necessity, on the grounds of and by the procedure established by law, and on the condition of advance and complete compensation of its value. The expropriation of property is permitted under conditions of public necessity; subsequent full compensation of its value is compulsory. Confiscation of property may be carried out only pursuant to a court decision and in accordance with the procedure established by law.⁴⁸⁵ These rules are specified in a wide range of legislative acts, the most important of which is the *Civil Code*.⁴⁸⁶

Regarding IDPs specifically, the *Law on ensuring rights and freedoms of internally displaced persons* lacks any provisions relating to IDPs' rights to property left behind as a result of displacement. Some provisions regarding property rights are included in the Law on guaranteeing rights and freedoms of citizens and the legal regime on the temporary occupied territory of Ukraine. In particular, Articles 11 and 11–1 stipulate that individuals, regardless of their acquisition of refugee status or other special legal status, as well as enterprises, institutions and organizations retain the right of ownership and other rights in property, including real property and land, located on the temporarily occupied territory if such property was acquired in accordance with the laws of Ukraine. Acquisition and termination of rights in property situated on the temporarily occupied territory shall be in accordance with the laws of Ukraine outside the temporarily occupied territory. If it is impossible for the State Registrar to register property on the temporarily occupied territory, the Cabinet of Ministers of Ukraine should appoint a state registration body to perform registration in this case; the Law provides similar regulations regarding inheritance of property. In practice, however, a parallel register has been established in the occupied territories, at least in Crimea. This means there now are competing property registers on both sides of the contact line (in the Government's counterterrorist operation area or ABL).

Cabinet of Ministers *Resolution No. 1035 on restrictions on the supply of certain goods (works, services) from temporarily occupied territory to another territory of*

⁴⁸⁵ Constitution of Ukraine, Art. 41.

⁴⁸⁶ *Civil Code of Ukraine*, adopted on 16 January 2003. See Section I. Property and, in particular, Arts. 317, 319 and 321.

152 *Ukraine and/or from another territory of Ukraine to the temporarily occupied territory*⁴⁸⁷ introduced limitations that ban the evacuation of IDPs' property from Crimea. An individual is allowed to remove from Crimea only a very limited list of personal items, including personal care products and individual cosmetic items in the quantities that meet the needs of one person for the period of travel; clothing and underwear; shoes clearly of a personal nature that are intended solely for private use and have signs of having been in use; personal jewellery, including made of precious metals and stones, that have signs of having been in use, and so on. It is not permissible to remove any pieces of furniture, the majority of household electronic devices, any valuable items that are not personal jewellery, paintings, books and so on. These limitations are connected to restrictions on the movement of trucks and buses through the ABL.⁴⁸⁸ The bi-directional application of this ban on transfer of property through the ABL makes it impossible not only for IDPs to flee with most of their possessions but also to return voluntarily, to their place of residence, any possessions that were removed prior to the adoption of this resolution. Such restrictions are significant enough to lead persons either not to flee, even if they otherwise feel compelled to do so, as it forces them to abandon their possessions, or to sell them far below their market value and then flee. Either way, regulations contribute to the increased vulnerability of IDPs from Crimea and other civilians still in Crimea. According to Articles 9 and 11 of the *Law on ensuring rights and freedoms of internally displaced persons*, state bodies of Ukraine must assist IDPs in the transfer of their movable property. The above-mentioned restrictions imposed by CMU Resolution No. 1035 Cabinet of Ministers directly contradict the IDP Law.

This situation concerning Crimea contrasts with the regulations regarding the transfer of persons, vehicles and goods through the contact line with the Donetsk and Luhansk regions, which is regulated by Order No. 415 of the first deputy head of the Counterterrorist Division.⁴⁸⁹ Section VII of this Order stipulates that various goods require special permission of the State Fiscal Service in order to be transferred through the contact line. However, private persons have

⁴⁸⁷ CMU Resolution No. 1035 on restrictions on the supply of certain goods (works, services) from temporarily occupied territory to another territory of Ukraine and/or from another territory of Ukraine to the temporarily occupied territory, adopted on 16 December 2015.

⁴⁸⁸ The legal basis for restrictions of this kind is unknown. Officers of the State Border Guard Service usually refer to the resolution of Cabinet of Ministers of Ukraine implemented in the report of the sitting of the Cabinet of Ministers dated 23 November 2015 (available at www.kmu.gov.ua/control/uk/publish/article?art_id=248650593&cat_id=244823857).

⁴⁸⁹ Deputy head of the Counterterrorist Operation Division, Order No. 415 on Temporary procedure of control over transfer of persons, vehicles and goods (goods) through the contact line within the Donetsk and Luhansk regions, dated 12 June 2015.

the right to evacuate their household inventory and are not obliged to get special permission.

Limitations on transferring money in cash have also been introduced. They are based on general rules for the transfer of cash across State borders.⁴⁹⁰ However, for IDPs such limitations have the effect of reducing IDPs' opportunities to sell property or possessions that they cannot or do not want to take with them when they flee. IDPs also face difficulties when they try to get access to their savings that have been deposited in bank accounts. According to the *Law on amendments to some legislative acts of Ukraine on the conditions of repayment of fixed-term deposits* dated 14 May 2015 and *Resolution No. 520* of the Board of the National Bank of Ukraine dated 12 August 2015,⁴⁹¹ it is prohibited for persons to demand early termination of their deposits. For this reason, some Banks (especially JSC "Privatbank") do not return money to IDPs (at least those from Crimea) even after expiration of the deposit term. The National Bank has proven reluctant to intervene into this situation. This situation not only deprives IDPs of possessions that rightfully are theirs, it also frustrates the ability for IDPs to deal with their situation during displacement and therefore exacerbates their vulnerability.

The legislation of Ukraine does not contain special provisions that could provide restitution of IDPs' property rights. As far as information on immovable property (real estate) due to the date of the beginning of occupation or the date of the beginning of the conflict in Donbas is available in the State Registry, further voluntary transfer of this property is not always registered under Ukrainian legislation. This problem is more relevant to movable property that has significant value. The documentation and verification of IDPs' property rights needs to be improved in Ukraine as a very important pre-condition of restitution procedures. A unified register of lost property is recommended.

Finally, in light of the *Guiding Principles on Internal Displacement* as well as the above-mentioned pronouncements by the ECtHR, the situation regarding the property rights of IDPs should be considered not only in respect of the responsibilities of the Ukrainian Government but also of any Occupying Power which, as explained above, is responsible for protecting property rights in any territory it occupies.

⁴⁹⁰ Article 9 of the Law "On creation of free economic zone 'Crimea' and on particularities of economic activities in the temporary occupied territory of Ukraine," Article 197 of the Custom Code of Ukraine (adopted on 13 March 2012), section 2 of the Regulations on transfer of cash and precious metals, adopted by the Resolution of National Bank of Ukraine Board No. 148, dated 27 May 2008.

⁴⁹¹ *Law on amendments to some legislative acts of Ukraine on the conditions of repayment of fixed-term deposits*, 14 May 2015; and Board of the National Bank of Ukraine, *Resolution No. 520*, 12 August 2015.

- Reaffirm in national legislation the rights of IDPs, refugees and other conflict-affected persons to the housing, land, property (movable and immovable), and possessions that they left behind or were dispossessed of upon displacement.
- Establish independent, transparent and non-discriminatory procedures for the documentation, investigation and verification of housing, land, and property ownership and other rights of possession.
- Amend and harmonise the content of Resolution 1035 of the Cabinet of Ministers on restriction of supply to and from different territories of Ukraine with Articles 9 and 11 of the *Law on ensuring the rights and freedoms of internally displaced persons*, which provides that IDPs should be assisted in taking their movable property with them.
- Ensure the right of IDPs to transfer their possessions from GCAs free of duties and taxes and without unreasonable restrictions.
- Establish independent, transparent and non-discriminatory procedures enabling money transfer by displaced persons from the NGCAs.
- Provide IDPs with free access to their financial savings in banks and guarantee their right to access their money without restrictions or discrimination.
- Take all feasible measures to secure homes, lands and property left behind by IDPs against destruction, unlawful use or occupation and appropriation, especially on the territories neighbouring the contact line.
- Establish a specific register of the property lost/left behind by IDPs, refugees, and other conflict-affected civilians, including documenting any sales of such property and requesting IDPs to provide information regarding the circumstances of the sale so as to identify cases of sales under duress.
- Establish independent, transparent and non-discriminatory procedures and mechanisms for the restitution of housing, land, and property, including inventories of movable and immovable property to facilitate future restitution or compensation.
- Develop, in cases where restitution is impossible, facilitated procedures for providing adequate compensation.
- Request specialized technical assistance and cooperation from relevant international agencies in the recovery of IDPs' housing, land, and property, and inquire into good practices and lessons learned by other CoE member States on these issues.

16. NATIONAL FOCAL POINT INSTITUTION RESPONSIBLE FOR THE COORDINATION OF PROTECTION OF AND ASSISTANCE TO IDPS

Experience around the world has shown that for a State to meet its responsibilities in situations of internal displacement, it is essential for there to be a clear indication of exactly which governmental actors are responsible. Absent this, scholars point out that there is a serious risk, as the saying goes, that “if everyone is responsible, then no one is responsible.” Designating a Governmental focal point for ensuring that internal displacement is effectively addressed by the State is critically important, both for clarifying institutional responsibilities and for accountability.⁴⁹²

Minimum essential elements of State regulation:

Designate an institutional focal point on IDP issues at the national level and, where appropriate, the sub-national level.

Establish a national coordination mechanism for the implementation of legislation which addresses internal displacement, and define its power and responsibilities.

Allocate adequate resources in the national budget to provide authorities with the necessary financial means to discharge the responsibilities which are assigned to them.

Create a mechanism responsible for coordinating the provision of humanitarian assistance to IDPs.

A. International normative framework

The *Guiding Principles on Internal Displacement* stipulate that national authorities have “the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.”⁴⁹³ Although the Principles do not specify the institutional modalities through which authorities should discharge this responsibility, the *Framework for National Responsibility*, which was developed to help States operationalize the concept of national responsibility for addressing internal displacement emphasized in the

⁴⁹² *Framework for National Responsibility*, p. 18. See also Elizabeth Ferris, Erin Mooney and Chareen Stark, *From Responsibility to Response: Assessing National Responses to Internal Displacement* (Brookings Institution–London School of Economics Project on Internal Displacement, 2011), pp. 87–88.

⁴⁹³ *Guiding Principles on Internal Displacement*, Principle 3.

156 Guiding Principles, provides guidance. Indeed, one of the twelve benchmarks of national responsibility outlined in the *Framework* is that States should designate a focal point institution for coordinating the Government’s response to internal displacement as well as for coordinating with local and international partners. As the *Framework* points out, various different institutional options exist, including designating an existing State body with responsibility for coordinating the response to internal displacement, creating a new State body for this purpose or establishing an inter-ministerial committee. Whichever institutional option is selected, the *Framework* emphasizes that the national institutional focal point for IDPs should have a number of key characteristics: its mandate should include both protection and assistance as well as finding solutions to displacement; its staff should be trained on IDP issues (*see also chapter on Awareness-raising and Training*); the institution should have adequate political authority within the government; and it must be furnished with adequate resources, both human and financial, to carry out its mandate effectively (*see also chapter on Allocation of Resources*). Further, the work of the institution should include, and can benefit greatly from, cooperation with NGOs and other civil society groups working to protect and assist IDPs.⁴⁹⁴

B. Council of Europe standards

The key normative instruments of the Council of Europe, including the European Convention on Human Rights, the European Social Charter, and the Framework Convention for the Protection of National Minorities, do not include any reference to the necessity for States to establish an IDP focal point institution, which is to be expected as these instruments are not IDP-specific.

Nor, however, is there any such reference in the Committee of Ministers’ Recommendation on internally displaced persons or its Explanatory Memorandum. The Recommendation simply recalls the principle of national responsibility according to which States are “primarily responsible for the protection and assistance” of IDPs.⁴⁹⁵ This general reference is nonetheless relevant since, as noted above, it is precisely to facilitate the exercise of national responsibility that the establishment of an IDP focal point is recommended.

The first relevant recommendation of the Parliamentary Assembly in 2009 was to “review, enact and implement national strategies and action plans by setting out a

⁴⁹⁴ *Framework*, p. 18.

⁴⁹⁵ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, Preamble.

clear legal and institutional framework assuring effective protection of IDPs and addressing their specific vulnerabilities,”⁴⁹⁶ which can be interpreted as a call to establish focal point institutions in the relevant countries. A report of the Parliamentary Assembly recommends that “a national governmental focal point for IDPs should be set up to deal with this issue effectively, while local offices should also be established with a view to raising awareness of the situation of IDPs and their rights.”⁴⁹⁷ The Parliamentary Resolution resulting from the report goes further and invites member States to “set up a national co-ordination centre for IDPs and refugees and ensure that it has sufficient administrative and financial resources to help IDPs in the countries concerned.”⁴⁹⁸ The conclusions of the Parliamentary Assembly should therefore be considered as the most developed ones in the question of national focal point institutions.

C. Analysis of national legislation

The *Law on ensuring rights and freedoms of internally displaced persons* does not designate a single institutional focal point for IDP issues, but rather distributes certain specific responsibilities among various State institutions. The State Migration Service is responsible for facilitating family reunification. However, there is no instruction stipulating the concrete procedures and responsibilities of the State Migration Service in this area of activity. The State Migration Service also is responsible for issuing identification documents to IDPs. Furthermore, the State Migration Service is responsible for informing the State organ that issues the IDP certificate if it determines that an IDP has provided false personal information. The Ministry of Health is responsible for the provision of medical assistance to IDPs. The Ministry of Social Policy (MSP) is responsible for the establishment and management of a comprehensive database on IDPs. The MSP also is responsible for elaborating State policies regarding livelihood support for IDPs and for facilitating the employment of IDPs.⁴⁹⁹ The MSP has overall responsibility for the delivery of humanitarian aid to IDPs.⁵⁰⁰ The MSP regulates the delivery of humanitarian aid mainly by registering international donors

⁴⁹⁶ PACE Recommendation 1877(2009), *Europe's forgotten people: protecting the human rights of long-term displaced persons*, 24 June 2009, para. 15.3.1.

⁴⁹⁷ PACE Report on *Alternatives to Europe's substandard IDP and refugee collective centres*, Doc. 13507, 5 May 2014, para. 74.

⁴⁹⁸ PACE Resolution 2026 (2014), *Alternatives to Europe's substandard IDP and refugee collective centres*, 18 November 2014, para. 10.2.2.

⁴⁹⁹ *Law on ensuring rights and freedoms of internally displaced persons*, Art. 11.

⁵⁰⁰ *Law on ensuring rights and freedoms of internally displaced persons*, Art. 11.

158 or recognizing humanitarian aid as such.⁵⁰¹ There is no legal act stipulating a responsibility of the MSP to assess the needs of IDPs.

Legislation does not establish a clear coordination mechanism for implementation of the legislation related to ensuring IDPs' rights and freedoms. According to Article 10 of the IDP Law, the Cabinet of Ministers of Ukraine is responsible for the coordination and control of executive authorities' activities relating to the enforcement of the IDP Law. The Cabinet of Ministers shall also monitor internal displacement and facilitate other institutions' work on preventing displacement.⁵⁰²

The *Action Plan for Implementation of the National Strategy in the Field of Human Rights* adopted by the Cabinet of Ministers on 23 November 2015 stipulates that the Cabinet of Ministers of Ukraine (CMU) is responsible for creating a special State body for addressing the situation of IDPs.⁵⁰³ The Action Plan specifies that the functions of this body shall include:

- “continuous monitoring of observance of constitutional rights and freedoms of IDPs [and] implementation of international commitments of Ukraine regarding IDPs;
- cessation and prevention of violations of rights of IDPs [and] submission of proposals on prevention of such violations in the future;
- development of draft laws [and] other regulatory acts on issues related to IDPs;
- visiting places of group residence of IDPs and social protection facilities, and obtaining information on conditions of their accommodation and treatment by State authorities;
- obtaining necessary information, documents and materials, including ones to which access is limited, from State enterprises, institutions, and organisations on issues falling within the scope of regulation of IDPs' rights;
- cooperation and coordination with representatives of State authorities, local self-government bodies, volunteer initiatives and non-government organisations on certain issues related to IDPs;
- participation in meetings of State authorities on issues falling within the area of IDPs' rights;

⁵⁰¹ Order No. 415 of the First Deputy Head of Counterterrorist Division of the State Security Services of Ukraine on approval of the interim order of control over the movement of persons, vehicles and goods along the contact line within the Donetsk and Luhansk regions, para. 8.2.

⁵⁰² Law on ensuring rights and freedoms of internally displaced persons, Art. 10.

⁵⁰³ Council of Ministers of Ukraine, Resolution No. 1393 “Action Plan on Implementation of the National Strategy in the field of human rights until 2020,” adopted on 23 November 2015, para. 120.

- notifying state authorities, including law enforcement bodies, about detected violations of the rights and lawful interests of IDPs;
- cooperation with volunteer initiatives and non-government organisations, including international ones, on the protection of the rights and lawful interests of IDPs;
- establishment of the relevant advisory bodies and public councils, etc.”

According to the Action Plan, this State authority for IDPs is to be established in 2016.

On 20 April 2016 the Cabinet of Ministers adopted the Resolution No 299 *On Issues of the Ministry of temporary occupied territories and internally displaced persons*. According to this resolution, the Cabinet of Ministers is to create the Ministry of temporary occupied territories and internally displaced persons of Ukraine, by merging the State Agency on the reconstruction of Donbas and the State Service on the issues of the Autonomous Republic of Crimea and the city of Sevastopol. To function, the Ministry needs the statute to be adopted. According to Resolution No 299 as of 20 April 2016, the Ministry of temporary occupied territories and internally displaced persons is to submit the draft statute to the Cabinet of Ministers of Ukraine within one month.

The State Budget for 2016 does not envisage any funds for creation of the focal point institution on IDPs, nor for central executive bodies to fulfil their responsibilities regarding to ensuring IDPs’ rights. Article 22 of the *Law on the State budget of Ukraine for 2016* does stipulate that the Cabinet of Ministers of Ukraine, with consent of the Budgetary Committee of the *Verkhovna Rada* (Parliament), is entitled to redistribute reserves of State funds from the educational and medical fields as well as undistributed funds originally allocated for the territories of Luhansk and Donetsk regions, which currently are non-government controlled territories, among local budgets to provide services for IDPs. Even so, the above-mentioned provisions are not enough for supporting the work of the Ministry of temporary occupied territories and internally displaced persons of Ukraine. According to paragraph 4 of *Resolution No 299*, the Ministry of Finance shall prepare and submit to the Cabinet of Ministries draft amendments to the *Law on the State Budget of Ukraine for 2016*, anticipating spending needed for activities of the Ministry of temporary occupied territories and internally displaced persons. Resources from the State Budget specifically for the establishment and effective functioning of the above mentioned State authority on IDPs must urgently be allocated. (*See also chapter on Allocation of Resources.*)

- Adopt by-laws stipulating clear coordination modalities among central and local bodies involved in ensuring IDPs' rights;
- Amend the *Law on State budget of Ukraine for 2016* to ensure adequate funds for the functioning of the Ministry of temporary occupied territories and internally displaced persons, and to ensure that central and local governmental bodies have sufficient funds for programs to ensure the rights of IDPs;
- Adopt the statute establishing the Ministry of temporary occupied territories and internally displaced persons;
- Adopt a by-law regulating the activities of the Ministry of Social Policy regarding the coordination of humanitarian aid to IDPs.

17. **ALLOCATION OF ADEQUATE RESOURCES**

For States to fulfil their national responsibility to protect, assist, and secure durable solutions for IDPs, including by meeting their treaty obligations and implementing any domestic laws or policies having these aims, requires considerable financial and human resources. Indeed, one of the benchmarks of national responsibility for addressing internal displacement is that “governments devote, to the extent possible, resources to address the needs and protect the rights of their internally displaced populations.”⁵⁰⁴ Where a government lacks the necessary means to fully address the needs of IDPs, it is expected to seek assistance from the international community. Even then, a Government’s demonstration, through whatever budget allocations are possible, that the issue of internal displacement constitutes a national priority is sure to be instrumental to mobilizing resources from the international community.⁵⁰⁵ Of course, any funds for humanitarian programs to address the needs of IDPs as well as members of the host community who may also be in need of assistance.

The *Manual for Legislators and Policymakers* emphasizes four important considerations for addressing issues of resource allocation in the development of national laws and policies on internal displacement. First, drafters of laws and policies should have in advance a “realistic understanding” of what budgetary funds, human resources and humanitarian supplies will be required to operationalize the laws and/or policies and will actually be available. In anticipation that State resources may be insufficient, laws and policies should include provisions to facil-

⁵⁰⁴ *Framework for National Responsibility*, p. 24.

⁵⁰⁵ *Framework for National Responsibility*, p. 24.

itate the role of domestic and international humanitarian actors in providing assistance supplementing that available from government resources. Third, as soon as a decision is made to draft an IDP law or policy, work should begin to coordinate its development with annual budget cycles, personnel procedures and procurement policies in order to avoid resource-based delays in its implementation. Fourth, it is essential to ensure that all authorities that have been given responsibilities to address internal displacement, including those not only at the national level but also at the municipal level, be provided with adequate resources to do so. This may require amending certain laws and regulations, such as those relating to fiscal decentralization.⁵⁰⁶

Minimum essential elements of State regulation:

Provide for the allocation of necessary human and financial resources to address internal displacement.

Ensure that the authorities or organizations at the national and local level that have been assigned clear and specific obligations in the area of humanitarian assistance to IDPs are provided with the necessary means to fulfil these responsibilities.

A. International normative framework

Based on well-established standards of international law, Principle 3 of the *Guiding Principles on Internal Displacement* affirms that national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to IDPs.⁵⁰⁷ Inherent in this overall responsibility of States is to provide adequate national resources both to ensure protection and to provide humanitarian assistance to IDPs. Principle 28 further provides that the authorities must “provide the means” which allow IDPs to safely and voluntarily return to their homes or to resettle in another part of the country, or in other words, to find a durable solution to displacement.⁵⁰⁸ The U.N. General Assembly, in encouraging States to develop and implement domestic legislation and policies dealing with all stages of displacement and based on the Guiding Principles, has called on States to do so including “through the allocation of budgetary resources.”⁵⁰⁹ Indeed, as noted above, one of the twelve benchmarks spelled out in the *Framework for National Responsibility*, which was developed based on the Guiding Principles and

⁵⁰⁶ *Manual for Legislators and Policymakers*, p. 37.

⁵⁰⁷ *Guiding Principles on Internal Displacement*, Principle 3.

⁵⁰⁸ *Guiding Principles on Internal Displacement*, Principle 28.

⁵⁰⁹ UN, General Assembly, Resolution 64/162, “Protection of and Assistance to Internally Displaced Persons: Resolution,” 2010, UN doc. A/RES/64/162, para. 12.

162 State practice, is that States devote, to the extent possible, national resources to address the needs of IDPs.⁵¹⁰

In the event that national resources are insufficient, Principle 25 of the Guiding Principles underscores that States are expected to request and facilitate assistance from the international community (*see Chapter on Cooperation with the International Community*).

B. Council of Europe standards

The Council of Europe standards do not make explicit reference to the need for States to provide adequate resources in order to address internal displacement. The Committee of Ministers' recommendation on internal displacement does recall the primary responsibility of States to provide protection and humanitarian assistance to IDPs.⁵¹¹ This responsibility entails that States should request assistance from other States or international organizations if they cannot do it themselves and that if such assistance is offered, it should not be refused arbitrarily.⁵¹² (*See also Chapter on Cooperation with International Community*.)

Beyond humanitarian assistance, States should put in place “conditions for proper and sustainable integration of internally displaced persons following their displacement.”⁵¹³ Doing so requires that States take measures to support the self-reliance of IDPs and provide them with adequate accommodation, health and education facilities;⁵¹⁴ all of these measures necessarily require allocation of resources. Further, according to the Guiding Principles, which States party to the Council of Europe have committed to implement,⁵¹⁵ States should “provide the means” to establish conditions to support return, resettlement and reintegration of IDPs.⁵¹⁶

The responsibility to allocate adequate resources is also implicit in the Committee of Ministers' Explanatory Memorandum, which underscores the “absolute necessity of ensuring that financial aid provided by national or international bodies is not diverted from its original destination, that it is being distributed in a

⁵¹⁰ *Framework for National Responsibility*, p. 24.

⁵¹¹ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 4.

⁵¹² *Ibid.*

⁵¹³ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 12.

⁵¹⁴ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 12.

⁵¹⁵ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, Preamble.

⁵¹⁶ *Guiding Principles on Internal Displacement*, Principle 3.

transparent way, and that accountability is ensured at every stage in the aid process.”⁵¹⁷

On the European level, the PACE Recommendation 1877 (2009) recognised “*the need for continued international assistance to IDPs in terms of financial aid and technical assistance in order to avoid their becoming Europe’s ‘forgotten people,’*”⁵¹⁸ calling for an allocation of resources across all Council of Europe member States. Moreover, PACE Recommendation 2026 from 2014 suggests a cooperation between the member States and the Council of Europe Development Bank in order to allocate resources for a common assistance to the internally displaced persons similar to the Sarajevo process initiated in 2005.⁵¹⁹

Some standards for allocation and redistribution of resources on the local level can be derived from the conclusion of the Congress of Local and Regional Authorities. A useful recommendation was concluded by the Congress as a follow-up to the situation of refugees and IDPs in former Yugoslavia in 2004, when it encouraged “*the Council of Europe Development Bank to establish programmes and activities aimed at helping local and regional authorities in the countries in question to improve their response to the return and/or integration of refugees and displaced persons, for instance by holding national seminars on the funding mechanisms provided by the Development Bank.*”⁵²⁰ Later, in its resolution addressing the social rights of immigrants, the Congress called for “*support, particularly through grants, non-government organisations involved in promoting more effective integration of immigrants.*” Although this document addresses the integration of foreign immigrants, the ethnic dimension of the conflicts triggering internal displacement may require a similar approach in the process of reconciliation.

C. Analysis of national legislation

The Constitution of Ukraine outlines general principles of budgeting at the state and local levels. Any state expenditures are regulated by the Law on the State Budget of Ukraine (Art. 95). Each year, the Cabinet of Ministers prepares a draft Law on the State Budget of Ukraine for the following year. The State Budget is ap-

⁵¹⁷ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 4.

⁵¹⁸ PACE Recommendation 1877(2009), *Europe’s forgotten people: protecting the human rights of long-term displaced persons*, 24 June 2009, para. 11.

⁵¹⁹ PACE Resolution 2026 (2014), *Alternatives to Europe’s standard IDP and refugee collective centres*, 18 November 2014, para. 19.

⁵²⁰ Congress of Local and Regional Authorities, Recommendation 147 (2004) on *Migration flows and social cohesion in South-East Europe: the role of local and regional authorities*, 27 May 2004, Art. 10 j.

164 proved by the *Verkhovna Rada* (Parliament) annually for the period from 1 January to 31 December or under special circumstances for a different period. At the sub-national level, local councils approve the budgets of the respective administrative and territorial units. The State participates in the formation of revenues of the budget of local self-government and financially supports local self-government. Expenditures of bodies of local self-government that arise from the decisions of State bodies are to be compensated by the State.

All regulations of the State budgetary process are to be made only by laws adopted by the Parliament and strictly in accordance with the *Budget Code of Ukraine*. The *Budget Code* regulates the processes of drafting, reviewing, and approving the State budget as well as of its execution, reporting on its implementation, monitoring compliance with budget legislation, and any liability for violations of budgetary legislation. The Budget Code also defines the legal principles of formation and payment of state and local debt.

Special provisions on sources of financial support for the implementation of IDPs' rights and freedoms are established by Article 15 of the *Law on ensuring rights and freedoms of internally displaced persons*. In addition to stating that financial support for addressing internal displacement is to be provided according to the above-mentioned general rules of budget legislation, the IDP Law declares an expenditure obligation on the part of State and local governments to ensure social rights and guarantees for IDPs, particularly reception, accommodation, establishment and movement. Article 15 also provides for the possibility of the engagement of private enterprises, foreign states and international organizations in the form of charitable, humanitarian, material and technical aid as well as charity from individuals and entities in financing activities to address IDPs' needs and "implement IDPs' rights and freedoms." Additionally, Article 22 of the *Law On the State Budget of Ukraine for 2016* provides that the Cabinet of Ministers of Ukraine, in coordination with the Parliamentary Committee on budget, shall distribute the reserve funds of educational and health subventions as well as undistributed expenditures of these subventions for the Non-government controlled areas (NGCAs) of Donetsk and Luhansk regions to local budgets for the purpose of providing services for IDPs. While significant, it should be noted that these provisions are declarative in nature and do not provide a regulatory framework to ensure the proper allocation of funds for the needs of IDPs.

Only one document with direct obligations for expenditures for IDP programming has been adopted by the Cabinet of Ministers of Ukraine (CMU), namely *General Directions of Solving the Employment Problems of Internally Displaced*

Persons in 2015–2016, by the Resolution of 8 July 2015 № 505. In terms of budgetary allocations, this legislation specifies general directions in investment policy, the use of communal and state property for the needs of IDPs, the creation of new workplaces, private-public partnerships, and legislative improvement. Although this document does not envisage direct allocation of State or local budget resources, some of its provisions set forth financial obligations of the State or local budget resources, such as compensation to businesses employing IDPs, grants to unemployed IDPs for entrepreneurial start-ups, and so on. (See also chapter on *Employment and Social Protection*.) However, the State budget for 2016 allocates no specific resources for the initiatives envisaged by the *General Directions*.

Meanwhile, additional programs to address IDP issues have also been adopted by the Government without the allocation of resources to enable their implementation. On 16 December 2015, the CMU adopted the *Integrated National Program for Integration, Social Adaptation, Protection and Integration of Internally Displaced Persons for the period until 2017*. This program envisages cooperation by public authorities at all levels and anticipates the involvement also of local government, educational and cultural organizations, and NGOs in addressing some of the key problems faced by IDPs. However, as with the above-mentioned *General Directions*, the Program is in effect until the end of 2016 and the budget for 2016 allocates no additional resources for operationalizing the Program's provisions.

Moreover, the Program itself does not envisage any financial resources to address internal displacement. This is in violation of state programming rules provided for in national law.⁵²¹ In addition, this contradicts the obligation of the CMU to adopt a comprehensive state program of targeted support for social adaptation of IDPs that specifies the sources and amounts of financing for such support in the case of any mass movement of citizens of Ukraine (over 100,000 people) or if displacement persists for more than 6 months.⁵²² With no other State program or strategy adopted to finance the solution of IDPs' problems and find durable solutions to internal displacement, there is a significant gap between commitments in law and the actual commitment of State resources to implement programs to address internal displacement.

The only direct financial support to IDPs from the State is the “monthly targeted assistance to internally displaced persons' living costs, including housing and

⁵²¹ Law on State targeted programs.

⁵²² Law on ensuring of rights and freedoms of internally displaced persons, Art. 10.

utilities” provided for under the CMU Resolution of 1 October 2014 № 505. It provides for monthly assistance of the following amounts: for pensioners and children, 884 UAH (Ukrainian *hryvnia*) per person; for disabled persons, 1074 UAH; for able-bodied persons, 442 UAH. The total amount of assistance per household is calculated as the sum of the rates of benefit for each family member and cannot exceed 2,400 UAH.⁵²³ The State budget of Ukraine for 2016 allocates the sum of 2,886,992,700 UAH for such payments.⁵²⁴ To date, only one allocation is provided for 2016. It is more than six times larger than planned by the CMU. However, the Ukrainian context is marked by a weakening economy, with high inflation, a devaluing currency, and a troubled labour market. Insufficient financial support is reportedly leading some IDPs in the Government controlled areas (GCAs) to return to non-government controlled areas (NGCAs) even in the absence of adequate conditions for safe and dignified return.⁵²⁵ Moreover, the State does not allocate funds for the implementation of durable solutions for IDPs.

Absent sufficient resources being allocated by the national Government, local authorities bear a particularly heavy financial burden for addressing IDPs’ problems. This creates intense financial pressure on local resources, which inevitably affects the effectiveness and breadth of services and support available to IDPs. It also risks tensions with host communities.

In 2015, the bulk of IDP assistance has come not from the Ukrainian Government, but from international non-governmental organizations (NGOs) such as the Norwegian and Danish Refugee Councils, People in Need, Save the Children, UN agencies, and national NGOs such as CF Eastern Heart, and the Akhmetov Foundation. (*See also chapter on Cooperation with the International Community.*)

Another problem established by CMU Resolution № 505 is that IDPs are limited in their right to choose the bank through which they can receive a monthly State pension and targeted assistance. Currently, they only are allowed to receive such allowances through the State Savings Bank of Ukraine. This limitation of banking institutions to the State Bank exclusively impinges on IDPs’ agency and freedom of choice. Moreover, the requirement that IDPs must give the bank permission to disclose all personal data on IDPs, with no limitations considering

⁵²³ <http://zakon1.rada.gov.ua/laws/show/505-2014-n>

⁵²⁴ <http://zakon2.rada.gov.ua/laws/show/80-19/page>

⁵²⁵ UNHCR, *International Protection Considerations related to developments in Ukraine – Update III*, September 2015, para. 8.

the recipients of such information, violates bank secrecy safeguards and risks the transfer of this information to public authorities with no mandate related to pension management, and possibly even to unauthorized users.

D. Recommendations

- Allocate, in the State budget, sufficient resources to finance implementation of this program as well as to finance state transfers to the local budgets to reimburse expenses for addressing IDPs' needs, including those that relate to durable solutions.
- Revoke the provision, in CMU Resolution № 505 of 1 October 2015, which restricts the bank through which IDPs can receive their monthly pension and any social assistance, so that IDPs can receive these allowances at the bank of their choosing.

18. RAISING AWARENESS AND PROVIDING TRAINING ON THE RIGHTS OF IDPS

In September 2014, when the UN Special Rapporteur on the Human Rights of Internally Displaced Persons undertook a mission to Ukraine, national and regional Government authorities in Ukraine informed him that they had been “caught by surprise by the crisis” and the resulting large numbers of IDPs and that “they were not experienced in dealing with internal displacement situations.”⁵²⁶ A lack of knowledge and expertise on IDP issues indeed is understandable, especially as, apart from the Chernobyl disaster in 1986, Ukraine had not experienced internal displacement, in particular internal displacement due to armed conflict, in recent history. However, now more than two years into the crisis, raising awareness of the specific needs of IDPs and provide training on the rights of IDPs remains essential to an effective national response.

Minimum essential elements of State regulation:

Provide for measures to raise awareness of the existence and nature of internal displacement and provide targeted training on the rights of IDPs.

⁵²⁶ UN, *Report of the Special Rapporteur on the human rights of internally displaced persons: Mission to Ukraine*, UN Doc. A/HRC/29/34/Add.3 (2 April 2015), paras. 9 and 74.

Based on established standards of international law, the *Guiding Principles on Internal Displacement* affirm that national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to IDPs within their jurisdiction.⁵²⁷ While the Guiding Principles do not explicitly address issues of awareness raising and training on the rights of IDPs, these activities should be seen as inherent elements of this obligation. Indeed, raising awareness of the problem of internal displacement and providing training on the rights of IDPs constitute two distinct benchmarks of national responsibility for addressing internal displacement.⁵²⁸ In addition, a Government's official acknowledgement of the Guiding Principles would provide an important indication of its recognition of the particular needs of IDPs and of Government obligations to address these particular needs and protect IDPs' rights.⁵²⁹ Government initiatives to raise awareness of the situation of internal displacement and provide training on the rights of IDPs are important ways in which the State can contribute to the mitigation and resolution of displacement.

(a) Raising awareness of the problem

As set out in *Addressing Internal Displacement: A Framework for National Responsibility*, a Government's acknowledgement of the existence of a situation of internal displacement on its territory and of its responsibility to address it is "an essential first step towards an effective national response." This recognition, the Framework elaborates, "also requires raising national awareness about the problem, building a national consensus around the issue, and making efforts to address the crisis a national priority" and "promoting national solidarity with the displaced" which is critical for their protection and for counteracting the stigmas that IDPs in many cases suffer.

The *Manual for Legislators and Policymakers* emphasizes: "Raising awareness of the existence and nature of internal displacement among all relevant stakeholders and of the steps necessary to address it is an important precondition for the implementation of laws and policies on internal displacement."⁵³⁰ Ensuring awareness among all relevant stakeholders – Government officials, IDPs, civilians at large, civil society, the media, and so on – of the laws and policies relating

⁵²⁷ *Guiding Principles on Internal Displacement*, Principle 5.

⁵²⁸ *Framework for National Responsibility*, pp. 13–16 (Benchmarks 2 and 4).

⁵²⁹ *Framework for National Responsibility*, p. 13.

⁵³⁰ *Manual for Legislators and Policymakers*, p. 24.

to IDPs is essential for promoting and enabling their implementation. General campaigns aimed at raising public awareness are invaluable for several reasons, including: (i) helping to reduce the stigma that is often associated with displacement and thereby assisting in reducing discrimination against IDPs; and (ii) encouraging understanding of why IDPs may need special assistance in certain circumstances that non-IDPs may not be entitled to. For the same reasons, it is also particularly important to target public awareness campaigns in those communities or areas where large populations of IDPs live.

(b) Providing training on the rights of IDPs

In order to ensure that the implementation of IDP laws and policies are effective, the enactment of IDP laws and policies needs to be accompanied by comprehensive training, in particular for those government officials who will be involved in implementing IDP laws and policies or whose work involves IDPs. Generally, the training should include: (i) the technical aspects of implementing IDP laws and policies; (ii) a general overview of the issues facing IDPs and their vulnerable situation; and (iii) special protections and assistance available to IDPs or vulnerable groups of IDPs.

With respect to IDP laws and policies, it is “crucial to ensure that all officials tasked with directly implementing such instruments understand: that IDPs retain their rights as citizens or habitual residents, but that they face particular displacement-related risks and vulnerabilities that may prevent them from fully enjoying their rights; precisely how officials themselves should proceed in carrying out their duties with regard to IDPs; how any new routines and procedures for IDPs differ from the ordinary routines and procedures that officials are responsible for carrying out under normal circumstances; and why changes are necessary in the way that officials carry out their work.”⁵³¹

B. Council of Europe standards

The European Convention for Human Rights does not include specific measures with regard to raising awareness or developing training activities. Neither does explicitly the European Social Charter. However, the ESC provision on the rights of migrant workers and their families requires the member States to undertake steps against “*misleading propaganda relating to emigration and immigra-*

⁵³¹ *Manual for Legislators and Policymakers*, pp. 26–27.

170 tion,”⁵³² which is highly relevant for internally displaced persons belonging to national or ethnic minorities and facing possible discrimination on the labour market of their country. A similar provision addressing the social rights of migrants has been adopted by the Congress of Local and Regional Authorities, inviting European cities and towns to “raise awareness among their citizens of non-discrimination, in particular through information campaigns.”⁵³³

The Framework Convention for the Protection of National Minorities calls on States to take measures to “promote mutual respect and understanding and cooperation”⁵³⁴ among the different persons living on their territory. To that effect, States shall “take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.”⁵³⁵ Such measures presumably could include training and awareness raising activities.

The Committee of Ministers’ Recommendation on internal displacement recalls the Council of Europe’s commitment to promote the *Guiding Principles on Internal Displacement*.⁵³⁶ The companion Explanatory Memorandum elaborates that among the aims of the Recommendation is to “raise awareness on certain issues which Council of Europe member States consider of particular relevance as regards the situation of IDPs in Europe today,” notably good practices in the protection and assistance to IDPs.⁵³⁷

The Parliamentary Assembly also has encouraged, in several resolutions, initiatives to raise awareness on the situation of IDPs through the monitoring, generation and exchange of information. It tasked the Council of Europe Commissioner for Human Rights “to bring together national human rights institutions and ombudspersons from the regions that currently have long-term IDPs in order to assess the progress made in accomplishing various Council of Europe recommendations on protecting IDPs’ rights and identify the remaining obstacles for securing durable solutions, and issue a position paper on the subject matter.”⁵³⁸ Furthermore, the Assembly invited the Committee of Ministers to “raise aware-

⁵³² Council of Europe, Revised ESC, 3 May 1996, ETS 163, Art. 19.

⁵³³ Congress of Local and Regional Authorities: Resolution 218 (2006) on *Effective access to social rights for immigrants: the role of local and regional authorities*, 1 June 2006, para. 10b.

⁵³⁴ Council of Europe, FCNM, 1 February 1995, ETS 157, Article 6, para. 1.

⁵³⁵ Council of Europe, FCNM, 1 February 1995, ETS 157, Article 12, para. 1.

⁵³⁶ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, Preamble.

⁵³⁷ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, General Considerations.

⁵³⁸ PACE Recommendation 1877(2009), *Europe’s forgotten people: protecting the human rights of long-term displaced persons*, 24 June 2009, para. 18.

*ness of the rights and existing protection mechanisms under the European Convention on Human Rights (ETS No. 5), the revised European Social Charter (ETS No. 163) and its collective complaint mechanism, the European Commission against Racism and Intolerance (ECRI) and the Framework Convention for the Protection of National Minorities (FCNM, ETS No. 157) in terms of their application to IDPs.*⁵³⁹

In a subsequent resolution on “Solving the property issues of refugees and internally displaced persons,” the Parliamentary Assembly encouraged member states confronted with property disputes related to displacement “to work with academic and civil society actors, as well as national human rights institutions, to generate reliable information on the number and nature of property claims, formulate proposals for procedures to address such claims, monitor their implementation, identify obstacles and measures to address them, and disseminate information and legal advice to persons affected.”⁵⁴⁰

As far as relevant training programs dedicated to the reintegration of IDPs are concerned, the Congress of Local and Regional Authorities instructed “*the European Committee on Migration (CDMG) to consider which new activities could potentially promote the permanent return of displaced persons, particularly through training programmes for public service staff aimed at improving understanding and enhancement of ethnic and cultural diversity, or programmes to promote fair access to public services and employment.*”⁵⁴¹

C. Analysis of national legislation

The *Law on ensuring rights and freedoms of internally displaced persons* does not include any measures for raising awareness of and providing training regarding internal displacement, IDPs’ rights, or responsibilities of the State. However, the *Action Plan on Implementation of the National Strategy in the Area of Human Rights for the Period until 2020* does envisage a number of awareness-raising and training programs, including an awareness-raising campaign “aimed at fighting stigmatization and discriminatory attitudes to IDPs among local people and executive authorities.”⁵⁴²

⁵³⁹ PACE Recommendation 1877(2009), *Europe’s forgotten people: protecting the human rights of long-term displaced persons*, 24 June 2009, para. 15.2.3.

⁵⁴⁰ PACE Resolution 1708(2010), *Solving property issues of refugees and internally displaced persons*, 28 January 2010, para. 11.2.

⁵⁴¹ Congress of Local and Regional Authorities, Recommendation 147 (2004) on *Migration flows and social cohesion in South-East Europe: the role of local and regional authorities*, 27 May 2004, para. 5.k.

⁵⁴² *Action Plan on Implementation of the National Strategy in the Area of Human Rights for the Period until 2020*, pp. 190–91.

172 This is especially important as other legislative acts risk encouraging such stigmatization of IDPs. Specifically, the *Integrated State Program on support, social adaptation and reintegration of citizens of Ukraine who moved from the temporary occupied territory of Ukraine and areas of the counterterrorist operation to other regions of Ukraine, for the period up to 2017*, adopted by Cabinet Ministers' Resolution No. 1094 of 16 December 2015,⁵⁴³ calls for a State Informational Strategy focused on promoting ideas of respect to Ukraine, patriotic upbringing, tolerance, and so on among IDPs. In such a way, the Integrated State Program in effect considers IDPs as outsiders that need special education, which is a kind of stigmatization that in practice cultivates more stigmatization and hostility towards IDPs. At the same time, there is nothing in the Program about the necessity of sensitizing Governmental officers and the public at large to the vulnerable situation of IDPs and to promoting tolerance and solidarity with IDPs.

The Ombudsperson has a special role to play in raising awareness among Government officials as well as the public about the particular vulnerabilities faced by IDPs as well as their capacities, and promoting solidarity with them. (See *chapter on the National Human Rights Institution*.)

D. Recommendations

- Adopt regulations for conduct in case of internal displacement for officers of the State Social Service (Ministry of Welfare), State Service on Emergency Situations, and other Government bodies concerned, including the State Migration Service, State Border Service, officers of regional administrations, and so on.
- Develop an educational course on IDPs' rights and the responsibilities of Government officers and make it an obligatory part of refresher courses for officers of the State Social Service (Ministry of Welfare), State Service on Emergency Situations and other Government bodies concerned, including the State Migration Service, State Border Service, officers of regional administrations, and so on.
- Implement the National Human Rights Action Plan of Ukraine provision on "carrying out an information campaign to combat stigmatization and discriminatory attitudes on internally displaced persons from both the local population and state agents." Conduct a public awareness campaign clarifying what an IDP is and that IDPs have particular concerns as a result of their displacement, as well as acknowledging the history of mass displacement in

⁵⁴³ <http://zakon4.rada.gov.ua/laws/show/1094-2015-%D0%BF>

Ukraine (including displacements that resulted from the Chernobyl disaster and natural disasters, such as floods in the Carpathian region).

19. A NATIONAL HUMAN RIGHTS INSTITUTION ENGAGED ON IDP ISSUES

A national human rights institution (NHRI) is a State-sponsored but autonomous body which is established either under a legislative or executive act, with the broad mandate of protecting and promoting human rights. While NHRIs are funded by the State, they are to be independent of it; an NHRI is not a non-governmental organization but rather serves a bridge between civil society and Government. NHRIs have a broad mandate to promote and protect human rights in the national context through a range of activities including raising awareness of human rights, both among the public and among national and local authorities, including the police and the military; monitoring the Government's compliance with its human rights treaty obligations; providing advice to Government officials and legislators on draft legislation to ensure it is compliant with human rights; and investigating individual complaints of human rights violations.

In situations of internal displacement, national human rights institutions can play a valuable role in promoting and protecting the rights of IDPs. UN resolutions encourage NHRIs to do so.⁵⁴⁴ In any country experiencing internal displacement, attention to IDP issues should be an integral part of the NHRI's work. Indeed, supporting a role for national human rights institutions in promoting and protecting the rights of IDPs is considered a benchmark of national responsibility for addressing internal displacement.⁵⁴⁵

Minimum essential elements of State regulation:

Vest an institution such as the National Human Rights Commission or the Ombudsperson's Office with the authority and responsibility to monitor and report on the respect and protection of the rights of IDPs.

⁵⁴⁴ See, for example, UN Commission on Human Rights, *Resolution 2004/55*, 20 April 2004, paras. 18 and 21; UN Commission on Human Rights, *Resolution 2003/51*, 22 April 2003, paras. 18 and 21; UN, General Assembly, *Resolution 64/162*, 17 March 2010, para. 20.

⁵⁴⁵ *Addressing Internal Displacement: A Framework for National Responsibility*, pp. 19–20. For an analysis of the extent to which this benchmark has been met in a number of countries, see Ferris, Mooney and Stark, *From Responsibility to Response*, pp. 99–112.

The Guiding Principles set out that the primary responsibility to provide protection and humanitarian assistance to IDPs lies with national authorities.⁵⁴⁶ The Guiding Principles do not specify the modalities and institutional mechanisms by which Governments are to fulfil this responsibility. However, suggestions in this regard are found in the *Framework for National Responsibility* for addressing internal displacement. One of the twelve benchmarks outlined in the Framework is a national human rights institution engaged with IDP issues.⁵⁴⁷ A national human rights institution that is active on IDP issues can help promote and reinforce the effective fulfilment of a Government's responsibility towards IDPs. Moreover, as noted above, the United Nations General Assembly has called upon Government to provide protection and assistance to IDPs and has noted with appreciation "the increasing role of national human rights institutions in assisting internally displaced persons and in promoting and protecting their rights."

More specifically relevant are the *Paris Principles*, an internationally agreed set of standards which frame and guide the work of NHRIs.⁵⁴⁸ The *Paris Principles* define the role, composition, status and functions of national human rights institutions according to the following principles: independence (guaranteed by statute or the constitution); autonomy from government; pluralism, including in its membership; a broad mandate based on universal human rights standards; adequate powers of investigations; and adequate resources and funding.⁵⁴⁹ The *Paris Principles* are broadly accepted as the measure of an NHRI's legitimacy and credibility. Globally, NHRIs are classified by the United Nations in terms of their compliance with these Principles.⁵⁵⁰ Ukraine's NHRI – the Ombudsperson – currently is classified by the UN as having "A" status, which is the highest category of compliance with the *Paris Principles*.

⁵⁴⁶ *Guiding Principles on Internal Displacement*, Principle 3(1).

⁵⁴⁷ *Addressing Internal Displacement: A Framework for National Responsibility*, pp. 19–21.

⁵⁴⁸ UN, General Assembly, *Resolution 48/134 on "National institutions for the promotion and protection of human rights,"* adopted on 20 December 1993.

⁵⁴⁹ Section B.2 of the *Paris Principles* specifies: "The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence."

⁵⁵⁰ See <http://nhri.ohchr.org/EN/Contact/NHRIs/Pages/Global.aspx>

B. Council of Europe standards

Neither the *European Convention for Human Rights* nor the Committee of Ministers' Recommendation on internal displacement and Explanatory Memorandum refer to national human rights institutions or other modalities according to which authorities should fulfil their responsibility to protect the human rights of IDPs. However, the Recommendation refers to the obligation of States to “take appropriate measures [...] to prevent acts that may violate internally displaced persons' right to life, to physical integrity and to liberty and security” and “to effectively investigate alleged violations of these rights.”⁵⁵¹ A national human rights institution can be instrumental in promoting, assisting, and monitoring such measures by States.

The important role that NHRIs can play in monitoring and protecting IDPs' rights has been highlighted in several resolutions of the PACE. In 2009, in a recommendation regarding protracted displacement, the Parliamentary Assembly encouraged the Council of Europe Commissioner for Human Rights “to bring together national human rights institutions and ombudspersons from the regions that currently have long-term IDPs in order to assess the progress made in accomplishing various Council of Europe recommendations on protecting IDPs' rights and identify the remaining obstacles for securing durable solutions, and issue a position paper on the subject matter.”⁵⁵² Furthermore, in the same recommendation, the Assembly called upon the member States to “continue to support national, regional and international human rights institutions operating in the member states concerned in their capacity to encourage governments to address the limited access of IDPs to their rights.”⁵⁵³ In a subsequent resolution on “Solving the property issues of refugees and internally displaced persons” the Parliamentary Assembly encouraged member States in countries with property disputes related to displacement “to work with academic and civil society actors, as well as national human rights institutions, to generate reliable information on the number and nature of property claims, formulate proposals for procedures to address such claims, monitor their implementation, identify obstacles and measures to address them, and disseminate information and legal advice to persons affected.”⁵⁵⁴ Similarly, in the resolution of the Assembly dedicated to the situa-

⁵⁵¹ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 5.

⁵⁵² PACE Recommendation 1877(2009), *Europe's forgotten people: protecting the human rights of long-term displaced persons*, 24 June 2009, para. 18.

⁵⁵³ PACE Recommendation 1877(2009), *Europe's forgotten people: protecting the human rights of long-term displaced persons*, 24 June 2009, para. 15.5.3.

⁵⁵⁴ PACE Resolution 1708(2010), *Solving property issues of refugees and internally displaced persons*, 28 Janu-

176 tion of IDPs and returnees in the northern Caucasus, the Russian government was called upon to “take adequate steps to ensure the independence of the national human rights mechanisms in the North Caucasus, and support their continuous capacity to monitor the human rights situation of IDPs and the implementation of the government’s obligations and commitments towards IDPs”⁵⁵⁵ and to facilitate the work of local NGOs working with the IDPs in the region.⁵⁵⁶

Moreover, the Council of Europe’s Commissioner for Human Rights was established in 1999 with a mandate including “facilitat[ing] the activities of national ombudsmen or similar institutions in the field of human rights.”⁵⁵⁷ In describing the operational dimensions of this mandate the Commissioner, although not specifically mentioning IDPs, does indicate that during country visits he or she should meet with “ordinary people with human rights concerns” and “visit places of human rights relevance including [...] settlements populated by vulnerable groups.”⁵⁵⁸ CoE Commissioners for Human Rights have included the monitoring of IDPs’ rights as part of their country visits and reports, including as regards Ukraine. For example, a 2015 report by a Commissioner on his visit to Ukraine includes a section on IDPs.⁵⁵⁹

C. Analysis of national legislation

In accordance with Article 101 of the *Constitution*, the Ukrainian Parliament Commissioner for Human Rights (Ombudsman) was established for the purpose of ensuring parliamentary monitoring of the State’s observance of the human rights and freedoms guaranteed in the Constitution. Article 55 of the Constitution proclaims the right of everyone to appeal to the Ombudsman for the protection of her or his rights. The *Law on the Ukrainian Parliament Commissioner for Human Rights* (Ombudsman Law) of 23 December 1997 does not specifically stipulate the Ombudsman’s responsibilities regarding the rights of IDPs. Nor does IDP-related legislation, in particular the *Law On Ensuring of Rights and*

ary 2010, para. 11.2.

⁵⁵⁵ PACE Resolution 1879(2012), *The situation of IDPs and returnees in the North Caucasus region*, 26 April 2012, para. 8.1.10.

⁵⁵⁶ PACE Resolution 1879(2012), *The situation of IDPs and returnees in the North Caucasus region*, 26 April 2012 – on NGOs, para. 8.1.11.

⁵⁵⁷ Council of Europe, Committee of Ministers, Resolution (99) 50 on Commissioner for Human Rights, 7 May 1999, Article 3(e).

⁵⁵⁸ See the mandate of the CoE Commissioner for Human Rights (www.coe.int/en/web/commissioner/mandate).

⁵⁵⁹ Commissioner for Human Rights, Report by Nils Muizinieks, Commissioner for Human Rights of the Council of Europe, following his visit to Ukraine from 29 June to 3 July, Doc. CommDH(2015)23, 3 November 2015.

Freedoms of Internally Displaced Persons (the IDP Law), specify any additional functions of the Ombudsman regarding IDPs, or make reference to the Ombudsman's office. However, being either a Ukrainian citizen and/or a habitual resident of Ukraine is sufficient for an IDP to access the protection and advice of the Ombudsman.

The Constitution and the *Law on the Ukrainian Parliament Commissioner for Human Rights* of 23 December 1997 created a model of a single ombudsman with the following attributes: constitutional status; an opportunity for everyone to appeal directly to the Ombudsman; independence of the Ombudsman from any state authority or local self-government and officials; broad jurisdiction over the state authorities, including courts, local self-government and officials; ample powers for inquiries and inspections and for constant monitoring; and authority to review petitions and make recommendations on rectifying detected violations of human rights and freedoms. The first Ombudsman was appointed in 1998.

The Ombudsman is mandated to conduct inquiries and investigations at his or her initiative or pursuant to petitions by individuals. Another important mission of the Ombudsman is to raise the legal awareness of Ukraine's population⁵⁶⁰ through regular information on the results of her or his activities, the distribution of legal information and counselling of complainants on legal issues, and spreading knowledge about international standards in human rights.

The Ombudsman has the following instruments of response at her or his disposal:

- Appeals to rectify an identified injustice or a defective administrative practice;⁵⁶¹
- Constitutional appeals to the Constitutional Court of Ukraine regarding the constitutionality of a law or other legal act of Parliament, President or Cabinet of Ministers, or a legal act of the Autonomous Republic of Crimea, or to receive an official interpretation of the Ukrainian Constitution and Ukrainian laws;⁵⁶²
- Appeal to the Supreme Council of Justice on the dismissal of a judge from office or disciplinary action against judges of the Supreme Court and higher specialized courts;⁵⁶³

⁵⁶⁰ *Law on the Ukrainian Parliament Commissioner for Human Rights*, Art. 3.

⁵⁶¹ *Law on the Ukrainian Parliament Commissioner for Human Rights*, Art. 15.

⁵⁶² *Law on the Ukrainian Parliament Commissioner for Human Rights*, Arts. 13 and 15; and *Law on the Constitutional Court of Ukraine*, Arts. 40 and 41.

⁵⁶³ *Law on the Supreme Council of Justice*, Arts. 30 and 38.

- Annual reports⁵⁶⁴ to Parliament noting gaps in national legislation and making proposals for its improvement;
- Special reports on specific issues of human rights and freedoms.

The Ombudsman does not possess powers to enforce the implementation of laws or of her or his recommendations and cannot act as a public prosecutor in administrative and civil proceedings. Nor can the Ombudsman initiate criminal proceedings against any official. Reports of the Ombudsman are approved by the Parliament upon presentation. However, this does not mean that the recommendations contained therein are adopted by the Parliament, included in the plan of Parliament's legislative activities, or otherwise acted upon by Parliament.

In terms of institutional support, Article 10 of the Ombudsman Law provides for a Secretariat to be established to ensure the activities of the Ombudsman. The legislation also provides that the Ombudsman may appoint representatives with territorial or thematic functions. Regional Offices of the Ombudsman have been established in Lviv, Zhytomyr, Rivne and Dnipropetrovsk regions; the jurisdiction of these regional offices extends to neighbouring regions where there is no office.

Promoting and protecting the rights of IDPs has been a “priority activity” of the Ombudsman since early 2015.⁵⁶⁵ Following recommendations by the Council of Europe, OSCE and other organizations, in February 2015 the position of Representative of the Commissioner on the rights of IDPs was established and a sub-division (department) on IDPs was created in the Secretariat of the Ombudsman to systematically monitor observance of IDPs' rights. The Commissioner explained that prior to this, IDP issues had nonetheless been addressed by various sub-divisions of the Secretariat such as those concerned with the rights of children, social protection, and medical care; however, these efforts would be strengthened with the establishment of a dedicated position and sub-division on IDP issues.⁵⁶⁶ Also in February 2015, the Ombudsman, with the support of the UN Development Programme (UNDP) and in cooperation with a number of local NGOs, established a Resource Centre for Assistance to IDPs. The Resource Centre conducts monitoring visits to assess the concerns of IDPs, pro-

⁵⁶⁴ Constitution of Ukraine, Art. 85; *Law on the Ukrainian Parliament Commissioner for Human Rights*, Art. 85.

⁵⁶⁵ Ukrainian Parliament Commissioner for Human Rights, “Observance of rights of internally displaced persons: one of priority activity of the Secretariat of the Commissioner for Human Rights,” 3 February 2015 (available at www.ombudsman.gov.ua/en/all-news/pr/4215-xe-observance-of-the-rights-of-internally-displaced-persons-one-of-prior).

⁵⁶⁶ *Ibid.*

vides direct assistance to IDPs, analyses the normative framework for protecting IDPs' rights, and advocates for necessary legislative amendments.⁵⁶⁷

Activities of the Ombudsman's office regarding IDPs are concentrated in the following areas:⁵⁶⁸

- Training and awareness raising on the rights of IDPs. The office of the Ombudsman has prepared various brochures called "road maps" on IDP issues, specifically on IDP registration and targeted assistance; social protection and the provision of priority needs; on IDP issues generally; and on guidance for IDPs on finding a job. These brochures focus on providing practical guidance in support of the implementation of IDPs' rights. The brochures are widely disseminated and published on the web site of the Ombudsman;
- Review of individual complaints by IDPs regarding alleged violation of their rights. In 2014, the Ombudsman's office handled sixty such individual complaints on IDP issues;
- Providing guidance on the implementation of existing legislation. The Ombudsman issued guidance on state social assistance to IDPs, on the payment of pensions to IDPs, and on financial assistance to IDPs;
- Review and analysis of national legislation, identifying gaps and inconsistencies in the Law and subordinated legal acts, such as acts of the Cabinet of Ministries, and on this basis, recommendations to legislators for legislative reform;
- Monitoring the observation of the rights of IDPs. Officials from the Ombudsman's Office make regular monitoring visits to places where groups of IDPs are accommodated and to the state authorities involved in IDP rights issues. For example, the social protection departments of 14 regions of Ukraine were visited by such monitoring missions in 2014;
- Reports to the Parliament. The Ombudsman does not produce a special report on observance of IDPs' rights and freedoms. However, in the Ombudsman's report of 2015 one chapter was devoted to IDP issues, which highlighted findings of the monitoring missions as well as proposals to improve legislation on IDP issues.

⁵⁶⁷ *Ibid.*

⁵⁶⁸ As established by the regulation of the Ombudsman on the department of the rights of internally displaced persons of the Secretariat of the Ombudsman (see www.ombudsman.gov.ua/ua/page/secretariat/docs/dokumenty/viddil-z-pitan-dotrimannya-prav-vnutrishno-peremischenix-osib.html).

180 It should be noted that the State Budget has allocated no additional resources to support the Ombudsman’s extensive additional activities concerning IDPs. Indeed, in intensifying its work on IDPs, the Commissioner has noted that this was done notwithstanding the “problems in financing of the Secretariat of the Commissioner.”⁵⁶⁹

D. Recommendations

- Allocate specific funds from the State budget to finance the Ombudsman’s activities relating to IDP rights protection, in particular to develop the Ombudsman’s regional offices in areas where IDPs are living.
- Amend the *Law on the Ukrainian Parliament Ombudsman for Human Rights* to include an obligation for Parliament to give due consideration to the Ombudsman’s proposals for legislative reform and to include a systematic review of these recommendations in the Parliament’s plan for legislative activity.
- Include a reference to the Ombudsman’s authority and responsibility to monitor and report on the respect and protection of IDPs’ rights in any future amendments to the IDP Law and to the Law that regulates the Ombudsman’s activities.

20. CONSULTATION WITH AND PARTICIPATION OF IDPS

IDPs must be able to have a say in the decisions affecting their lives. In addition to it being their right, consulting with IDPs also makes for more relevant, inclusive, and effective programming and policies. Consulting with IDPs provides information on the actual realities and conditions faced by IDPs as well as their suggestions on how to address these concerns most effectively, including highlighting the measures that they and their communities are taking to do so. Ensuring that IDPs have accurate information is an essential pre-requisite to their being able to make voluntary and informed decisions, including on critically important issues such as relocation prior to them becoming displaced, as well as for safe and voluntary durable solutions to displacement. Essential to the legitimacy of consultation and participation processes is that all groups of IDPs, including women, youth, older persons, persons with disabilities, minorities and other marginalized groups, have equal access to these processes and that the voices and views of different groups of IDPs are given due consideration.

⁵⁶⁹ *Ibid.*

Minimum essential elements of State regulation:

Ensure the consultation and participation of IDPs in all matters affecting them during all phases of displacement and provide sufficient information on such matters to enable them to make voluntary and informed decisions about their future.

A. International normative framework

IDPs' right to participate in the decisions concerning them is founded on the internationally guaranteed human rights to freedom of expression and political participation, the latter of which includes the right to seek, receive, and impart information and to take part in the conduct of public affairs.⁵⁷⁰ An obligation of States to facilitate consultation with and participation of IDPs runs through the Guiding Principles and infuses all phases of displacement.

Prior to displacement, and in situations outside of the emergency stages of armed conflicts and disasters, the Guiding Principles specify procedural safeguards to ensure the fairness of the process of displacement and the decision-making procedures in the event of displacement (*see also chapter on Protection from Arbitrary Displacement*). Among these requirements are that “adequate measures” be taken “to guarantee those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation.”⁵⁷¹ Overall, the “free and informed consent of those to be displaced shall be sought.” Furthermore, the authorities concerned “shall endeavour to involve those affected, particularly women, in the planning and management of their relocation.”⁵⁷²

During displacement, the Guiding Principles point out that “special efforts should be made to ensure the full participation of women in the planning and distribution” of basic subsistence supplies.⁵⁷³ Moreover, IDPs should not be discriminated against due to their displacement, in particular in ways affecting their rights to freedom of expression, association and equal participation in community affairs, and to voting and participation in governmental and public affairs⁵⁷⁴ (*see also chapter on Electoral Rights*).

⁵⁷⁰ See *inter alia* UDHR, Article 19; ICCPR, Article 25. See also *Annotations to the Guiding Principles*, pp. 31–32.

⁵⁷¹ *Guiding Principles on Internal Displacement*, Principle 7(3)(c).

⁵⁷² *Guiding Principles on Internal Displacement*, Principle 7(3)(d).

⁵⁷³ *Guiding Principles on Internal Displacement*, Principle 18(3).

⁵⁷⁴ *Guiding Principles on Internal Displacement*, Principles 22(1)(a), (c), and (d).

182 Regarding durable solutions to displacement, the Guiding Principles provide that authorities bear the primary duty and responsibility to establish the conditions and provide the means to allow IDPs to return voluntarily, in safety and with dignity, to their homes or to resettle elsewhere in the country.⁵⁷⁵ Special efforts should be made to ensure the full participation of IDPs in the planning and management of their return or resettlement and reintegration.⁵⁷⁶ Furthermore, IDPs who have returned to their homes or resettled should not be discriminated against as a result of their having been displaced and such individuals have the “right to participate fully and equally in public affairs at all levels and have equal access to public services.”⁵⁷⁷

B. Council of Europe standards

Neither the *ECHR* nor the *Framework Convention for the Protection of National Minorities* makes any mention of the principles of consultation with or participation of individual rights holders. The *European Social Charter* similarly contains no such general reference, though it does include a principle of information and participation by workers.⁵⁷⁸

Regarding IDPs specifically, the Committee of Ministers’ Recommendation on internal displacement highlights the need for IDPs not only to be “properly informed but also consulted to the extent possible, in respect of any decision affecting their situation prior to, during and after their displacement.”⁵⁷⁹ The Explanatory Memorandum emphasizes that IDPs’ right to be informed and consulted “is particularly important with respect to reintegration and rehabilitation programmes proposed to IDPs.”⁵⁸⁰

The importance of participation and consultation with internally displaced persons is further elaborated in the documents of the Parliamentary Assembly. With regard to the direct engagement of the Council of Europe, the Assembly wishes to “bring together representatives of IDPs from across Europe in order for them to share and learn from their different experiences”⁵⁸¹ and issues a call to “mobil-

⁵⁷⁵ *Guiding Principles on Internal Displacement*, Principle 28(1).

⁵⁷⁶ *Guiding Principles on Internal Displacement*, Principle 28(2).

⁵⁷⁷ *Guiding Principles on Internal Displacement*, Principle 29(1).

⁵⁷⁸ Council of Europe, Revised ESC, 3 May 1996, ETS 163, Art. 21.

⁵⁷⁹ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 11.

⁵⁸⁰ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 11.

⁵⁸¹ PACE Recommendation 1877(2009), *Europe’s forgotten people: protecting the human rights of long-term displaced persons*, 24 June 2009, para. 15.4.

ise and empower IDPs as actors of their own protection.”⁵⁸² Moreover, the Assembly explicitly stressed the principle of an “*effective and meaningful participation of IDPs in decision making*”⁵⁸³ concerning their new housing in the report of the Committee on Migration, Refugees and Displaced Persons. Another provision on participation and consultation in a concrete policy area is formulated in the PACE Resolution 1708 (2010) on Solving property issues of refugees and internally displaced persons, encouraging the member States “*to consult directly with displaced persons and include them in the design and implementation of procedures and redress for property loss.*”⁵⁸⁴

Finally, Resolution 218 (2006) of the Congress of Local and Regional Authorities concerning the social rights of immigrants, possibly applicable also in cases of internal displacement, “*underlines that any local or regional policies aimed at ensuring access by immigrants to social rights must involve consultation of the groups concerned.*”⁵⁸⁵

C. Analysis of national legislation

With some reservations, all three conditions – the right to seek information, the right to association and the right to take part in community affairs – that are necessary for implementation of the right of IDPs to participation in decision-making processes and other areas of social activity that impact their life are guaranteed in the legislation of Ukraine.

According to the Constitution of Ukraine, citizens have the right to participate in the administration of state affairs and in national and local referendums as well as to freely elect and to be elected to bodies of state power and bodies of local self-government (Article 38). Citizens enjoy equal rights of access to the civil service and to service in bodies of local self-government (Article 38). Citizens of Ukraine have the right to freedom of association in political parties and public organisations for the exercise and protection of their rights and freedoms and for the satisfaction of their political, economic, social, cultural and other inter-

⁵⁸² PACE Recommendation 1877(2009), *Europe's forgotten people: protecting the human rights of long-term displaced persons*, 24 June 2009, para. 15.3.2.

⁵⁸³ PACE Resolution 2026 (2014), *Alternatives to Europe's substandard IDP and refugee collective centres*, 18 November 2014, para. 55b.

⁵⁸⁴ PACE Resolution 1708 (2010), *Solving property issues of refugees and internally displaced persons*, 28 January 2010, para. 11.3.

⁵⁸⁵ Congress of Local and Regional Authorities, Resolution 218 (2006) on *Effective access to social rights for immigrants: the role of local and regional authorities*, 1 June 2006, article 9.

184 ests (Article 36). Everyone has the right to freely collect, store, use and disseminate information by oral, written or other means of his or her choice (Article 34).

The right to information is further guaranteed by the *Law on Access to Public Information*. Article 19 of this Law stipulates that every person shall have the right to address an information provider with an information request, regardless of whether the document in question is related to that person, without specifying the reason for request. Information providers shall address the request as soon as possible but no later than within 5 business days following receipt of the request (Article 21). In conjunction with the *Law of Ukraine on the Procedure of State Reporting on the Activity of State Bodies and Local Administrations in Ukraine by Mass Media* and some other legislative acts, this provides the necessary guarantees regarding access to information.

As to the right of association, there are no legal obstacles that prevent IDPs from associating and cooperating with others for the protection of their interests. In this respect, IDPs have the same level of general protection as any other person in Ukraine. Special concerns arise regarding associations of lawyers, writers, artists, journalists, and so on originally established in areas that are now NGCAs. As a result of displacement, many such associations are now in exile from these localities and as a result are not legally recognized.

In addition to these general guarantees, the *Law of Ukraine on ensuring of rights and freedoms of internally displaced persons* addresses issues of consultation with and participation of IDPs. Article 8 reaffirms that IDPs have voting rights (*see chapter on Electoral Rights*). Article 16 of the Law provides that executive bodies and local governments “may engage” with humanitarian organizations that assist IDPs in the processes of development and implementation of State policy on addressing IDPs. However, this is not an obligation, simply a possibility. In fact, IDP legislation has been adopted and amended without (or limited) consultations directly with IDPs.

The provision in the IDP Law regarding consultation in the formulation and implementation of public policy is supplemented by general regulations, namely the Resolutions of the Cabinet of Ministers of Ukraine No. 976 of 5 November 2008 and No. 996 of 3 November 2010. These stipulate a procedure and an obligation by governmental bodies to organize consultations with community members on issues of State policy. These Resolutions also include a provision for public evaluation of State bodies’ activities, with specific provisions to evaluate such activities to ensure non-discrimination.

Finally, special attention should be paid to the right to vote (see chapter on Electoral Rights). The *de facto* exclusion of IDPs from voting in local elections disenfranchises them and denies them a voice or influence in the decisions being made by the local elected bodies.

D. Recommendations

- Amend the *Law on ensuring rights and freedoms of internally displaced persons* to include provisions that guarantee IDPs a right to consultation and participation in decision-making processes on internal displacement issues.
- Arrange wide consultations with IDPs as well as civil society organizations engaged in providing support to IDPs to discuss the merits of current legislation and policies relating to IDPs as well as any proposed amendments.
- Amend legislation to include provisions that stipulate the obligatory publication of the drafts of any laws and policies that concern IDPs' rights, as well as consultations with IDPs on these draft laws and policies before they are adopted.
- Amend legislation to include provisions that stipulate the continued recognition of professional associations, such as bar associations, writers' associations, artists' and journalists' associations, and so on, that originally were based on what is now NGCAs, and that as a result of displacement are in exile in GCAs.

21. COOPERATION WITH NATIONAL AND INTERNATIONAL HUMANITARIAN PARTNERS

The magnitude of IDPs' needs for protection, assistance, and solutions is typically such that these needs cannot be met by one single national institution (see *chapter on National Institutional Focal Point Institution*) or by the national authorities alone. Supplementary assistance, requiring cooperation with national and international humanitarian partners, is typically needed. However, in some contexts, authorities may impede the provision of aid by denying international humanitarian agencies entry into the country or preventing access by national and international humanitarian partners to certain displaced communities in need of assistance and protection. In other situations, there may be domestic legal and administrative barriers to the provision of international assistance. A lack of coordination between the authorities and humanitarian partners may also frustrate

186 effective implementation of humanitarian activities.⁵⁸⁶ These are obstacles that need to be rectified under national legal frameworks in order to facilitate the provision of protection, assistance, and solutions support to IDPs.

Minimum essential elements of State regulation:

Provide the necessary legal basis for cooperation with national and international humanitarian partners, including provisions to facilitate the immediate entry of humanitarian personnel and goods, such as the waiver of regular visa and custom requirements.

A. International normative framework

Based on well-established standards of international law, Principle 3(1) of the *Guiding Principles on Internal Displacement* affirms as a general principle: “National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.”⁵⁸⁷ Principle 25 of the U.N. Guiding Principles reaffirms this general principle and then specifies, in paragraph 2:

International humanitarian organisations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or interference in a State’s internal affairs and shall be considered in good faith. Consent there-to shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.⁵⁸⁸

As a corollary of this legal obligation of States: “All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.”⁵⁸⁹ Such “[p]ersons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.”⁵⁹⁰ All humanitarian assistance is to be carried out in accordance with the principles of humanity and impartiality,

⁵⁸⁶ See *Manual for Legislators and Policymakers*, pp. 66–67.

⁵⁸⁷ *Guiding Principles on Internal Displacement*, Principle 3(1). For the international law from which this principle is derived, see *Annotations to the Guiding Principles*, pp. 19–20. As a corollary, Principle 3(2) affirms: “Internally displaced persons have the right to request and to receive protection and humanitarian assistance from the authorities.”

⁵⁸⁸ *Guiding Principles*, Principle 25(2). See also *Annotations to the Guiding Principles*, pp. 114–115.

⁵⁸⁹ *Annotations to the Guiding Principles*, pp. 114–115.

⁵⁹⁰ *Guiding Principles on Internal Displacement*, Principle 26. See also *Annotations to the Guiding Principles*, p. 120.

and without discrimination.⁵⁹¹ In this connection, humanitarian assistance “shall not be diverted, in particular for political or military reasons.”⁵⁹²

In addition to these overall principles prescribing cooperation with the international community in the provision of humanitarian assistance, the *Guiding Principles* also elaborate what this requires in relation to specific activities. Principle 16(2) requires cooperation by the authorities concerned with relevant international organisations with regard to establishing the fate and whereabouts of IDPs who are reported missing and notifying the next of kin on the progress and results of such investigations.⁵⁹³ Principle 17(3) requires authorities to “encourage and cooperate with humanitarian organisations engaged in the task of family reunification.”⁵⁹⁴ (See also *chapter on Family Life*.) Principle 30 affirms an obligation on the part of the authorities to grant and facilitate rapid and unimpeded access by “international humanitarian organisations and other appropriate actors” to IDPs specifically in order to assist them with resettlement and reintegration.⁵⁹⁵

Upholding these legal responsibilities to cooperate with the international community in order to ensure that IDPs obtain the protection, assistance, and solutions they require is considered a benchmark of national responsibility for addressing internal displacement.⁵⁹⁶ Practical measures demonstrating such cooperation would include the authorities waiving requirements for transit, entry, and exit visas for humanitarian personnel acting in their official capacity, minimising customs inspections and documentation requirements, and waiving otherwise applicable duties or restrictions on export, transit, or import of relief goods and equipment.⁵⁹⁷

Another important way in which governments can demonstrate cooperation with the international community is by inviting specialized experts on IDPs and human rights, such as the U.N. Special Rapporteur on the Human Rights of Internally Displaced Persons and the Council of Europe High Commissioner on Human Rights, to visit the country. Such visits can be instrumental in facilitating dialogue regarding the situation of IDPs, raising national awareness on the problems facing IDPs, stimulating government action to adopt or enhance poli-

⁵⁹¹ *Guiding Principles on Internal Displacement*, Principle 24(1).

⁵⁹² See also *Annotations to the Guiding Principles*, p. 111.

⁵⁹³ See also *Annotations to the Guiding Principles*, p. 71.

⁵⁹⁴ See also *Annotations to the Guiding Principles*, p. 76.

⁵⁹⁵ *Guiding Principles on Internal Displacement*, Principle 30. See also *Annotations to the Guiding Principles*, pp. 140–141.

⁵⁹⁶ *Framework for National Responsibility*, p. 24–26.

⁵⁹⁷ *Manual for Legislators and Policymakers*, p. 63.

188 cies and programmes to effectively address internal displacement, and fostering strengthened links between the authorities and the international community as well as with civil society and IDPs themselves.⁵⁹⁸

B. Council of Europe standards

None of the key conventions of the Council of Europe⁵⁹⁹ contain provisions on cooperation with international organisations to facilitate humanitarian assistance. Article 18 of the Framework Convention for the Protection of National Minorities can nonetheless be considered relevant if the displaced persons belong to a certain national minority. The Article makes important provisions for international cooperation in case national minorities are in need of protection:

[T]he Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned.

2. *Where relevant, the Parties shall take measures to encourage transfrontier co-operation. This article encourages the Parties to conclude, in addition to the existing international instruments, and where the specific circumstances justify it, bilateral and multilateral agreements for the protection of national minorities. It also stimulates transfrontier co-operation. As is emphasised in the Vienna Declaration and its Appendix II, such agreements and co-operation are important for the promotion of tolerance, prosperity, stability and peace.*⁶⁰⁰

The commitment of the Committee of Ministers to implement the Guiding Principles on Internal Displacement⁶⁰¹ and specific provisions of the Committee of Ministers' Recommendation and Explanatory Memorandum on internal displacement confirm the responsibility of the State concerned to facilitate humanitarian access by international actors. According to the Recommendation, the responsibility of the State concerned to provide humanitarian assistance entails a duty to request "aid from other states or international organisations if the state concerned is not in a position to provide protection and assistance to its internally displaced persons."⁶⁰² Moreover, offers from other States or international

⁵⁹⁸ *Framework for National Responsibility*, p. 25.

⁵⁹⁹ Council of Europe, ECHR as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5; Council of Europe, Revised ESC, 3 May 1996, ETS 163; Council of Europe, FCNM 1 February 1995, ETS 157.

⁶⁰⁰ Council of Europe, FCNM, 1 February 1995, ETS 157, Art. 18.

⁶⁰¹ Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, Preamble.

⁶⁰² Council of Europe, Committee of Ministers, Recommendation 2006(6) on IDPs, 5 April 2006, para. 4.

organisations to provide aid should not be refused arbitrarily.⁶⁰³ The Explanatory Memorandum explains that “a refusal which is not reasonably justified or which is not in accordance with the law” or “the refusal of any offer made by an international organ responsible for humanitarian assistance” constitute an arbitrary refusal.⁶⁰⁴ Whenever a State requests assistance to address internal displacement, member States of the Council of Europe are “encouraged to agree to providing such aid” although they are not bound to do so.⁶⁰⁵

With regard to the primary responsibility of the State affected by internal displacement to provide protection and assistance to IDPs, the Committee of Ministers considers that in “exceptional circumstances determined by the highest international organizations,” this responsibility can fall to an external State that exercises effective control or *de facto* authority over a territory located outside its internationally recognized borders. This responsibility also may fall, again in “exceptional circumstances determined by the highest international organizations” to an international organisation mandated under international law to ensure the protection and assistance of IDPs, as was for instance the case in Kosovo.⁶⁰⁶

There are a series of Parliamentary Assembly documents containing provisions referring to cooperation with humanitarian partners in order to protect displaced communities. First, PACE Recommendation 1877 (2009) underlined the need for cooperation with the European Union, notably via the Eastern Partnership and the European Neighbourhood Programme.⁶⁰⁷ Second, regarding IDPs’ property rights issues, the Assembly calls upon the relevant member States to seek technical assistance from other countries or international organisations in Resolution 1708 (2010).⁶⁰⁸ That same resolution commends the UNHCR and the OSCE “*for highlighting displacement-related property issues in Europe within their respective mandates and [they] are encouraged to continue and*

⁶⁰³ *Ibid.*

⁶⁰⁴ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 4.

⁶⁰⁵ Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 4.

⁶⁰⁶ The Memorandum explains that the United Nations Mission in Kosovo was set up by UN Security Council with a responsibility including to establish “a secure environment in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established, and humanitarian can be delivered.” Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006, para. 4.

⁶⁰⁷ PACE Recommendation 1877(2009), *Europe’s forgotten people: protecting the human rights of long-term displaced persons*, 24 June 2009, Art. 13.

⁶⁰⁸ PACE Resolution 1708(2010), *Solving property issues of refugees and internally displaced persons*, 28 January 2010, para. 11.

broaden their efforts to ensure the resolution of such property issues at national level.”⁶⁰⁹ Third, PACE Resolution 2026 (2014), dedicated to housing and the livelihoods of refugees and IDPs, called for “prepar[ing] a global strategy concerning in particular sustainable solutions for the rehousing and reintegration of displaced persons, in keeping with the United Nations Guiding Principles, and in consultation with relevant international organisations.”⁶¹⁰ Finally, Resolution 2028 (2015) on the IDPs in Ukraine invited “the Council of Europe Development Bank to consider action with a view to assisting the displaced Ukrainian population and the reconstruction process in the devastated areas.”

C. Analysis of national legislation

The *Law on ensuring rights and freedoms of internally displaced persons* provides the legal basis for cooperation by the Government of Ukraine with international organizations and other humanitarian partners on issues regarding internal displacement. Paragraph 1 of Article 18 of the Law provides that Ukraine will cooperate with other States and international organizations to prevent the occurrence of internal displacement, to protect the rights of IDPs and to create conditions for the voluntary return of IDPs to abandoned places of residence. While this provision is rather declarative in character, paragraphs 2–4 of Article 18 give more explanation on how the Government is to promote the provision of humanitarian aid by international donors. More specifically, the Government shall facilitate accelerating the import of humanitarian aid provided by international donors.⁶¹¹ However, the IDP Law does not contain any specific accelerated procedures or any referrals to such procedures. The Law “also provides that international humanitarian, charitable, technical or any other aid that is provided for IDPs is to be exempted from tax and customs fees.”⁶¹²

Also relevant is the *Law on Humanitarian aid* which provides that goods that are imported as humanitarian aid shall have priority in declaration procedures, which are free of charge for this type of goods. This Law also stipulates that executive bodies shall adopt an instruction to give priority free of charge for a simplified declaration of humanitarian aid.⁶¹³ Such an instruction was adopted in 1999 but

⁶⁰⁹ PACE Resolution 1708(2010), Solving property issues of refugees and internally displaced persons, 28 January 2010, para. 12.

⁶¹⁰ PACE Resolution 2026 (2014), *Alternatives to Europe's substandard IDP and refugee collective centres*, 18 November 2014, para. 10.2.1.

⁶¹¹ *Law on ensuring of rights and freedoms of internally displaced persons*, Art. 18, para. 2.

⁶¹² *Law on ensuring of rights and freedoms of internally displaced persons*, Art. 18, para. 3.

⁶¹³ *Law on humanitarian aid*, Art. 8.

revoked in October 2015.⁶¹⁴ On 15 August 2014 the Cabinet of Ministers adopted Resolution No. 347 *On customs clearance of humanitarian aid* which provides that non-tariff regulations of foreign trade shall not apply to humanitarian aid provided by the International Committee of the Red Cross, the World Health Organization, the North Atlantic Treaty Organization (NATO), and the United Nations. Subsequently, on 8 October 2014 the Cabinet of Ministers adopted Resolution No. 566 *On customs clearance of humanitarian aid* which stipulated that the same rules apply to humanitarian aid provided by the foreign governments through their authorized organizations. Only on 24 December 2015 was the *Tax Code* amended and a tax exemption for international humanitarian aid introduced.⁶¹⁵

The *Law on ensuring rights and freedoms of internally displaced persons* also sets forth the legal basis for cooperation with local humanitarian partners. Article 16 provides that State authorities can involve civic organizations in the formation and implementation of public policy to address IDP issues. Moreover, Article 15 (2) stipulates that to develop material and the technical base needed to protect the rights and freedoms of IDPs, the Government can involve funds from foreign countries and international organizations in the form of charitable, humanitarian, material and technical assistance, as well as donations from individuals, entities, charities and NGOs, and other sources not prohibited by law.

The *Law on humanitarian aid* also includes a provision on the support of foreigners and stateless persons who facilitate import of humanitarian aid to Ukraine.⁶¹⁶ According to the Law, such persons have priority in receiving visas and can be accommodated in hotels at prices set for citizens of Ukraine. This provision is declarative. There is no procedure or reference to a procedure for priority issuance of visas for this category of persons.

Humanitarian partners have limited access to the territories in Crimea and Eastern Ukraine, which are territories not controlled by the Government. According to the Resolution of the Cabinet of Ministers of Ukraine No. 367 “*On approval of rules for entering the temporarily occupied territory of Ukraine and exiting from it*” as of 4 June 2015, foreigners have to obtain a special permit to enter Crimea (para 3.1). International organizations, international and foreign NGOs as well as independent human rights missions can receive a permit to enter Crimea only

⁶¹⁴ Order of the State Customs Service of Ukraine No. 852 “On approval of instruction on priority free of charge simplified declaration of humanitarian aid.”

⁶¹⁵ *Tax Code of Ukraine*, Art. 197, para. 197.11.

⁶¹⁶ *Law on humanitarian aid*, Art. 13.

192 with the consent of the Ministry of Foreign Affairs of Ukraine. To obtain such permits persons must apply to the head or deputy head of the territorial office of the State Migration Service in Novotroitskiy and Genichenskiy districts of Kher-son region. Processing the applications may take up to 5 working days (para. 25). As for humanitarian aid access to Crimea, the Cabinet of Ministers has banned the supply of goods to the territory of Crimea as long as it is occupied, but humanitarian aid was exempted from this ban.⁶¹⁷

Representatives of international organizations can enter NGCAs only if they provide a passport document and a special permit to enter this territory. This permit can be obtained only upon request or with the consent of the Ministry of Foreign Affairs of Ukraine.⁶¹⁸ To obtain such permit a person must apply online on the website of the State Security Service. Processing the application takes 10 days. As for humanitarian aid access, those international organizations and NGOs that are registered as international donors with the Ministry of Social Policy are entitled to a simplified procedure for transporting humanitarian aid. An order from the Ministry of Social Policy is not needed for these organizations.⁶¹⁹ Currently, 11 organizations, including UNHCR, UNICEF, the Danish Refugee Council, Save the Children, and others are registered as international donors with the Ministry of Social Policy. The full list is published online at the website of the Ministry of Social Policy.⁶²⁰ Organizations not in this list are required to go through the procedure for clearance of humanitarian aid that is conducted by the Ministry of Social Policy.⁶²¹

Also, the Cabinet of Ministers of Ukraine adopted a resolution to regulate distribution of humanitarian aid in Donetsk and Luhansk regions, which are the major IDP-hosting areas. However, all other regions of Ukraine (there are IDPs present in all regions of the country) lack guidance in this field. Resolution No. 21 “On the procedure for rendering humanitarian assistance to the population of Donetsk and Luhansk regions” stipulates that Donetsk and Luhansk

⁶¹⁷ Resolution of the Cabinet of Ministers No. 1035 dated 16 December 2015 “On constraints of supplying goods (works, services) from temporarily occupied territory to another territory of Ukraine and/or from other territory of Ukraine to temporarily occupied territory,” para. 2.

⁶¹⁸ Order No 415 of the First Deputy Head of the Counterterrorist Operation Division of the State Security Services of Ukraine “On approval of the interim order of control over the movement of persons, vehicles and goods along the contact line within the Donetsk and Luhansk regions,” para. 7.1.

⁶¹⁹ *Ibid.*, para. 8.2.

⁶²⁰ http://www.mlsp.gov.ua/labour/control/uk/publish/category?cat_id=147818

⁶²¹ Order No. 415 of the First Deputy Head of the Counterterrorist Operation Division of the State Security Services of Ukraine “On approval of the interim order of control over the movement of persons, vehicles and goods along the contact line within the Donetsk and Luhansk regions,” para. 8.2.

regional state administrations shall distribute aid taking into account the needs of particular IDPs. Donetsk and Luhansk regional state administrations receive information from the respective district state administrations in Donetsk and Luhansk regions about particularly vulnerable IDPs to be prioritized for assistance.⁶²² However, the Resolution does not specify vulnerability criteria or procedures for this needs assessment.

D. Recommendations

- Amend the Resolution of the Cabinet of Ministers of Ukraine No. 367 “*On approval of rules for entering the temporarily occupied territory of Ukraine and exiting from it*” to simplify international partners’ access to the territory of Crimea.
- Amend Order No. 415 of the First Deputy Head of the Counterterrorist Operation Division of the State Security Services of Ukraine “*On approval of the interim order of control over the movement of persons, vehicles and goods along the contact line within the Donetsk and Luhansk regions*” to simplify international partners’ access to the territory of counterterrorist operation.
- Adopt a by-law that stipulates the facilitation of visa issuance to foreigners who import humanitarian aid to Ukraine.
- Amend CMU Resolution No. 21 “*On procedure of rendering of humanitarian assistance to the population of Donetsk and Luhansk regions*” to specify procedures for the distribution of humanitarian aid, integrating vulnerability criteria and needs assessment.
- Revoke the provision, in CMU Resolution № 505 of 1 October 2015, restricting the bank through which IDPs can receive their monthly pension and any social assistance, so that IDPs can receive these allowances at the bank of their choice.

⁶²² CMU Resolution No. 21 “*On procedure of rendering of humanitarian assistance to the population of Donetsk and Luhansk regions*,” dated 30 January 2015, para. 6.

ANNEX 1.

SELECTION OF COUNCIL OF EUROPE STANDARDS RELEVANT TO THE RIGHTS OF INTERNALLY DISPLACED PERSONS

Treaties

- CoE, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5
 - Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952, ETS 9
 - Protocol 4 to the European Convention on Human Rights and Fundamental Freedoms, 16 September 1963, CETS No.046
 - Protocol 12 to the European Convention on Human Rights and Fundamental Freedoms on the Prohibition of Discrimination, 4 November 2000, ETS 177
- CoE, European Charter for Regional or Minority Languages, 4 November 1992, ETS 148
- CoE, Framework Convention for the Protection of National Minorities, 1 February 1995, ETS 157
- CoE, European Social Charter (Revised), 3 May 1996, ETS 163
- CoE, Convention on Action against Trafficking in Human Beings, 16 May 2005, ETS 197
- CoE, Convention on Preventing and Combating Violence against Women and Domestic Violence, 11 May 2011, ETS 210

Committee of Ministers

- CoE, Committee of Ministers, Recommendation (98)3 on Access to Higher Education, 17 March 1998
- CoE, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36 Addendum, 8 March 2006
- CoE, Committee of Ministers, Recommendation 2006(6) on internally displaced persons, 5 April 2006
- CoE, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, CM (2006)35 Addendum, 5 April 2006
- Council of Europe, Committee of Ministers, Situation in Ukraine, Decision at 1207th meeting, 17 September 2014
- Council of Europe, Committee of Ministers, Situation in Ukraine, Decision at 1210th meeting, 22 and 24 October 2014

Parliamentary Assembly of the Council of Europe

- PACE Recommendation 1499(2001), *Humanitarian situation of refugees and internally displaced persons (IDPs) from Chechnya*, 25 January 2001
- PACE Recommendation 1631(2003), *Internal displacement in Europe*, 25 November 2003
- PACE Recommendation 1652(2004), *Education of refugees and internally displaced persons*, 2 March 2004
- PACE Recommendation 1857(2009), *Humanitarian consequences of the war between Georgia and Russia*, 29 January 2009
- PACE Recommendation 1877(2009), *Europe's forgotten people: protecting the human rights of long-term displaced persons*, 24 June 2009
- PACE Resolution 1459(2005), *Abolition of restrictions on the right to vote*, 24 June 2005
- PACE Resolution 1708(2010), *Solving property issues of refugees and internally displaced persons*, 28 January 2010
- PACE Resolution 1879(2012), *The situation of IDPs and returnees in the North Caucasus region*, 26 April 2012
- PACE Resolution 1897(2012), *Ensuring greater democracy in elections*, 3 October 2012
- PACE Resolution 2026 (2014), *Alternatives to Europe's substandard IDP and refugee collective centres*, 18 November 2014

- PACE Resolution 2028 (2015), *The humanitarian situation of Ukrainian refugees and displaced persons*, 27 January 2015
- PACE Resolution 2067 (2015), *Missing persons during the conflict in Ukraine*, 25 June 2015
- PACE Report on *Alternatives to Europe's substandard IDP and refugee collective centres*, Doc. 13507, 5 May 2014

Congress of Local and Regional Authorities

- Congress of Local and Regional Authorities, Recommendation 147 (2004) on *Migration flows and social cohesion in South-East Europe: the role of local and regional authorities*, 27 May 2004
- Congress of Local and Regional Authorities: Resolution 218 (2006) on *Effective access to social rights for immigrants: the role of local and regional authorities*, 1 June 2006

Case law of the European Court of Human Rights

- ECtHR, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, Application no. 9214/80; 9473/81; 9474/81, judgment of 28 May 1985
- ECtHR, *Akdivar and others v. Turkey*, Application no. 21893/93, judgment of 16 September 1996
- ECtHR, *Akdivar and others v. Turkey (Article 50)*, (99/1995/605/693), judgment of 1 April 1998
- ECtHR, *Akimova v. Azerbaijan*, Application no. 19853/03, judgment of 27 September 2007
- ECtHR, *Aziz v. Cyprus*, Application no. 69949/01, judgment of 22 June 2004
- ECtHR, *Budayeva and others v. Russia*, Applications nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, judgment of 20 March 2008
- ECtHR, *Budina v. Russia* (decision on admissibility), Application no. 45603/05, decision of 18 June 2009
- ECtHR, *Calvelli and Ciglio v. Italy* [GC], Application no. 32967/96, judgment of 17 January 2002
- ECtHR, *Catan and others v. Moldova and Russia* [GC], Applications nos. 43370/04, 8252/05 and 18454/06, judgment of 19 October 2012
- ECtHR, *Chiragov and others v. Armenia*, Application no. 13216/05, judgment of 16 June 2015

- ECtHR, *Cruz Varas and others v. Sweden*, Application no. 15576/89, judgment of 20 March 1991
- ECtHR, *Cyprus v. Turkey*, Application no. 25781/94, judgment of 10 May 2001
- ECtHR, *Demades v. Turkey*, Application no. 16219/90, judgment of 31 July 2003
- ECtHR, *Demopoulos v. Turkey* (decision on admissibility), Application nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04, decision of 1 March 2010
- ECtHR, *Deznici and others v. Cyprus*, Applications nos. 25316–25321/94 and 27207/95, judgment of 23 May 2001
- ECtHR, *Diogenous and Tseriotis v. Turkey*, Application no. 16259/90, judgment of 22 September 2009
- ECtHR, *Dogan and others v. Turkey*, Applications nos. 8803–8811/02, 8813/02 and 8815–8819/02, judgment of 29 June 2004
- ECtHR, *Dubetska and others v. Ukraine*, Application no. 30499/03, judgment of 10 February 2011
- ECtHR, *Dzemyuk v. Ukraine*, Application no. 42488/02, judgment of 4 September 2014
- ECtHR, *Eweida and others v. the United Kingdom*, Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10, judgment of 15 January 2013
- ECtHR, *Fadeyeva v. Russia*, Application no. 55723/00, judgment of 9 June 2005
- ECtHR, *Gaygusuz v. Austria*, Application No. 17371/90, judgment of 16 September 1996
- ECtHR, *Grudić v. Serbia*, Application no. 31925/08, judgment of 17 April 2012
- ECtHR, *Gulmammadova v. Azerbaijan*, Application no. 38798/07, judgment of 22 April 2010
- ECtHR, *Inze v. Austria*, Application no. 8695/79, judgment of 28 October 1987
- ECtHR, *Ipek v. Turkey*, Application no. 25760/94, judgment of 17 February 2004
- ECtHR, *Isgandarov and others v. Azerbaijan*, Applications nos. 50711/07, 50793/07, 50848/07, 50894/07 and 50924/07, judgment of 8 July 2010

- ECtHR, *Ismoilov and others v. Russia*, Application no. 2947/06, judgment of 24 April 2008
- ECtHR, *Jafarov v. Azerbaijan*, Application no. 17276/07, judgment of 11 February 2010
- ECtHR, *James and others v. the United Kingdom*, Application no. 8793/79, judgment of 21 February 1986
- ECtHR, *Khamidov v. Russia*, Application no. 72118/01, judgment of 15 November 2007
- ECtHR, *Koua Poirrez v. France*, Application no. 40892/98, judgment of 30 September 2003
- ECtHR, *Kroon and others v. the Netherlands*, Application no. 18535/91, judgment of 27 October 1994
- ECtHR, *Kurić v. Slovenia*, Application no. 26828/06, judgment of 26 June 2012
- ECtHR, *L.C.B. v. the United Kingdom* (14/1997/798/1001), judgment of 9 June 1998
- ECtHR, *Lithgow and others v. the United Kingdom*, Application no. 9006/80, 9262/81, 9263/81, 9265/81, 9266/81, 9313/81, 9405/81, judgment of 8 July 1986
- ECtHR, *Loizidou v. Turkey (Preliminary Objections)*, Application no. 15318/89, judgment of 23 March 1995
- ECtHR, *Loizidou v. Turkey*, Application no. 15318/89, judgment 18 December 1996
- ECtHR, *Loizidou v. Turkey (Article 50)* (40/1993/435/514), judgment of 28 July 1998
- ECtHR, *Mentesş and Others v. Turkey (Article 50)* (58/1996/677/867), judgment of 27 July 1998
- ECtHR, *Mozer v. the Republic of Moldova and Russia*, Application no. 11138/10, judgment of 23 February 2016
- ECtHR, *M.S.S. v. Belgium and Greece*, Application no. 30696/09, judgment of 21 January 2011
- ECtHR, *Pichkur v. Ukraine*, Application no. 10441/06, judgment of 7 November 2013
- ECtHR, *Radanović v. Croatia*, Application no. 9056/02, judgment of 21 December 2006

- ECtHR, *Saadi v. Italy* [GC], Application no. 37201/06, judgment of 28 February 2008
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ANNEX 2.

LIST OF KEY NATIONAL LEGAL ACTS RELEVANT TO THE PROTECTION OF INTERNALLY DISPLACED PERSONS IN UKRAINE

Name of legal act	Date of adoption
Constitution of Ukraine	Adopted on 28.06.1996
Criminal Code of Ukraine	Adopted on 05.04.2001
Family Code of Ukraine	Adopted on 10.01.2002
Housing Code of Ukrainian Soviet Socialist Republic	Adopted on 30.06.1983
Tax Code of Ukraine	Adopted on 02.12.2010
Code of Administrative Proceedings of Ukraine	Adopted on 07.12.1984
Budget Code of Ukraine	Adopted on 08.07.2010
Law on ensuring rights and freedoms of internally displaced persons	Adopted on 20.10.2014
Law on securing the rights and freedoms of citizens and the legal regime on the temporarily occupied territory of Ukraine	Adopted on 15.04.2014
Law on amendments to the certain legislative acts of Ukraine regarding reformation of compulsory state social insurance and legalization of payroll	Adopted on 28.12.2014
Law on amendments to certain legislative acts of Ukraine regarding strengthening social protection of internally displaced persons	Adopted on 05.03.2015

Law on amendments to certain legislative acts of Ukraine regarding strengthening guarantees of ensuring rights and freedoms of internally displaced persons	Adopted on 24.12.2015
Law on amendments to certain legislative acts of Ukraine regarding strengthening the social protection of children and support of families with children	Adopted on 26.01.2016
Law on principles of prevention and combating discrimination in Ukraine	Adopted on 06.09.2012
Law on amendments to certain legislative acts of Ukraine regarding prevention and combatting discrimination	Adopted on 13.05.2014
Law on creation of free economic zone “Crimea” and on the peculiarities of economic activities on the temporarily occupied territory of Ukraine	Adopted on 12.08.2014
Law on amendments to certain legislative acts of Ukraine regarding defining the starting date of temporary occupation	Adopted on 15.09.2015
Law on temporary measures for the period of holding the counterterrorist operation	Adopted on 02.09.2014
Law on freedom of movement and free choice of place of residence in Ukraine	Adopted on 11.12.2003
Law on the unified state register of demographic and proof of citizenship of Ukraine identity or their special status	Adopted on 20.11.2012
Law on state registration of civil status acts	Adopted on 01.07.2010
Law on the housing fund for social purposes	Adopted on 12.01.2006
Law on drinking water and drinking water supply	Adopted on 10.01.2002
Law on ensuring sanitary and epidemic safety of the population	Adopted on 24.02.1994
Law on fundamentals of the legislation of Ukraine on health care	Adopted on 19.11.1992
Law on medicinal products	Adopted on 04.04.1996
Law on protection of population against infectious diseases	Adopted on 06.04.2000

Law on rest and recreation of children	Adopted on 04.09.2008
Law on amendments to the law of Ukraine “On rest and recreation of children” regarding recreation of children of combatants, children whose one parent died in the area of counterterrorist operation, fighting or armed conflict or during the mass actions of civic protests, children who are registered as internally displaced persons	Adopted on 14.07.2015
Law on mandatory state social unemployment insurance	Adopted on 02.03.2000
Law on state social aid to indigent families	Adopted on 01.06.2000
Law on state aid to families with children	Adopted on 21.11.1992
Law on mandatory state social insurance against industrial accident and occupational disease that caused	Adopted on 23.09.1999
Law on education	Adopted on 23.05.1991
Law on higher education	Adopted on 01.07.2014
Law on vocational education	Adopted on 10.02.1998
Law on amendments to certain legislative acts of Ukraine regarding the state support of combatants and their children, children whose one parent died in the area of counterterrorist operation, fighting or armed conflict or during the mass actions of civic protests, children who are registered as internally displaced persons, for acquiring vocational and higher education	Adopted on 14.05.2015
Law on election of people’s deputies of Ukraine	Adopted on 17.11.2011
Law on elections of the president of Ukraine	Adopted on 05.03.1999
Law on local elections	Adopted on 14.07.2015
Law on central election commission	Adopted on 30.06.2004
Law on the state register of voters	Adopted on 22.02.2007
Law on political parties in Ukraine	Adopted on 05.04.2001
Law on amendments to certain legislative acts of Ukraine regarding the conditions of repayment of fixed-term deposits	Adopted on 14.05.2015

Law on state budget of Ukraine for 2016	Adopted on 25.12.2015
Law on state special programs	Adopted on 18.03.2004
Law on the Ukrainian parliament commissioner for human rights	Adopted on 23.12.1997
Law on access to public information	Adopted on 13.01.2011
Law on the procedure for covering activities of bodies of state power and local self-government by media	Adopted on 23.09.1997
Law on humanitarian aid	Adopted on 22.10.1999
Cabinet of Ministers Resolution № 1393-p on adoption of an action plan on implementation of the national strategy in the area of human rights for the period under 2020	Adopted on 23.11.2015
Decree of the President of Ukraine № 501 on approval of the national human rights strategy of Ukraine	Adopted on 25.08.2015
Cabinet of Ministers Resolution № 509 on registration of internally displaced persons	Adopted on 01.10.2014
Cabinet of Ministers Resolution № 505 on providing monthly targeted financial support to internally displaced persons from the temporarily occupied territory of Ukraine and counterterrorist operation area to cover livelihood, including housing and utilities	Adopted on 01.10.2014
Cabinet of Ministers Resolution № 34 on amending the regulations adopted by the resolutions of the cabinet of ministers № 505 dated 1 October 2014 and № 509 dated 1 October 2014	Adopted on 28.01.2015
Cabinet of Ministers Resolution № 79 on some issues of registration and issuance of certificate of registration of a person who moved from temporarily occupied territory of Ukraine or area of the counterterrorist operation	Adopted on 04.03.2015
Cabinet of Ministers Resolution № 264 on amending the Cabinet of Ministers Resolution № 509 dated 1 October 2014	Adopted on 15.04.2015

Cabinet of Ministers Resolution № 428 on amending paragraph 7 of the rules of issuing the certificate on registration of a person who move from the temporary occupied territory of Ukraine, the area of counterterrorist operation or a settlement that is situated at the contact line	Adopted on 15.06.2015
Cabinet of Ministers Resolution № 636 on amending some resolutions of the Cabinet of Ministers of Ukraine	Adopted on 26.08.2015
Cabinet of Ministers Resolution № 1094 on approval of the comprehensive state programme for support, social adaptation and reintegration of citizens of Ukraine internally displaced from the temporarily occupied territory of Ukraine and counterterrorist operation to other regions of Ukraine for the period until 2017	Adopted on 16.12.2015
Resolution of the Board of the National Bank № 699 on application of certain norms of currency legislation during the temporary occupation of the territory of the free economic zone “Crimea”	Adopted on 03.11.2014
Resolution of the Board of the National Bank № 810 on amending the resolution of the board of the National Bank of Ukraine dated 3 November 2014 № 699	Adopted on 16.12.2014
Cabinet of Ministers Resolution № 61 on the issues of anti-discrimination expertise and civic anti-discrimination expertise of the project of the legislative acts	Adopted on 30.01.2013
Order of the Ministry of Interior Affairs № 1077 on approval of the rules for registration of residence and place of habitual residence of persons in Ukraine and templates of relevant documents	Adopted on 22.11.2012
Cabinet of Ministers Resolution № 1064 on adoption of the rules of maintenance of the State Register of citizens’ civil status acts	Adopted on 22.08.2007

Order of the First Deputy Head of Counterterrorist Operation Division of the State Security Services of Ukraine № 415 on approval of the interim order of control over the movement of people, vehicles and goods along the contact line within the Donetsk and Luhansk regions.	Adopted on 12.06.2015
Cabinet of Ministers Resolution № 149-r on additional measures of strengthening control over movement of people in the territory of Ukraine	Adopted on 09.03.2014
Cabinet of Ministers Resolution № 367 on approval of rules for entering the temporarily occupied territory of Ukraine and exiting from it	Adopted on 04.06.2015
Cabinet of Ministers Resolution № 722 on amendments to the Rules of entering to the temporary occupied territory of Ukraine and exiting from it	Adopted on 16.09.2015
Cabinet of Ministers Resolution № 682 on certain aspects of implementation of the law of Ukraine on the housing fund for social purpose	Adopted on 23.07.2008
Cabinet of Ministers Resolution № 696 on approval of measures to promote employment, return of funds to finance such measures in case of violation of employment guaranties for internally displaced persons	Adopted on 08.09.2015
Cabinet of Ministers Resolution № 81 on part-time work of employees of state enterprises, institutions and organizations that moved from areas of the counterterrorist operation	Adopted on 04.03.2015
Cabinet of Ministers Resolution № 37 on approval of the material support from the Social Insurance Fund on temporary disability for persons who moved from the temporarily occupied territory of Ukraine and the areas of counterterrorist operation	Adopted on 26.12.2014
Cabinet of Ministers Resolution № 234 on approval the payment of pensions and provision of social services for the citizens of Ukrainian who live in the Autonomous Republic of Crimea and in Sevastopol	Adopted on 02.07.2014

Cabinet of Ministers Resolution № 403 on amendments to the Rules of registration, re-registration of unemployed and keeping records of persons who are seeking employment	Adopted on 27.08.2014
Cabinet of Ministers Resolution № 306 on amending the rules approved by the resolutions of the Cabinet of Ministers of Ukraine of 31.01.2007 № 80 and of 05.04.2012 № 321	Adopted on 06.08.2007
Cabinet of Ministers Resolution № 595 some issues of financing budget institutions, paying social benefits and providing financial support to enterprises and organizations in Donetsk and Luhansk regions	Adopted on 7.11.2014
Resolution of the Board of the Social Insurance Fund against industrial accidents and occupational diseases № 20 on adoption of the rules of provision of insurance benefits, financing costs for medical and social assistance provided by the mandatory state social insurance against industrial accidents and occupational diseases for persons who move temporarily from the temporarily occupied territory and areas of the counterterrorist operation	Adopted on 11.12.2014
Cabinet of Ministers Resolution № 1266 on calculating the average wage (income, cash collateral) to calculate the payments on mandatory state social insurance	Adopted on 26.09.2001
Cabinet of Ministers Resolution № 450 on some issues of provision (occupancy) of additional places of the state order for training of specialists, scientific, educational staff for the citizens of Ukraine residing in the temporarily occupied territory or moved out of it	Adopted on 17.09.2014
Letter of the Ministry of Education and Science № 1/9–436 on continuing secondary education by persons residing in the temporarily occupied territory of Ukraine	Issued on 14.09.2015

Cabinet of Ministers Resolution № 1035 on restrictions on the supply of certain goods (works, services) from temporarily occupied territory to another territory of Ukrainian and /or from another territory of Ukraine to the temporarily occupied territory	Adopted on 16.12.2015
Resolution of the Board of the National Bank № 520 on amendments to the Regulations of the procedure for banks of Ukraine to conduct deposit transactions with corporations and individuals	Adopted on 12.08.2015
Cabinet of Ministers Resolution № 505 on adoption of guidelines of solving the employment issues of internally displaced persons in the years 2015–2016	Adopted on 08.07.2015
Cabinet of Ministers Resolution № 976 on approval of the procedures for facilitation of civic expertise of the activities of executive state bodies	Adopted on 05.11.2008
Cabinet of Ministers Resolution № 996 on guaranteeing participation of civil society in devising and implementing state policies	Adopted on 03.11.2010
Cabinet of Ministers Resolution № 347 on customs clearance issues of cargo execution of humanitarian aid	Adopted on 15.08.2014
Cabinet of Ministers Resolution № 566 On custom clearance of cargo of humanitarian aid	Adopted on 08.10.2014
Cabinet of Ministers Resolution № 21 on procedure of rendering of humanitarian assistance to the population of Donetsk and Luhansk regions	Adopted on 30.01.2015
Cabinet of Ministers Resolution № 637 on welfare payments to internally displaced persons	Adopted on 05.11.2014
Cabinet of Ministers Resolution № 535 on the approval of the Procedure on the use of funds received from individuals and legal entities to provide one-time financial assistance to affected persons and persons from temporarily occupied territory of Ukraine or counterterrorist operation areas	Adopted on 01.10.2014

Cabinet of Ministers Order № 588-r on Social Security Services for citizens of Ukraine displaced from temporary occupied territory and counterterrorist operation areas	Adopted on 11.06.2014
Cabinet of Ministers Resolution № 636 on amendments to some resolutions of the Cabinet of Ministers of Ukraine	Adopted on 26.08.2015
Cabinet of Ministers Resolution № 382-p on providing compensation for the costs associated with temporary disabilities living in sanatoriums and other citizens who move temporarily from the occupied territory and the area of counterterrorist operations	Adopted on 15.04.2015
Cabinet of Ministers Resolution № 1068-p on provision of partial payment for the temporary housing of citizens who temporarily moved from the occupied territories and area of the counterterrorist operation	Adopted on 16.10.2014
Decree of the Ministry of Social Policy № 140 on approval of the Provision on the commission for allocation of funds to provide cash assistance to affected population or internally displaced persons	Adopted on 12.02.2015
Cabinet of Ministers Resolution № 531 on peculiarities of realization of the rights of certain categories of persons to mandatory state social insurance	Adopted on 01.10.2014
Decree of the Ministry of Social Policy № 738 on approval of the form of application for registration of a person who moved from temporarily occupied territory of Ukraine or area of the counterterrorist operation	Adopted on 08.10.2014
Cabinet of Ministers Resolution № 68 on approval of the transfer of intergovernmental transfers to local budgets in the towns of Donetsk and Luhansk regions, which are located in the area of counterterrorist operation	Adopted on 25.02.2015

Cabinet of Ministers Resolution № 213 on temporary accommodation of families displaced from Autonomous Republic of Crimea and the city of Sevastopol	Adopted on 25.06.2014
Cabinet of Ministers Resolution № 198 on adoption of the Rules for registration, re-registration and recordkeeping of persons who are seeking employment	Adopted on 20.03.2013
Cabinet of Minister Resolution № 352 on adoption of amendments to Cabinet of Ministers Resolution № 509 dated 1 October 2014	Adopted on 08.06.2016
Cabinet of Minister Resolution № 365 on certain issues of social benefits of internally displaced persons	Adopted on 08.06.2016

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